Super and divorce

FactSheet









Going through a separation or divorce can be a stressful time for you and your family.

The financial decisions you make now could have a big impact on your life in the future, so take the time to consider your options and don't forget about super assets.

This fact sheet will help you understand how super can be split when a relationship breaks down.

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This information is about Cbus Super. It doesn't take into account your specific needs, so you should look at your own financial position, objectives and requirements before making any financial decisions. Read the relevant Product Disclosure Statement and Target Market Determination to decide if Cbus Super is right for you.

Call **1300 361 784** or visit **cbussuper.com.au** for a copy.

Issued by United Super Pty Ltd ABN 46 006 261 623 AFSL 233792 as Trustee for the Construction and Building Unions Superannuation Fund ABN 75 493 363 262 (Cbus or Cbus Super). Use of 'us', 'we', 'our' or 'the Trustee' is a reference to United Super Pty Ltd. Use of 'Fund' refers to Cbus Super.

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How is super treated when a relationship breaks down?

Super is usually one of the biggest assets you have as a couple, but it's often overlooked when a relationship breaks down.

Any super assets you and your ex-partner hold can be taken into account when you divide your property during a separation or divorce. This applies whether you were married or in a de facto relationship (with someone of the same sex or opposite sex).

It's important to remember that any super you split isn't converted to cash so it's still subject to super laws. This means you won't generally be able to access it until you've met a condition of release, such as retirement.

You don't have to split your super assets. Instead, you and your ex-partner could agree to use super assets to offset the division of other property.

Can all super entitlements be split?

Most super entitlements can be split. However, there are rules in place to prevent splitting of super if the balance is too small. For example, if your super balance is less than $5,000 it cannot be split.

Payments made to a person on the grounds of severe financial hardship or on approved compassionate grounds can't be split either.

Retirement Scheme and Defined Benefit Scheme members: If a family law split is deducted from your account this will reduce your benefits in the scheme. For Retirement Scheme members this includes the maximum number of benefit points you can accrue as a contributing member. For more information, see the relevant product disclosure statement at **cbussuper.com.au/forms**.



How can super entitlements be split?

Not all relationship breakdowns end up in the courts. However, if an agreement can't be reached between you and your ex-partner, the Federal Circuit and Family Court of Australia (FCFCOA) may issue a court order.

Depending on your situation, there are three key ways that super entitlements can be split:

- **Superannuation agreement** – A formal written agreement can be developed with independent legal guidance. Both you and your ex-partner's lawyers must sign a certificate stating independent legal advice was provided.
- **Consent order** – A type of court order that can be lodged with the Family Court where you both agree to the terms.
- **Contested order** – A type of court order that can be made by the Family Court where an agreement can't be reached.

If you receive a super payment split through an agreement or court order, you can request to have this money paid to:

- your Cbus Super account; or
- another super fund.

This money can only be paid to you as cash if you're eligible for a cash payment (e.g. if you've reached preservation age or the money is classified as unrestricted non-preserved).

Family law can get complicated. A lawyer or mediator can provide you with advice and options for splitting super.

How does a court decide how to divide debts and assets?

The way that debts and assets are ultimately shared depend on the individual circumstances of your family. A decision is made by the court after all of the evidence is heard.

There are guidelines set out in the law for dividing up property during the settlement process. These include understanding:

- what you've got and what you owe (e.g. what are your assets and debts worth?)
- direct financial contributions you've both made to the relationship (e.g. what wages and salary have been earned?)
- indirect financial contributions you've both made to the relationship (e.g. gifts and inheritances from families)
- non-financial contributions you've both made to the relationship (e.g. caring for children and homemaking), and
- potential future requirements (e.g. age, health, financial resources, care of children and ability to earn).

For detailed information about this process and the relevant forms, visit the Family Court of Australia website at **fcfcoa.gov.au**.

What you need to do

1. Find out how much super is available

You and your ex-partner both have the right to request information about each other's super from your respective super funds.

The request for information is confidential, and is only provided to support the negotiation of a superannuation agreement or to assist with the administration of the Family Law Act.

If you have concerns that your ex-partner has not fully disclosed all of their super assets, you or your legal representative can apply directly to the courts for visibility of their super information held by the Australian Taxation Office (ATO). The request must be made in the approved *Super Information Request* form online using the Commonwealth Courts Portal. You must be part of a current property settlement proceeding to make a request.

For more info visit: **fcfcoa.gov.au/fl/fp/super-visibility**.

Check your own super balance

If your super is with us, log into your account at **cbussuper.com.au** to get your latest super balance. Don't forget about any other super accounts you might have.

Check your ex-partner's super

If your ex-partner's super is with us, to find out how much super they have you'll need to complete the following forms and send them to us:

- A *Superannuation Information Request* form
- A *Form 6 Declaration* to show that you are eligible to make a request.

These forms are available in the *Superannuation Information Kit* at **fcfcoa.gov.au**.

2. Decide how your super will be split

These are difficult and complex decisions to make on your own. We recommend you speak to a financial adviser and lawyer to get the right advice for your situation.

3. Provide instructions to us

What you need to send us will depend on the way you and your ex-partner split these assets:

Superannuation agreement	We will need: ■ a certified copy of the superannuation agreement with an original signature ■ certificates from you and your ex-partner's legal practitioners confirming you both received independent legal advice ■ a copy of your Decree Absolute (if you have already divorced) or a separation declaration (if you have separated but not yet divorced or if your de facto relationship has broken down). The agreement may specify either a dollar amount or a percentage of the superannuation benefit to be split. If the agreement specifies a method for calculating a base amount, you also need to provide the amount calculated and method used.
Court orders (consent orders and contested orders)	Before the court has approved the order we will need: ■ to be provided with any draft court orders about super entitlements. A super fund trustee must be given the opportunity to review the draft court orders to be satisfied that the superannuation splittable payment clauses in the draft are correct and able to be implemented. After the court has approved and sealed the order we will need: ■ a copy of the approved and sealed court order specifying how the super will be split. ■ Court orders can be received via mail or email and don't need to be certified. Orders can also be issued electronically by the court via the Commonwealth Courts Portal. The electronic orders must be forwarded in their original protected format and must match the draft orders we have previously approved.

Once we have received the certified superannuation agreement or sealed court order and any other required documentation, we will generally record the split on our database within 8 to 10 business days after receipt. This prevents it from being paid out or moved until the split is processed.

At this point we'll contact you and your ex-partner to confirm how the super will be split. If you are the person receiving the super, you will then have 28 days to tell us where you would like this money paid (i.e. into a Cbus Super account, another super fund or as cash if it's unrestricted non-preserved).



Solicitor FAQs

Are you a solicitor acting on behalf of a client? Here are some of the most frequently asked questions.

Where do you serve your documentation?

Legal documents including court orders or superannuation agreements should be addressed to the Proper Officer of United Super Pty Ltd as Trustee for the Construction and Building Unions Superannuation Fund and provided:

In person: **Level 22, 130 Lonsdale St, Melbourne, 3000**
By post: **PO Box 24231 Melbourne, VIC, 3001**
By email: **familylaw@cbussuper.com.au**

Do you need to provide proof of your authority to act?

Yes. Please ensure you provide proof of your authority to act on behalf of your client. If your client is a Cbus Super member, you can do this by asking your client to complete the *Third party authority* form available at **cbussuper.com.au/forms**.

How do you pay conduct money to Cbus Super?

The appropriate conduct money should be paid when you submit your documentation to us. The minimum amount under family law rules is $25.

How should I refer to Cbus Super in documentation?

All orders should refer to Cbus Superannuation Fund.

Fees and charges

We don't charge any additional fees for requests for information or payment splits.

Getting your finances in order

Whether you're married or in a de facto relationship, you're likely to be going through a complex process of separating your finances and trying to understand how to manage your money independently.

It's important to remember, you're not alone. There are almost 50,000 divorces in Australia each year. This means there are many other people in your situation, and there is a wide range of support and resources to help you through this time.

If you're not sure where to start, ASIC's MoneySmart website at **moneysmart.gov.au** provides a number of tips and videos to help. The sorts of things most people need to think about include:

- ✓ getting your bank accounts in order
- ✓ doing a financial stocktake
- ✓ organising your bills and other financial information
- ✓ reviewing and updating any bills and direct debit payments
- ✓ reviewing and updating your will, insurance and super
- ✓ creating a budget
- ✓ seeking financial advice
- ✓ seeking legal advice.

Help is at hand

Legal advice

Seeking legal advice is vital during a separation and there are lots of ways you can do this:

- **Paid legal services** – If you'd like to use a private solicitor you can find a family lawyer through the Bar Associations and Law Societies listed by the Law Council of Australia at **familylawsection.org.au**.
- **Free or discounted legal services** – If you can't afford to pay for a private solicitor, you may be able to access free or discounted legal advice through community legal centres listed at **clcs.org.au** or legal aid offices.

There are also women's legal services available in each state who can provide advice over the phone or in person.

Comprehensive financial advice

If you'd like to arrange a meeting with a financial adviser for comprehensive personal financial advice, our Advice Services team can refer you to an accredited financial adviser who meets strict professional qualification and service criteria as set by Cbus Super and the Financial Advice Association Australia (FAAA).

The financial adviser can offer you advice on a fee-for-service basis. All service fee quotes must be provided in writing and require your signed approval to proceed.

If you're a Cbus Super member, you may be able to have your advice fees deducted from your super account. Your financial adviser will let you know if you're eligible.

Member FAQs

My ex-partner and I have reached an agreement, can I request a family law split without needing legal advice or involving the court?

If you and your ex partner reach an agreement you must provide a certified copy of your superannuation agreement as well as a certificate that proves independent legal advice was provided to both of you. You should not request a family law split until you have provided proof that legal advice was obtained.

How can I find out my ex-partner's super balance with Cbus Super?

You can download the Superannuation Information Kit here: **fcfcoa.gov.au/fl/forms/superannuation-kit**.
Send your completed form to: **familylaw@cbussuper.com.au**.

Why was the amount paid to me/my ex-partner different to the amount in the court order or agreement?

The amount stipulated in the orders or agreement belongs to the receiving party from a specific date, referred to in the order or agreement as the 'operative time'. The actual amount paid may be higher or lower due to the impact of investment returns since the specified date, which may be positive or negative.

If you would like more information about your super entitlements after a relationship breakdown or you would like to ask us a question please visit: **cbussuper.com.au/super/accessing-my-super/super-and-divorce-or-separation**.

Useful information

ASIC MoneySmart website **moneysmart.gov.au**	For information about divorce and separation, including a useful divorce and separation financial checklist that can help you re-assess your situation.
Family Court of Australia **fcfcoa.gov.au**	For information on how to split your super, going to court, applying for a divorce and getting legal advice.
Family Relationships Advice Line **1800 050 321**	For advice on family relationship and separation issues, including information on the family law system and referrals to support services.
Family Relationships Online **familyrelationships.gov.au**	For access to information and guidance around family relationship issues and dispute resolution, as well as looking after children when parents separate.
Services Australia **servicesaustralia.gov.au**	For information to help separated parents, including understanding child support options.
Australian Institute of Family Law Arbitrators and Mediators **aiflam.org.au**	For help finding a mediator to help you come to an agreement or resolve a dispute without going to court.
Community Legal Centres Australia **clcs.org.au**	For help finding information on free or discounted legal services you might be eligible for. There are also women's legal services in each state who can provide advice over the phone or in person.

This fact sheet is based on general information only, so it's important to seek legal advice from a qualified and specialist family law practitioner to understand your rights and obligations in relation to splitting super entitlements.

You can find more information about what happens to your super after a relationship breakdown or make an enquiry about a family law matter at **cbussuper.com.au/super/accessing-my-super/super-and-divorce-or-separation**.



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Log in to chat to us online



Visit us in person in Adelaide, Brisbane, Melbourne, Perth and Sydney.
Details: **cbussuper.com.au/contact**