

1 January 2017

Superannuation is not an estate asset; on death it does not automatically flow to the estate of the deceased. The trustee of the super fund will generally pay a death benefit in accordance with the governing rules of the fund and relevant law. A binding death benefit nomination is a way to override this trustee discretion.

Put simply, a binding death benefit nomination is a legally binding nomination that allows you to advise the trustee who is to receive your superannuation benefit in the event of your death. In order for a nomination to be binding, it must be 'valid'. One of the requirements of validity is that only 'dependants' can be nominated. Depending on your circumstances, however, you can nominate one dependant or a number of dependants. For the purposes of superannuation law, a dependant includes:

- a spouse (including de facto, opposite and same-sex)
- children of any age (including adopted or ex-nuptial)
- any person(s) financially dependent on the member
- any person(s) in an interdependency relationship with the member (applicable since 1 July 2004)
- a legal personal representative (LPR).

The role of binding nominations in estate planning

Providing certainty

One of the biggest benefits you receive from having a binding death benefit nomination in place is peace of mind. This is especially the case if you have multiple beneficiaries (eg from previous marriages) who may have a claim on your death benefit.

In this case, you can nominate with reasonable certainty who you wish to receive your death benefit or, if being paid to more than one beneficiary, who receives what proportion.

Ease and speed

Another advantage of a binding death benefit nomination is the ease and speed with which a death benefit can be paid.

If your beneficiary needs quick access to your benefit, a binding death benefit nomination may allow a more timely distribution of your assets and your beneficiary won't have to wait for the trustee or the deceased estate to determine the distribution.

How to make a valid binding death benefit nomination

To make a valid nomination you must follow the procedures explained below.

The nomination must:

- be made to the trustee in writing and clearly set out the proportion of the benefit to be paid to each person nominated. It may also include the type of benefit payment (such as a lump sum and/or an income stream)
- be signed by the member in the presence of two witnesses over 18 years of age and who are not nominated as beneficiaries
- contain a signed witness declaration
- be sent to the trustee (a nomination will not be valid until it's received by the trustee).

Once you have made the nomination, it will be valid for three years from the date it was signed, or non-lapsing depending on the superannuation trust deed options. You can renew, change, update or revoke a nomination at any time.

If the nomination is valid, the trustee must follow it, even if your circumstances have changed. For example, if you nominate your spouse and you separate, but have not yet obtained a divorce, the nomination remains valid and binds the trustee unless the nomination has been amended, revoked or has expired.

When binding nominations may not be appropriate

As binding nominations require a formal nomination, much like a Will, and must be renewed every three years, or whenever your circumstances change, they may not be suitable for everyone. If certainty already exists, for example, where there is a sole dependant, a binding death nomination may be of little value.

Additionally, unless the person you nominate to receive your super death benefit is a dependant or your LPR at the date of your death, a binding death benefit nomination will not be valid. When a person does not meet these requirements, alternative estate planning arrangements will need to be made.

What about non-binding nominations?

A non-binding nomination, on the other hand, gives the trustee discretion to protect the interests of your beneficiaries if circumstances change. For example, if one of your beneficiaries is bankrupt, the trustee can take this into account and avoid putting your super benefit into the hands of creditors instead of your beneficiaries.

Ask your Apt Wealth Partners financial planner for more information.

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