



Should I make a superannuation Binding Death Benefit Nomination?

Author: [Martin Alfonso](#)

Email: martin@ealawyers.com.au

Date: Monday March 7, 2022

A Binding Death Benefit Nomination is a form of direction you give to your super fund, setting out how you wish your superannuation death benefits to be distributed. If done properly, the trustee of the superannuation fund is bound to follow that nomination. It is similar to making a nomination on a life insurance policy.

The funds payable to nominated person(s) could include death benefits (also referred to as life insurance), together with the superannuation fund balance at the time of death.

Many people believe that [their Will](#) would control what happens with their superannuation. That can be the case if there is no Binding Death Benefit Nomination ("BDBN") in place. In that situation, your death benefits would form part of your estate for distribution in accordance with your Will. But if you complete a BDBN, the proceeds of superannuation should be paid in accordance with the nomination and not be part of the assets of your estate.

Must a Binding Death Benefit Nomination be made?

The nomination is an option for you to consider. It is not required that you make a nomination but making one means that you at least determine how you want the benefits of your superannuation to be paid upon your death.

If no nomination has been made, then most superannuation trust deeds leave it to the trustee to decide who should receive the benefits. Although the persons who may receive the benefits are limited by the *Superannuation Industry (Supervision) Act Cth 1993* ("the SIS Act"), you may still wish to make your nomination clear rather than leaving it to a trustee to decide.

Is a Binding Death Benefit Nomination available for all superannuation funds?

In order for you to put in place a Binding Death Benefit Nomination, the superannuation trust deed needs to provide that a nomination can be made and that such a nomination will be binding on the trustee of the fund.

It cannot be assumed that every superannuation trust fund permits a nomination to be made which is binding. This needs to be considered as a first step to deciding whether to make a nomination.

Who can the superannuation benefits be directed to?

There are two pieces of legislation that have an impact on who can receive the benefits and what outcomes arise from it.

The first legislation is the *Superannuation Industry (Supervision) Act Cth 1993* (the SIS Act). By virtue of that Act, beneficiaries are limited to dependants of the member of the superannuation fund or the estate of that member. A dependant covers a spouse (including de facto spouse), a child or a person with whom the member of the fund had a close personal relationship and supported each other financially, domestically and personally.

The second legislation relates to taxation of the superannuation benefits. Where the benefits of the deceased member of the superannuation fund are paid to a "death benefit dependant", then no tax will be payable on those benefits. Generally, a death benefit dependant would include a spouse (including de facto spouse), children under the age of 18 years and a person dependant on the member before they died, including a child under 25 years who is continuing their education and living at home.

It also includes a person who the deceased member was in an interdependency relationship with; meaning two people living together providing each other with financial or domestic support.

What if there are no dependants or death benefit dependants?

If there are no dependants under the SIS Act, then the proceeds would generally be paid to the estate of the deceased. To the extent that the benefits are then paid to persons who are not death benefit dependants, tax will be payable.

If there are no death benefit dependants, again the benefits should pass to the estate of the deceased. In that scenario, the benefits will be taxed even if the person receiving the benefits is a dependant for the purposes of the SIS Act. For example, the beneficiary under the Will may be a child of the deceased member but if they are over 25 years, then the benefit passing to them will likely be taxed.

What are the taxation consequences?

In very general terms, for non-death benefit dependants (whether they be named in the BDBN or be a beneficiary in the Will), the taxable component of the superannuation benefits will be taxed at the rate of 15% plus the Medicare Levy.

If the superannuation benefits are paid by the trustee of the superannuation fund, under a BDBN, to a non-death benefit dependant, then the superannuation trustee is responsible to calculate and deduct the tax before paying the balance.

If the superannuation benefits are paid to the executor of [the deceased estate](#) , the executor will be responsible for ensuring the tax is paid if the beneficiary is a non-death benefit dependant.

How is a Binding Death Benefit Nomination made?

The first step is to understand whether the superannuation fund trust deed allows for a nomination to be made which is binding on the superannuation trustee. Not all funds allow the nomination to be binding.

The second step is to ensure that the nomination is made according to the provisions of the superannuation trust deed. There are a great deal of court cases relating to whether a nomination is valid or not. There are many situations where an aggrieved family member was not nominated as a beneficiary, so they press to have the nomination declared invalid and the benefits to be paid to the estate of the deceased.

In order to ensure that the nomination is valid, we spend some time reading the trust deed and understanding requirements under the deed for the making of the nomination and for the trustee to accept the nomination. In doing this review of the trust deed, we also need to have regard to the provisions of the SIS Act, including the requirements as to how the nomination is to be signed.

Does the Binding Death Benefit Nomination continue forever?

If the superannuation fund is an APRA regulated fund (commonly known as an industry fund or a public superannuation fund), the nomination needs to be refreshed every three years.

With self-managed superannuation funds, pending the outcome of a High Court case currently being determined, the accepted argument is that a Binding Death Benefit Nomination on the self-managed superannuation fund remains effective until it is revoked.

Get help

At E&A Lawyers, we're highly experienced in [Wills & Estate Planning](#). We can assist you in considering whether a Binding Death Benefit Nomination may be of benefit to you as part of your whole Estate Plan and we can guide you as to making a nomination if that is what you choose.

We can also consider and advise you whether a nomination which has been made by the deceased member of a superannuation fund, is valid.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](tel:0299972111)

info@ealawyers.com.au

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.