



Monthly Information Newsletter – Tax & Super

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How to nominate a super beneficiary

There are many types of nominations offered by different funds. Knowing which one suits your circumstances is key to ensure your superannuation ends up in the right hands.

Types of nominations

Individuals can direct or influence their superannuation fund trustee as to how they want their death benefits distributed by completing a death benefit nomination form.

Superannuation funds offer a range of death benefit nominations, including:

- Non-binding death benefit nominations
- Binding death benefit nominations
- Non-lapsing binding nominations
- Reversionary pension nominations, and
- In the case of an SMSF, executing a trust deed amendment or using one of the above types of nominations.

However not all funds will provide all options to their members, and completion of these forms is best done by the member in conjunction with their adviser and an estate planning lawyer in the first instance.

Non-binding death benefit nomination

This is the most common type of death benefit nomination and is offered by most superannuation funds. A non-binding nomination is an expression of wishes which is not binding on trustees. The trustee of your superannuation fund will look at the nomination you make, but will exercise discretion to determine which of your beneficiaries receives your superannuation and in what proportions.

Binding death benefit nomination

A binding death benefit nomination is a written direction from a member to their superannuation trustee setting out how they wish some or all of their superannuation death benefits to be distributed. The nomination is generally valid for a maximum of three years and lapses if it is not renewed.

If this nomination is valid at the time of your death, the trustee is bound by law to follow it.

Non-lapsing binding death benefit nomination

This is a written direction by a member to their superannuation trustee establishing how they wish some or all of their superannuation death benefits to be distributed. These nominations generally remain in place forever unless you cancel or replace it with a new nomination. If this nomination is valid at the time of your death, the trustee is bound by law to follow it.

Reversionary pension nomination

If you are in receipt of an income stream, you can nominate a beneficiary (usually your spouse) to whom the payments automatically revert upon your death. With this type of death benefit nomination, the fund trustee is required to continue paying the superannuation pension to your beneficiary if your benefit nomination is valid.

SMSFs and death benefit nominations

If you are an SMSF member and want to make a death benefit nomination, it is important to review your fund's trust deed requirements to determine the rules regarding death benefit nominations. Although the High Court recently ruled in the case of *Hill v Zuda Pty Ltd* [2022] that traditional three-year lapsing binding death benefit nominations do not apply to SMSFs, many trust deeds expressly include the traditional requirements. If this is the case, they must be complied with, and the nomination will lapse.

What if there is no nomination or an invalid nomination?

If you have not made a nomination, your superannuation fund will have rules for determining the death benefit recipient(s). In many cases, funds will either exercise discretion and follow the same process as if a member had a non-binding nomination, or pay your benefit to your legal personal representative (LPR). The risk with this option is if

you don't have a Will, your benefit may be distributed under the relevant state laws for dealing with intestacy!

Similarly, if your nominated beneficiary does not meet the definition of a superannuation law dependant at the time of your death, the nomination will be deemed invalid. Again, it will come down to your fund's rules which may determine that your benefit must be paid to your LPR or alternatively that the trustee exercise their discretion.

Check your nomination

Remember to regularly review your superannuation death benefit nominations when your circumstances change to ensure it remains up to date and ends up in the hands of the right person(s).

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