

Making the right nomination

Introduction

An essential yet neglected estate planning task is the nomination of who is to receive your superannuation monies. Unfortunately some fail to make (or update) their nomination of beneficiaries. And others mistakenly nominate those who cannot legally receive their superannuation benefit.

Given that superannuation balances can be substantial, there are important rules to be aware of, to ensure that your super benefits are distributed to those you intend.

Who can you nominate?

A superannuation benefit can only be paid to certain categories of people ("dependants") limited to:

- Your spouse (legal and/or de facto)
- Your children (step, adopted, ex-nuptial)
- A person financially dependent on you
- A person in an interdependent relationship with you.

You can also nominate your legal personal representative (who is the executor of your estate). If you nominate your estate, those benefits will then pass to your beneficiaries in accordance with your Will. Only when you make this nomination or the trustee pays your benefit to your estate will your superannuation benefits be paid according to the instructions outlined in your Will.

Please note: there are taxation consequences if your super benefit is paid to a non-

dependant. For taxation purposes, this includes an adult child.

How do you nominate?

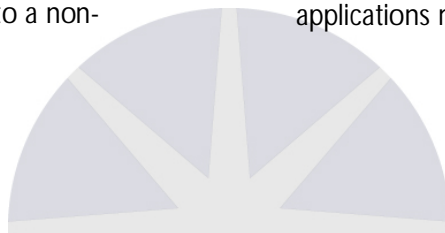
Firstly, where the trust deed provides for it, superannuation proceeds may be paid by way of a *binding nomination* which will lock in who is to receive your super benefits. This can be beneficial as it allows the benefits to be paid quickly to those you intend. Also, the trustee is bound by your decision. However for this to remain valid, certain rules and restrictions must be followed.

Secondly, most super funds offer *non-binding nominations* which enable you to indicate your preferred beneficiary(s). A trustee will usually take this nomination into account in making its decision on the distribution of your death benefit, but it is not binding on the trustee.

Who will actually receive my superannuation benefit?

If you have completed a valid binding nomination your death benefit will simply be paid to those nominated. If your binding nomination is invalid or you have completed a non-binding nomination, the trustees have the task of distributing your superannuation benefits at their discretion.

This can be a difficult task given that a large number of people could potentially contest the proceeds. In fact trustees may take applications made by:





- Family members
- Beneficiaries nominated in your Will; and
- Any other person who considers they have a claim to your benefit.

Trustees will also collect any other information available to identify potential recipients. Accordingly there will be competing interests among beneficiaries who will claim a degree of dependency and feel a sense of entitlement.

The difficulty is exacerbated because there are no legislative guidelines or regulations issued to indicate who among the potential beneficiaries takes priority. However practice has shown that in determining their decision trustees may consider the following:

- The strength of the relationship between you and the potential beneficiary(s)
- The length of any marriage-like relationship, and financial contributions made during that relationship
- Who would/should have continued to benefit from your income if you had not died? Minors or children, adults undertaking further study and disabled adult children may be considered as having a high priority; and

- Intentions expressed through your Will.

There are no easy answers to such questions. Trustees must face the decision as best they can. There will be widely differing views and there is no necessarily correct answer.

Points to consider

- Persons nominated must be dependants at the time of your death
- While superannuation assets fall outside of your estate, your nomination should be considered in the context of your Will to ensure estate planning consistency
- Nominations should be considered in the context of your overall portfolio and tax considerations
- Nominations should be reviewed regularly and especially after major life events (marriage, children etc)

Your superannuation benefit can help you ensure that your family or beneficiaries are looked after when you die. However you will need to be mindful that there are a number of rules that treat super differently to other assets. Careful planning can ensure an effective estate planning strategy that incorporates superannuation.

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