What Happens to My Superannuation When I Die? A Guide for NSW Families

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Superannuation is often a significant asset that has been built over time and one of the largest assets a person owns. Many people are surprised to learn that it does not automatically form part of their estate when they die.

Understanding what happens to your superannuation can be an important part of effective estate planning. Without proper planning, your superannuation may not be distributed to the intended recipients or in the way you intended, which can create uncertainty, delays, and disputes for your loved ones.

This guide explains how superannuation is treated on death and the steps you can take to ensure your wishes are properly considered.

Does Superannuation Form Part of Your Estate?

When a member of a superannuation fund dies, the balance of their superannuation account and any associated life insurance benefits may be paid as a superannuation death benefit.

In most cases, a superannuation does not automatically form part of your estate when you die.

Unlike assets such as your home, bank accounts, or personal belongings that are held in your individual name, superannuation is generally held by the trustee of your superannuation fund on your behalf.

As a result, your superannuation usually falls outside of the control of your Will, unless specific arrangements have been made.

Who decides what happens to my Superannuation then?

If no specific arrangements have been made, then the trustee of your superannuation fund may retain the ability to determine who receives your superannuation death benefit, subject to the governing rules of the fund.

This can result in the board of the superannuation company you hold your superannuation with determining where or who to pay your superannuation death benefits. This can be a very bureaucratic process that takes months to navigate, delaying the timeframe before your loved ones receive your superannuation death benefit.

This is why a carefully drafted Will alone may not be enough to ensure your superannuation is distributed according to your wishes.

What Arrangements can be made to Avoid Decisions being Made on my Behalf?

If you want greater certainty about what happens to your superannuation after your death, it is important to put appropriate arrangements in place during your lifetime.

This may include:

- Making a valid Binding Death Benefit Nomination (BDBN);
- Creating a reversionary pension; or
- Making other arrangements permitted by the governing rules of the fund, which can include non-lapsing nominations or superannuation wills.

Regularly reviewing these arrangements, particularly after significant life events such as marriage, separation, the birth of children, or changes in financial circumstances, can help ensure they continue to reflect your wishes.

By taking proactive steps and ensuring your superannuation arrangements are considered alongside your Will and broader estate plan, you can significantly reduce the likelihood of trustee discretion determining the outcome and provide greater certainty for your loved ones.

Who Can Receive My Superannuation Death Benefit?

Australian superannuation laws restrict who can receive a death benefit directly from a superannuation fund.

Generally, eligible beneficiaries include:

- Your spouse or de-facto partner

- Your children, including adult children
- A person who was financially dependent on you
- A person with whom you were in an interdependency relationship
- Your legal personal representative, being the executor of your estate

If you nominate someone under a BDBN who is not an eligible beneficiary under superannuation law, the nomination may not be valid, and the superannuation trustee may be able to override the nomination. If a reversionary pension is established for someone who is not a financial dependent, then it too may not be valid.

What Is a Binding Death Benefit Nomination (BDBN)?

One of the most effective ways to influence what happens to your superannuation is through a Binding Death Benefit Nomination (BDBN).

A valid BDBN directs the trustee of your superannuation fund to pay your death benefit to the beneficiaries you have nominated. It will remove the trustee’s discretion to determine where to pay your superannuation.

Provided the nomination complies with the requirements of the fund and remains valid at the time of death, the trustee will generally be required to follow your instructions.

Binding nominations can provide you with greater control as to where your superannuation will be paid, which may assist in reducing the likelihood of disputes between family members.

However, not all nominations remain valid indefinitely. Some funds require nominations to be renewed every three years, while others offer non lapsing nominations.

It is important to regularly review your superannuation arrangements to ensure they remain effective.

What Happens If I Do Not Have a Binding Nomination?

If no valid binding nomination exists, the trustee of the superannuation fund will usually have discretion to decide who receives the death benefit.

The trustee will typically consider factors such as:

- Your family circumstances
- Financial dependency
- Relationships between potential beneficiaries

- Any wishes expressed in your estate planning documents

While trustees are required to act appropriately, their decision may not always align with what you would have wanted. It can also take a long time for a decision to be made.

This can sometimes lead to disputes between family members, particularly in blended families or where there are competing claims from adult children and a surviving spouse.

Can My Superannuation Be Paid to My Estate?

Yes. A Binding Death Benefit Nomination can direct that your superannuation be paid to your “legal personal representative”, allowing the benefit to be paid to your executor to be distributed through your estate under the terms of your Will.

This approach can be beneficial in certain circumstances, including where:

- You wish to establish a testamentary trust
- You want all assets administered together
- You want your superannuation paid to someone who is not ordinarily a eligible beneficiary
- You have complex family arrangements
- You want greater control over how inheritances are managed

However, there are also potential disadvantages.

Once superannuation is paid into the estate, it may become exposed to claims against the estate, including family provision claims under NSW succession law (though that may already be the case due to NSW’s notional estate laws). Your superannuation would also likely not be paid until a Grant of Probate has been obtained by your executors.

Whether directing superannuation to your estate is appropriate will depend on your individual circumstances.

Are There Tax Consequences on superannuation death benefits?

The tax treatment of superannuation death benefits can vary significantly depending on who receives the benefit.

In general terms:

- Payments to a spouse are often received tax free.
- Payments to financially dependent beneficiaries (including minor children) are received tax free.
- Adult children who are not financially dependent may be required to pay tax on certain components of the death benefit.

The amount of tax payable can depend on factors including:

- The taxable and tax-free components of the superannuation account
- Whether life insurance proceeds are included in the death benefit
- The relationship between the beneficiary and the deceased

Because the tax consequences can be substantial, superannuation should be considered as part of your broader estate planning strategy rather than in isolation.

What about a Reversionary Pension?

A reversionary pension is a pension that automatically continues to a nominated beneficiary upon your death, rather than stopping and requiring the trustee to decide how the benefit should be paid.

Most commonly, a reversionary pension is paid to a surviving spouse. Upon the member's death, the pension automatically transfers to the nominated reversionary beneficiary, allowing them to continue receiving the pension payments, subject to the superannuation fund's rules and applicable superannuation laws.

Importantly, a reversionary pension can operate differently from a Binding Death Benefit Nomination. While a BDBN directs the trustee how to distribute a death benefit, a valid reversionary pension may take effect automatically upon death and can override inconsistent estate planning arrangements.

As part of any estate planning review, it is important to confirm whether you have a reversionary pension in place and whether it continues to align with your overall estate planning objectives.

Why you should regularly review your superannuation nominations

Many people establish a superannuation account years before preparing a Will and never review their beneficiary nominations.

Major life events should prompt a review of your superannuation arrangements, including marriage, separation, birth of children, death of a beneficiary, significant changes in assets or financial circumstances or changes to your Will or estate plan.

An outdated nomination can create uncertainty and may undermine your estate planning objectives.

How E&A Lawyers Can Help

Superannuation is a critical part of estate planning, yet it is often overlooked.

A well drafted Will should be considered alongside your superannuation nominations, asset ownership structures, trusts, and broader succession planning objectives. Taking the time to review these arrangements can provide certainty for your loved ones and reduce the risk of disputes after your death.

If you would like advice about your superannuation, Binding Death Benefit Nominations, or estate planning in NSW, the team at E&A Lawyers can help you develop a strategy that reflects your wishes and protects those you care about most.

Contact E&A Lawyers today to discuss your estate planning arrangements and ensure your superannuation is structured appropriately for your circumstances.

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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