

Financial Planning Weekly

Estate Planning – Superannuation

When you pass away, your assets, other than Superannuation, are generally distributed in accordance with your Will. Superannuation is not automatically included as an asset in your deceased estate and may not be accounted for by your Will.

Therefore, making a death benefit nomination allows you to direct your Superannuation to your preferred dependant/s and/or Legal Personal Representative (your Estate). If there is no nomination, your Superannuation fund will use their own trustee/s discretion to determine whom and in what proportion to distribute your super benefits – this may not be in accordance with your wishes.

Superannuation Death Benefit

On your passing, your Superannuation will be paid to your dependant/s and/or to your Legal Personal Representative (your Estate).

Dependants are defined under Superannuation Law as:

- Spouse or de facto spouse;
- Children; or
- A person in an interdependency relationship, who lives with you in a close personal relationship and depends on you financially, whom may provide you with domestic and personal support.

Selecting a friend or relative to receive your Superannuation is not a valid death benefit nomination. The only way for them to receive this is if you nominate a Legal Personal Representative/s or an Executor/s through your Will.

Nomination of a Beneficiary/ies

Nominating beneficiaries is a quick and straightforward process. Generally speaking, trustee/s are required to deal with Superannuation death benefit distributions in accordance with the governing rules of the superannuation fund however, they are not required to offer any types of death benefit nominations to their members. If you make a valid death benefit nomination the trustee/s are legally bound by law to follow your instructions and therefore, offers you more certainty that your wishes will be carried out upon your passing.

Broadly, there are four types of Superannuation death benefit nominations:

1. Binding death benefit nomination

This is a written *direction* from a member to their Superannuation trustee/s setting out how they wish their death benefits to be distributed. Generally, the nomination is valid for a maximum of three years and lapses if it is not renewed.

2. Non-binding death benefit nomination

This is a written *guide* by a member about how they wish their death benefits to be distributed. However, the Superannuation trustee/s retains the ultimate discretion in distributing the death benefit to the deceased's dependants or Legal Personal Representative (your Estate).

3. Non-lapsing binding death benefit nomination

This is a written *direction* from a member to their Superannuation trustee/s setting out how they wish their death benefits to be distributed. This nomination, if valid, remains in place indefinitely unless the member cancels or replaces it with a new nomination.

4. Reversionary beneficiary

Members who currently receive an income stream can nominate a beneficiary to whom the payments will automatically revert to upon the death of the member. There are limitations on whom can be nominated to receive this. The rules are similar to the definition of a dependant, with the exception of your 'children' recipients, who must be either;

- Under 18 years of age;
- Age 18 - 24 and financially dependent (on you); or
- Any age and with a qualifying disability.

Adult children with a permanent disability can continue to receive the income stream after they turn 25. In all other situations, the income stream **must** change to a lump sum on or before the date the beneficiary/ies turns 25.

Absence of a Nomination

If you pass away without a valid nomination in place, the Superannuation trustee/s will use their discretion to determine which dependant/s the death benefit is paid to or, make payment to your Legal Personal Representative (your Estate). This decision must be in accordance with the terms of the trust deed and is subject to Superannuation law.

If any dependant/s or Legal Personal Representatives can't be identified, after reasonable enquiries, the Superannuation trustee/s may distribute the benefits to other persons in accordance with the trust deed or pay the benefit to unclaimed Superannuation with the ATO (Australian Tax Office).

Withdrawal before death

If you have no tax dependants to receive your death benefit tax-free, you may decide to withdraw your super before your passing to avoid certain taxation implications. This can be done by those who have achieved a condition of release and who are eligible to receive benefits tax-free.

Final thoughts

There are tax implications to consider when passing assets to your beneficiaries. Please consult a tax professional for thorough advice on the potential consequences. It is also important to note that the definition of 'dependant' is viewed differently under Superannuation law and taxation law which can affect how tax is applied to death benefit payments.

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