



Advantages of professional advice when making a Binding Death Benefit Nomination

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When considering a Binding Death Benefit Nomination (**BDBN**), professional advice can be valuable to ensure the nomination is valid, complies with relevant legislation, and fits within your broader financial and [estate planning strategy](#). While you are not required to seek professional assistance, engaging a lawyer, accountant, and/or financial advisor can provide significant advantages.

What is a Binding Death Benefit Nomination?

A Binding Death Benefit Nomination is a legal instruction that allows a superannuation fund member to direct their fund's trustee to pay their death benefit to a nominated beneficiary upon their death. The trustee must follow this direction, ensuring the nominated beneficiary receives the benefit.

Do I need professional assistance to prepare a BDBN?

You are not obligated to seek professional help when making a BDBN, but doing so can help you avoid common pitfalls. A professional can ensure that the nomination is correctly completed and legally binding, preventing the trustee of your superannuation fund from having discretionary powers over your benefits, which could see a different beneficiary receive the payment.

This is particularly the case if you have a self-managed superannuation fund.

If a BDBN does not strictly comply with the provisions contained in your fund's trust deed, then it may not be effective and may not bind your superannuation trustee to your decision. If that occurs, then all of your planning could potentially be compromised.

What roles do different professionals perform in the preparation of a BDBN?

1. Lawyers

Lawyers will typically be involved in drafting your BDBN and ensuring that your BDBN complies with the requirements of the *Superannuation Industry (Supervision) Act 1993 (SIS Act)* and the specific terms of your superannuation fund's trust deed.

They can also confirm that your nomination aligns with your broader estate planning goals and is consistent with the terms of your Will.

While other professionals may assist in drafting BDBNs, the frequency with which poorly drafted BDBNs have been challenged in recent years has increased the importance in having a BDBN drafted by a lawyer. Precise legal drafting can assist in minimising ambiguity that could lead to legal challenges.

1. Accountants

Accountants assess the tax implications of your BDBN, particularly for beneficiaries who are not considered "death benefit dependants."

With time and depending on your particular circumstances, they may also help optimise your superannuation balance and integrate your BDBN into your overall financial plan.

1. Financial Advisors

Financial advisors focus on ensuring that your BDBN aligns with your investment and retirement goals.

They can advise on the selection of beneficiaries and methods of providing for your particular beneficiaries for maximum financial benefit.

Each profession brings unique expertise to the preparation of a BDBN, working together to ensure it is legally compliant, tax-efficient, aligned with your financial objectives, and accurately reflects your personal wishes for the distribution of your superannuation benefits.

What happens if I do not make a BDBN?

Without a valid BDBN, the trustee of your superannuation fund will typically decide how to distribute your death benefits. While the SIS Act limits eligible beneficiaries to dependants (as [defined under the Act](#)) or your legal personal representative (so that it is dealt with under [your Will](#)), leaving this decision to the trustee may result in outcomes that do not reflect your wishes.

Some common issues when leaving decisions to the trustee

1. Trustees do not know your family

The trustees making decisions for you may not be familiar with your family's circumstances and the particular needs of your family members. This can then take time and require additional work from your family members petitioning to have part of your superannuation entitlements paid to them.

The decisions of the trustee are based strictly on the fund's trust deed and the law rather than your unique family relationships, needs, or intentions.

1. Risk of disputes or challenges

If the trustee's decision does not align with the expectations of certain family members or beneficiaries, it can lead to disputes or legal challenges. Aggrieved parties may contest the trustee's decision, resulting in delays, additional costs, and emotional strain on your loved ones.

1. Trustees making decisions you would not have made

The trustee may make a decision that you would not have made had you prepared a BDBN yourself.

By making a valid BDBN, you retain control over how your superannuation benefits are distributed, avoiding the uncertainty that can arise when decisions are left to a trustee.

How do I make a valid BDBN?

The first step is to confirm that your superannuation fund allows for a binding nomination. Once confirmed, the nomination must comply with the trust deed's requirements and the SIS Act, including proper signing and witnessing.

A professional can guide you through these steps and ensure your nomination is effective and binding.

Conclusion

While not mandatory, professional advice can provide peace of mind that your superannuation benefits will be distributed according to your wishes, with minimal risk of disputes or unknown tax consequences. Starting with a lawyer who can coordinate with your accountant and financial advisor is often the best approach.

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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