

Short Minutes Transcript: Super Splitting

Lawcover sees a number of family law claims relating to superannuation splitting; particularly the failure of the solicitor to register the interest of their client in the other parties' superannuation.

In a recent Lawcover claim the solicitor failed to serve a copy of the final orders of the court which included the splitting order relevant to the husband's super on the trustee of the super fund. As a result, the super fund paid out the entire balance to the husband at his request. By the time the wife found out, the husband had the benefit of the super for about 18 months and spent it all.

The wife claimed the loss from the solicitor to a value consistent with the amount which she would have received had the splitting order been served on the trustee of the super fund.

Other claims arise from:

- A failure to properly deal with the super fund
- Mistakenly leaving the super out of the asset pool
- A failure to recognise the need for advice on tax implications

There can be uncertainty as to whose responsibility it is to serve the splitting orders on the super fund. The general principle is that the responsibility lies with the solicitor of the party who acquires the benefit of the order. Do not rely on the other party to attend to this important step.

When dealing with superannuation, solicitors should remember that:

- A practice procedure or diary alert can help ensure either original sealed orders or a certified copy of the sealed orders are served on the relevant superannuation fund promptly after orders are made
- Advice to the client to seek appropriate financial or tax advice may be relevant
- Any file closing procedure should include checking that any super splitting orders have been served
- The matter is not finished when the orders are given. Ensure that you 'mop up' everything before closing the file

I'm Jen McMillan