

Why should I make a death benefit nomination?

Estate Planning Information Sheet

If you are concerned about how your superannuation benefits will be distributed, 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.

What Is A Death Benefit Nomination?

A superannuation fund may permit a member to give a notice to the trustee of the superannuation fund requesting that the member's benefit be paid at their death to either the member's estate or to their dependants as specified in the notice.

The notice may be either a binding nomination or a non-binding nomination. A binding nomination is an instruction to the trustee by the member and the trustee must comply with it. A non-binding nomination, on the other hand, is merely an expression of the member's wishes, and the trustee can exercise its discretion not to follow the nomination.

As a result, only by making a binding nomination can you ensure that your intentions regarding your superannuation will be carried out. In the absence of a binding nomination, it is the trustee of a superannuation fund who decides how and to whom superannuation benefits are paid following a member's death.

What Is Required To Make The Nomination 'Binding'?

In a public offer superannuation fund, a member's death benefit nomination is binding if each of the following conditions is met:

- The governing rules of the superannuation fund permit binding death benefit nominations;
- Each death benefit nominee is a legal personal representative of the member's estate or a dependant of the member;
- The allocation of the death benefit between the nominees is clear;

- The notice is in writing, and is signed and dated by the member 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 the member in their presence;
- No more than three years have passed since the notice was first signed, last confirmed or amended by the member.

A nomination made in this manner will also bind a trustee of a self-managed superannuation fund or a Small APRA Fund. However, these funds usually have the advantage that the governing rules of the fund may allow a member to bind the trustee to pay a death benefit in accordance with the fund's rules without the requirement to renew the nomination every three years and have the nomination witnessed.

What Are The Advantages Of A Binding Nomination?

A binding nomination gives you certainty that your superannuation death benefit will be dealt with in accordance with your wishes.

If you have put in place an estate planning strategy to achieve particular outcomes, a binding nomination can ensure your superannuation death benefits are paid in accordance with that strategy.

For example you may wish the death benefit to be paid to your estate to allow your estate planning strategy to be carried out.

Alternatively, a binding death benefit nomination can be used to direct superannuation death benefits away from your estate, reducing the likelihood of claims against your estate by disgruntled beneficiaries or creditors.

When Should A Binding Nomination Be Reviewed?

Your binding death benefit nomination, like your Will, should be kept up to date so that it reflects your current estate planning strategy and takes into account changes to your circumstances and those of your intended beneficiaries. However, unlike your Will, a binding nomination provided to the trustee of a public offer superannuation fund will generally lapse if it is not confirmed or renewed within three years of it being made, leaving the distribution of your superannuation benefits to the discretion of the trustee of your superannuation fund.

As stated previously, so far as a self managed superannuation fund is concerned, the governing rules of the fund will set out whether a binding nomination needs to be renewed or confirmed every three years but unless the governing rules say so there is strictly no need for any such renewal or confirmation.

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's inability to manage his financial affairs. When Frank dies, he wishes Ross to inherit his estate, but in a way that will provide Ross with an income for many years.

As Frank's superannuation fund permits members to make binding death benefit nominations, he gives the trustees a binding nomination directing that his superannuation death benefit be paid to his estate when he dies. In his Will, Frank provides for the establishment of a testamentary discretionary trust of which Ross is the beneficiary. He appoints an independent trustee to act as the sole trustee of the trust.

Frank dies shortly after making these arrangements. His \$300,000 superannuation death benefit is paid to his estate and is included in the assets of the testamentary discretionary trust. The trustee can vary the distribution of income and capital to Ross, both to control the funds he receives and to maximise the tax efficiency of the trust.

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

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