

BINDING DEATH BENEFIT NOMINATIONS

Background

By law, a superannuation fund trustee ordinarily has some discretion as to whom any superannuation benefits may be paid following your death. Whilst the regulations require that the benefit be paid to a dependant or to your legal personal representative (eg. the executor of your estate), a Trustee ordinarily still has an overriding discretion to pay it to those people that they consider to be the most appropriate.

Often times you will be asked to sign a Nomination of Beneficiary Form, which will set out your basic wishes as to how you would like to see the benefits distributed. This does not bind the trustee when making that decision.

Recent Changes

A few years ago, however, the Government introduced new regulations which enable members of superannuation funds to nominate who they wish to get that benefit after they die, and to do it in a way which binds the trustee of the superannuation fund.

Benefits

This can be quite beneficial in certain circumstances, especially where, for example, you want the benefit to go to a particular dependant, or you want it to pass through to your estate and not to a dependant. In short, it can remove any uncertainty.

Who Can You Nominate?

You may nominate any of your dependants as defined in your Superannuation Fund Trust Deed. These would normally include your spouse, children or anyone financially dependent upon you. You can also nominate that the benefit pass to your estate. You can also nominate how the benefit is to be split.

In some business circumstances, it may be appropriate and advantageous if this is directed to a particular person who may be expected to control a business after your death.

Are Binding Nominations Effective Forever?

Under the present regulations, a binding nomination only lasts for three years, at which time it automatically lapses. You can also revoke it whenever you wish.

How can I Make a Binding Nomination?

To be able to use a Binding Death Benefit Nomination, the trustee of the fund must allow it. Unfortunately many funds still do not allow it. If you have your own self-managed fund you will be able to amend it to enable a Binding Nomination to be accepted.

There are various technical formalities which must be observed. You will need to complete a form and have it witnessed in a particular way.

You should consider carefully whether this may be of benefit to you and contact us if you wish to have a Binding Death Benefit Nomination apply to your superannuation benefits.