

Can my ex claim superannuation even though we're not married?

When you're in a de facto relationship, many of the legal entitlements and obligations afforded to married couples still apply to you. Therefore, it's important to be aware of what might happen when it comes to your finances in a **de facto separation**. Ultimately, in the event that a de facto relationship breaks down, your ex could be entitled to a portion of your superannuation like any other asset.

According to the Family Law Act 1975, a person is considered to be in a de facto relationship with another person if:

1. the persons are not legally married to each other; and
2. the persons are not related by family; and
3. having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

Applications for **property settlements** following a de facto split can only be made if there is a child in the relationship, the parties lived together in a relationship for at least two years, or a serious injustice would result to one party if an order was not made due to their contributions to the relationship.

When a de facto relationship breaks down, the superannuation of both partners forms part of the pool

of assets that are divided upon separation. All superannuation is taken into account regardless of whether it was acquired before, during the relationship or after separation. Therefore, with employer contributions increasing to 10% as of July 2021, superannuation can often be a person's largest asset.

How the law applies

Under the Family Law Act 1975, superannuation is treated as property, which can be adjusted, transferred or divided between parties. In Australia, superannuation can be split through an order of the Federal Circuit and Family Court of Australia.

You can enter into an agreement without the need for litigation, however if you do end up in Court, a Judge will consider all of the relevant circumstances when splitting assets, by:

1. Establishing the property pool and ownership of assets.
2. Assessing the contributions of each of the parties to that property pool to arrive at a percentage.
3. Making adjustments to the percentage for future needs.
4. Applying the percentage to the property pool and assessing whether the effect is just and equitable.

Assets are not automatically subject to a 50/50 split. However, superannuation is often considered separately, and therefore the division of non-superannuation and superannuation assets can be different. For example, a court could determine that the assets, should be apportioned 60% to one party and 40% to the other party and superannuation may be equalised.

As superannuation is often locked away until retirement, if your ex is entitled to your superannuation, the money is transferred into the superannuation account of the recipient. It is important to get advice about the financial ramifications of splitting super and this is something we always recommend our client does in conjunction with our advice.

Things you should consider when entering a de facto relationship

When entering a de facto relationship, it's important to be aware that your partner may be entitled to a portion of your assets, including superannuation, if the relationship breaks down.

If you or someone you know is going through a separation, or you would like to know more about your options in relation to **property settlement** and superannuation, please contact our experienced **Family Law team** for advice on 8238 6666.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.