

Why should you make a superannuation death benefit nomination?

If you are concerned about how your superannuation benefits will be distributed following your death, a properly executed binding death benefit nomination can give you peace of mind.

Your superannuation is likely to be one of your most valuable assets. However, you may not realise that it does not automatically become part of your estate on your death and therefore is not covered by your Will.

What is a death benefit nomination?

A death benefit nomination is a notice you give to the trustee of your superannuation fund requesting the payment of your death benefits to either your estate or one of your specified dependants.

There are usually two types of nominations:

- 1 A binding nomination is binding on the trustee, that is, the trustee must comply with it.
- 2 A non-binding nomination, on the other hand, is merely an expression of your wishes. The trustee can exercise its discretion not to follow your nomination.

By making a binding nomination, can you be sure that your intentions for your superannuation will be carried out. In the absence of a binding nomination, it is the trustee of your superannuation fund that decides how and to whom your superannuation benefits will be paid upon your death.

What is required to make the nomination 'binding'?

Generally, in a public offer superannuation fund, your death benefit nomination will be binding if all of the following conditions are met:

- The governing rules of the superannuation fund must permit binding death benefit nominations.
- Each death benefit nominee is either your dependant or legal personal representative (your estate).
- The allocation of your death benefit between the nominees is clear.
- The notice is in writing, and is signed and dated by you in the presence of two witnesses aged over 18, neither of whom is a nominee.
- The notice contains a declaration, signed and dated by the witnesses, stating that it was signed by you in their presence.
- No more than three years must have passed since you first signed, last confirmed or amended the nomination. The nomination will therefore need to be renewed every three years to ensure it remains valid.

The governing rules of a self-managed superannuation fund (SMSF) or a small APRA fund (SAF) may also allow a nomination made in this manner to bind the trustee of that fund. However, these funds usually have the advantage that the governing rules of the fund may allow you to bind the trustee to pay a death benefit in accordance with the fund's rules without the requirements to renew the nomination every three years, or to have your nomination witnessed. This will depend on the specific provisions of each SMSF or SAF deed. The nomination will need to comply with the requirements of that deed to be valid.

What are the advantages of a binding nomination?

A valid binding nomination gives you certainty that your superannuation benefit will be paid to your nominated beneficiaries.

If you have structured your Will to achieve certain outcomes, by having a binding nomination in place to your estate, you can be sure that your superannuation benefits will flow into your estate and allow that estate planning strategy to be fulfilled.

Alternatively, a binding death benefit nomination can be used to direct your superannuation benefits to a beneficiary directly, which in certain states, reduces the risk of claims against your estate by disgruntled beneficiaries or creditors.

When should a binding nomination be reviewed?

Like your Will, your binding death benefit nomination should be kept up-to-date so that it reflects your current estate planning strategy and takes into account any changes to your circumstances and/or those of your intended beneficiaries. Unlike your Will, however, a binding nomination provided to the trustee of a public offer superannuation fund will generally lapse if it is not confirmed or amended within three years, which leaves the distribution of your superannuation benefits to the discretion of the trustee.

Case study

Frank and his ex-wife Sarah have one child, Ross, who is aged 25. Frank has \$300,000 in his public offer superannuation fund.

Frank has always been concerned about Ross' inability to manage his financial affairs. When Frank dies, he would like Ross to inherit his estate, but in a way that will provide Ross with an income for many years to come rather than a lump sum of money.

As Frank's superannuation fund permits him to make a binding death benefit nomination, he nominates his estate to be the recipient of his superannuation benefit when he dies. In his Will, Frank provides for the establishment of a testamentary discretionary trust and, while Ross will be the primary beneficiary of the trust, Frank appoints a trustee company to act as the sole trustee of the trust.

Sadly, Frank dies shortly after making these arrangements. His \$300,000 superannuation benefit (less any tax) is paid to his estate in accordance with his nomination and forms part of the assets over which the discretionary trust is established. The trustee can vary the distribution of income and capital to Ross, not only to control the funds he receives but also to maximise the tax efficiency of the trust.

In the absence of a binding death benefit nomination from Frank, the trustee of his superannuation fund could have exercised its discretion to pay the death benefit directly to Ross as a lump sum. This would have meant that Ross' ability to access the superannuation benefit was unrestricted and could have led to him misusing his inheritance. Having a binding death benefit nomination in place has allowed Frank's estate planning strategy to be fulfilled.

Would you like further information?

For further information please contact your AET estate planning specialist on **1800 882 218**.