



Super Death Benefit Nominations

This information sheet discusses why you need to think about what happens to your super when you die

People have more and more of their wealth tied up in super. People are also keeping money in super for longer during retirement – taking a super ‘pension’ rather than in lump sums because it is better from a tax perspective.

But if you die with money left in super, it is important to give some thought to who will get your super when you die.

Doesn't my Will take care of my super?

Strictly speaking, you don't own your super. The super fund holds your super ‘in trust’, and it must be dealt with according to superannuation laws and the particular trust deed for your fund.

The super fund can either pay your super directly to one or more ‘super dependants’ or to your Estate. Your Will only decides who gets your super if the super fund trustee decides to pay it to your Estate, which may not happen.

Who might get my super?

Only limited categories of people can directly receive your super. These people are called your ‘super dependants’, and they are:

- Your spouse/partner;
- Your children;
- People who are financially dependent on you when you die;
- People with whom you have a relationship of financial interdependence when you die; and
- The executor of your Estate.

If your super is paid to the executor of your Estate, then you can nominate in your Will whomever you wish to receive your super – the class of beneficiaries is not then limited.

What if I have life insurance in super – who receives the proceeds when I die?

If your super fund holds life insurance over your life, then the proceeds get paid to your fund when you die. The proceeds then get dealt with in the same way as the rest of your super.

Who gets to decide who gets my super?

The starting position is that the trustee of your super fund gets to decide who gets your super. The trustee must follow the rules that govern your super fund, as well as superannuation law.

Most funds allow you to make a nomination to the trustee as to where you would like your super paid. These nominations can either be ‘non-binding’ nominations or ‘binding’ nominations.

A **non-binding nomination** is really just a statement of your ‘wishes’ which the trustee may follow or choose to ignore.



A **binding nomination** requires the trustee to do what you have asked, which means that it effectively takes away the trustee's discretion. This is only the case if the binding nomination is valid, so it is important that it is prepared, signed and witnessed properly.

My last super nomination is quite old. Do I need to do anything to make sure my nomination is still valid?

There are a couple of issues you should consider.

The nomination that you made some time ago may not have been a 'binding' nomination in the first place. You may wish to check and make sure that it is binding, if that is what you intend.

Further, many binding nominations only last for 3 years, after which they become non-binding nominations. If you have a self-managed super fund, you may be able to make a **non-lapsing binding nomination**, but the governing rules of your super fund must allow it. If the rules do not currently allow it, you can update your super fund deed to change the rules.

You should also regularly review who you have nominated to receive your super, to make sure that your nomination matches your current wishes.

What next?

We can help you put a binding super nomination in place to ensure that your super ends up in the right hands. If your super fund deed does not allow you to make a non-lapsing binding nomination, we can also help amend your deed.

If you would like to speak to someone about getting your super nomination sorted, call us on **1300 654 590** or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.