

SMSF Estate Planning: Binding Death Benefit Nominations

What is a Binding Death Benefit Nomination?

Superannuation benefits do not automatically form part of your estate. This is because the benefits are not directly owned by you. Consequently, your superannuation benefits may not be distributed according to your will.

The fund's trustee has discretion as to the payment of your benefits unless a Binding Death Benefit Nomination (BDBN) is made. You can only be sure that your superannuation benefits will be directed to your estate or to specific beneficiaries if you instruct the fund's trustee to do so using a BDBN.

In order to ensure that the trustee will pay your superannuation benefits on your death in accordance with your wishes, the member has the option of nominating a beneficiary via a BDBN.

A Binding Death Benefit Nomination:

- ▶ binds a trustee as to how to pay the superannuation death benefit;
- ▶ must be witnessed by two people who are not beneficiaries;
- ▶ may lapse after a 3-year period; and
- ▶ must be allowed by your SMSF's Trust Deed.

A BDBN must nominate for the benefits to be paid to the estate (legal personal representative) or a beneficiary that meets the definition of dependant in the *Superannuation Industry (Supervision) Act 1993*.

Should you require assistance or additional information, contact

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People who meet the definition of dependant for this purpose are:

- ▶ your spouse;
- ▶ your children (regardless of age);
- ▶ people who are financially dependent on you at the time of your death; and
- ▶ people who have an interdependent relationship with you.

Recent changes enable same-sex couples to receive their partner's superannuation as a dependant.

Why have one?

In a recent case of *Katz v Grossman*, a SMSF member made a nomination (non-binding) as to how his superannuation benefits would be distributed on death. Upon his death, his daughter gained control of the SMSF and paid all the benefits to herself. Her brother (the deceased's son) who believed he was entitled to receive 50% of his deceased father's benefits, litigated the matter and lost.

If the SMSF member had put in place a BDBN such that his entitlements were paid equally to his son and daughter this situation would never have arisen.

A note of caution...

A BDBN is a means by which a member can control how their benefits are paid on death and should be an important consideration of your estate planning.

Do not sign a BDBN unless you have considered your entire estate plan. Doing so may mean that your estate is distributed unequally to beneficiaries and hefty taxes may apply to the payment.