

SUPERANNUATION AND BINDING DEATH BENEFIT NOMINATIONS (BDBN's)

Superannuation is fast overtaking the family home as most people's major asset. Under the current legislation if you have used a Binding Death Benefit Nomination form, then any of these benefits will not form part of your Estate.

Under the Commonwealth Superannuation Act, any Superfund must pay death benefits to a dependant as follows:

- as specifically nominated on form;
- or to deceased estate which can include spouse (defacto)
- or child
- or dependant who meets criteria as "person having interdependent relationship"

Currently for Superannuation, a spouse specifically excludes same sex partners, although draft legislation before parliament will allow and increase new potential claimants.

The creation of new class which is effective from 1 July 2004 for Superannuation & tax dependants includes:

- Parents who care for injured child;
- Adult children who are caring for disabled or elderly parent
- Siblings who live together and provide each other with financial and domestic support and personal care
- Same sex partners provided they can establish that they are a "dependant"

Without a specific nomination via BDBN, the Trustee of your Superfund has discretion as to how benefits can be distributed. While it is possible to include these instructions in your will a Trustee is not required to follow these instructions but may give some weight to them.

The best method is to complete a BDBN nomination form and to notify the appropriate person with the Superfund.

What instructions must be given to the Superfund:

Forms must clearly nominate a beneficiary or beneficiaries and this must include the following detail:

- Different percentages for multiple beneficiaries, although this will depend on the Superfunds and must be checked beforehand.
- Provided that the individual Superfund will allow this to occur, include alternate beneficiaries in case something occurs to first nominated Beneficiaries
- form of death benefit (ie lump sum and or pension)
- Need to comply with the procedure set out in trust deed;
- Should ensure that the entire document history is available and that variations to the deed have been properly completed

Why have BDBN's Forms

You should consider having Binding Death benefit Forms if:
it is likely that the deceased member's estate may be subject to challenge;

If members are in second marriage and they have children from a previous relationship and want to ensure their biological children benefit, which is often an important consideration for self-managed SF's;

Where the surviving spouse and/or children cannot be trusted with the superannuation monies, you can specify that beneficiaries can only receive an income stream to stop possible conflict.

If you don't have BDBN forms

It is difficult to challenge decisions made by the trustee of a self managed super fund because Trustees are not required to give reasons for their decision.

If there is no specific nomination, the Trustee(s) has a discretionary option, that if unable to contact all potential beneficiaries, these beneficiaries will not be able to recover unless they are part of a large fund where dependants can challenge trustee's decision via Super Tribunal ("SCT"),

Self-managed super funds are excluded from SCT and have to go to Supreme Court which is a very expensive option.

Self Managed Funds

Generally, the surviving spouse is likely to be the Trustee of the fund and that this could result in a potential conflict of interest if there are children not related to the surviving spouse;

It is suggested that a binding nomination form be used that can be changed depending on individual circumstances;

These BDBN's should be reviewed if circumstances change otherwise if you don't update the form the ex-spouse may receive the full super benefit against your wishes following a divorce.

For further details please contact Adrian Riccioni at Lilydale on 9739 7377 and Frank Lamari at Carlton on 9344 1700.

DISCLAIMER: The above information is general in nature and believed to be correct at the time of writing. All matters should be discussed fully with your solicitor before any action is taken. No responsibility will be accepted by this firm for any loss or damage suffered by anyone as a result of the information contained above.