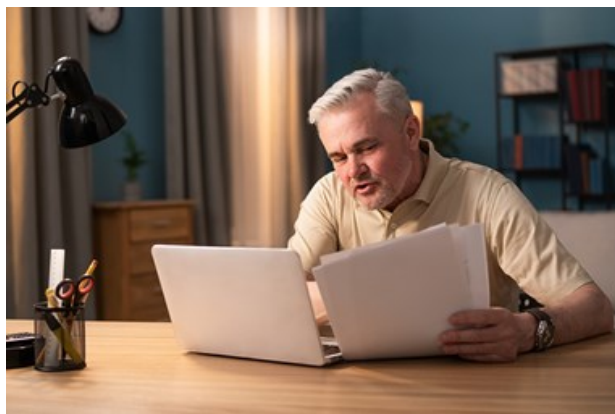




# When should I review my Binding Death Benefit Nomination?

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A Binding Death Benefit Nomination is a written direction from a superannuation fund member to the trustee of the fund, nominating who will be the beneficiary of fund moneys upon death. It is an important part of any estate plan, particularly as you get older and as the value in your superannuation fund increases.

If you have made a [Binding Death Benefit Nomination](#) (“a **Nomination**”) nominating your legal personal representative in your Will (also known as your Executor) or nominating a particular person, then like your Will, it may need to be reviewed and revised from time to time.

## When should a Nomination be reviewed?

As with [reviewing your Will](#), changes in your family and your life might be the catalyst to review your Nomination.

For example, this may arise where:

- you have moved into pension phase and have provided that the pension be reversionary;
- you have gone through [family law proceedings](#);
- those financially dependent upon you may have changed;
- you had not previously made a Nomination, and circumstances have changed;

- there has been an update made to your self-managed superannuation trust deed;
- a Nomination has been made, but it is not in compliance with the terms of your self-managed superannuation trust deed.

## Binding Death Benefit Nominations when moving into pension phase

It is quite common in this situation that you might provide that the pension is reversionary in the sense that, if you died, your spouse or partner would receive that pension.

Where that occurs, the question arises as to whether the Binding Death Benefit Nomination or the provisions of the reversionary pension have priority in determining how your superannuation is dealt with upon your passing. Usually, but not always, the trust deed gives priority to the reversionary pension over the Nomination.

But, where there is the potential of a conflict, it may be appropriate that you revoke any prior Nomination so that it is clear that the provisions for the reversionary pension apply.

## Binding Death Benefit Nominations when going through family law proceedings

It is important when going through any family law proceedings, and upon completing those proceedings, that the [whole of your estate plan be considered](#). Again, this should include reviewing any Nomination you have made, particularly if it was a nomination in favour of your former spouse or partner.

A review at that time might include making a new Nomination in favour of your legal personal representative so that the benefits pass to your estate, and you can then guide as to how you wish those benefits to be dealt with.

## Those financially dependent upon you have changed

This is certainly relevant when you and your partner or spouse have separated or divorced. But there may have been provisions previously made as part of your estate plan by which you provided a Nomination for your superannuation benefits to pass to your minor children.

Where those children have since attained adulthood and have become financially independent, it may be appropriate to revoke the Nomination and instead provide for the benefits to pass through your estate and, perhaps, into [discretionary testamentary trusts](#) for your children.

## You have not made a Nomination, and your circumstances have changed

An example of this may be when you have been through family law proceedings and have now entered into a new relationship. If you had not made a Nomination previously, or you had merely

revoked the Nomination during the family law proceedings, you may need to consider a new Nomination, whether it be to your new spouse or partner or to direct the benefits to your children.

And the circumstances may also be where, having not previously made any Nomination, your family structure is such that the trustee of the superannuation fund may determine to pay the superannuation benefits to your children when in fact, you do not wish for each of your children to share the benefits.

A Nomination might be made then to ensure that the benefits are paid to your estate, and so your Will determines where those benefits are paid - or a Nomination might be made giving the benefits to some but not all of your children.

## You have updated your self-managed superannuation trust deed

Changes made to the trust deed may dictate the need for you to modify or renew a Nomination. This very much depends upon the terms of the trust deed itself, particularly if it is prescriptive as to how a Nomination must be worded to be effective.

## Binding Death Benefit Nominations that do not comply with your SMSF trust deed

Given the extent to which we have seen Nominations being challenged in [contested estate litigation](#), it is important to ensure that the Nomination complies with the trust deed.

This needs to be considered in respect of both the form of Nomination required under the trust deed and the process for serving the Nomination on the trustee and getting the acknowledgement of the trustee of its receipt. On occasions, Nominations are made without proper regard to the provisions of the trust deed and, therefore, potentially expose your estate to contest by an aggrieved beneficiary.

## Get help from estate planning lawyers

We can assist you in reviewing your Binding Death Benefit Nomination as part of your whole estate plan. We can then guide you as to whether a change needs to be made or the Nomination revoked or a new Nomination made.

## Contacting E&A Lawyers

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

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