

Superannuation Death Benefits

Death benefit nominations

Who can I leave my superannuation benefits to?

- Your Spouse or de facto
- Your children
- Any person who is financially dependant on you at the time of your death
- Any person who had an interdependency relationship with you at the time of your death
- Your estate via your 'legal personal representative'
- Any one or more of the above

Types of superannuation death benefit nominations

Non-Binding death benefit nominations

A non-binding death benefit nomination expresses your wishes upon your death regarding who you would like your superannuation paid to. The Trustee of the super fund is not bound by your wishes and will still have discretion as to how the relevant amounts are to be distributed.

Binding death benefit nominations

A binding death benefit nomination binds the Trustee by law to pay your superannuation benefits upon your death to beneficiaries in the proportion you have nominated. The nomination is valid for three years and must be signed and witnessed by two persons who are not intended beneficiaries and are over the age of 18, as required by the SIS Act.

Non-Lapsing death benefit nominations

A non-lapsing death benefit nomination is similar to a binding death benefit nomination however it remains in place until such time as either the member dies or a written revocation or replacement is provided by the member. This type of nomination removes uncertainty, binding the nomination on the Trustee and reducing the need to replace the nomination every three years.

Taxation of death benefits

The taxable proportion of superannuation lump sums are taxed as follows:

Spouse	No tax payable
Dependant child under the age of 18	No tax payable
Child over the age of 18 and not dependant	15% tax plus medicare levy
Any other non-dependant	15% tax plus medicare levy

There is no tax payable on the tax free proportion of a superannuation death benefit regardless of the beneficiary it is paid to.

The importance of a valid nomination

Munro v Munro

In *Munro v Munro* [2015] QSC 215 a purported binding death benefit nomination (BDBN) was held not to be binding.

Mr Munro died leaving his second wife, Suzie (who has a daughter), and two daughters from a previous marriage. Suzie's daughter became trustee on his death. Mr Munro signed a document entitled 'binding death benefit nomination' directing the trustee to pay his death benefit "to my estate".

The trust deed of the SMSF allowed for a binding nomination "only if the benefit is specified to be paid to one or more nominated dependants or the legal personal representative of the member". SIS reg 6.22 prescribes when a member's benefit cannot be cashed to persons other than the member; in the case of death a payment can only be made to a dependant or a member's legal personal representative (LPR). LPR is defined as the executor of the Will. Only where a dependant or LPR cannot be found after making reasonable enquiries, can the death benefit be paid to another individual.

The Court determined that the Trustee of a deceased estate is not the LPR. Therefore the Court found that the purported BDBN was not a binding nomination as it did not comply with the SMSF trust deed or super law and that the death benefit be paid according to the exercise of the Trustee's discretion.

Katz v Grossman

In *Katz v Grossman* [2005] NSWSC 934 the deceased left a son and daughter. The deceased's Will provided that his estate assets were to pass equally to his two children and part of the deceased's wealth included approximately \$1 million in an SMSF. The deceased signed a non-binding death benefit nomination expressing his wishes to coincide with his Will.

Following the death, the SMSF was in the control of the daughter. The daughter caused the deceased's superannuation death benefit to be paid directly to her, and not to the deceased's estate. Accordingly, the son did not receive half the superannuation as intended by the deceased. The Court determined that the daughter was legally able to do this as there was no binding obligation on the Trustee to distribute the superannuation benefits in accordance with the deceased's Will.

Contact a member of our team if you would like further information

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