

Death Benefit Nominations A Guide for Superannuation Fund Members

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Disclaimer

The information contained in this document is of a general nature only and is not intended to be personal or legal advice. The particular conditions of your trust deed may prevent the operation of one or more of the options described in this summary.

No person should act solely on the basis of the information contained herein but only after discussing their individual circumstances with their financial and/or legal advisers.

Before you make any nominations we recommend that you seek professional advice to ensure that any nomination you make will meet your overall estate planning objectives.

The definition of dependant under the superannuation legislation is different to the definition of dependant for tax purposes. We recommend you seek professional advice regarding the tax consequences of making a death benefit nomination.

WHAT TYPE OF NOMINATION SHOULD I MAKE?

The type of nomination that should be made for the payment of benefits to your beneficiaries in the event of your death comes down to you deciding the appropriate mix of:

1. How much flexibility you want your beneficiaries to have; and
2. How much control you want to have over the form of payment of funds to specific beneficiaries.

Total Control

Specify exactly who will get what and how they will receive it with **no** ability to modify either

Total Flexibility

Allow the beneficiaries to decide for themselves **what** they receive and **how** they receive it

How do I decide?

Pick the question below that best describes what you are trying to achieve and take the appropriate actions:

	Question	Example	Requirements
<div style="display: flex; flex-direction: column; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Total Control</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Total Flexibility</div> </div>	Do you want a specific sum or percentage of the fund to go to a specific beneficiary and have it paid in a specific non-changeable form?	I want this person to only get a pension of \$40,000pa without the ability to convert all or part of it to a lump sum	<ul style="list-style-type: none"> ■ Complete a Binding Death Benefit Nomination form to bind the amount or percentage to your chosen beneficiary(ies) ■ Amend the Deed to bind the form of payment
	Do you want a specific sum or percentage of the fund to go to a specific beneficiary, paid in a specific manner but not make the payment compulsory?	I would prefer this specific person to only get a pension of \$40,000pa but want them to have the flexibility to change the method at the time (to say take a lump sum or partial lump sum)	<ul style="list-style-type: none"> ■ Complete a Binding Death Benefit Nomination form to bind the amount or percentage to your chosen beneficiary(ies) ■ Complete a Statement of Wishes to state your preference as to the method of payment (ie lump sum, income stream or mixture of both)
	Do you want a specific sum or percentage of the fund to go to a specific beneficiary, paid in a form of the beneficiary's choosing?	I only want the children of my first marriage to be beneficiaries	<ul style="list-style-type: none"> ■ Complete a Binding Death Benefit Nomination form to bind the amount or percentage to your chosen beneficiary(ies)
	Do you want to suggest what you would like to happen but allow the beneficiary or legal personal representative to change this at the time?	I would generally like my children to share my benefit equally but want to give flexibility in case one has more needs than the other at the time I die	<ul style="list-style-type: none"> ■ Complete a Statement of Wishes only
	Do you want to leave the decisions to your beneficiaries or legal personal representative to deal with at the time?		<ul style="list-style-type: none"> ■ Make no Nomination or Statement of Wishes

Total Control = Beneficiaries **CANNOT** change the direction

Total Flexibility = Beneficiaries determine the outcome

How does my will affect my superannuation?

Your will has no influence over how your superannuation will be dealt with unless your fund pays your superannuation benefits to your estate. In that case your estate will deal with your benefits in accordance with your will. This may happen, for example if you do not have a Binding Nomination or a Statement of Wishes. However this may not be the most beneficial method of payment from a taxation and needs point of view. You should be particularly careful about making a Binding Nomination to your estate.

Binding nominations

- You need to regularly monitor your Binding Nomination to ensure that your wishes are still adequately met. An example of a problem with an out of date nomination would be a benefit being paid to a former spouse.
- Binding nominations expire after 3 years. If the 3 years have passed and the nomination has not been renewed, it does not apply and the surviving trustee(s) will determine how your benefit will be paid. Your benefit may be paid out in a way that you did not intend.
- Your beneficiary's circumstances may change between the time you make the nomination and when the payment is made. For example, a dependant may have had a serious accident or illness that requires more resources than previously expected. For example, specifying that a beneficiary can only get a pension may leave them in a difficult situation.
- A Binding Nomination is only valid if the following conditions are met:
 - ✓ Each nominated beneficiary is a dependant and/or legal personal representative;
 - ✓ You clearly state the allocation of your benefit between beneficiaries (eg the % allocation adds up to 100%);
 - ✓ The notice has been signed and dated by yourself and two witnesses NOT NAMED AS BENEFICIARIES;
 - ✓ The nomination is not older than three years from the date of signature; and
 - ✓ The nominated beneficiaries are still dependants as at the date of death.
- If your nomination is invalid the benefit (or the relevant part of it) will be paid to your legal personal representative when you may have preferred to have it split among the remaining nominated beneficiaries.

Statements of wishes

- The trustee(s) remaining after your death make the decision as to who will receive your benefit and how it will be paid irrespective of who you have nominated. This may provide the flexibility to make a more appropriate allocation but may also create problems. For example – if mum, dad and one of the adult children are the only members of the fund but there are 2 other adult children, the surviving member/trustee could pay all the benefits to themselves if mum and dad both died in a car accident.
- Decisions made by the trustee(s) can be contested. For example, if the trustee(s) paid the benefit entitlement to children from a former marriage, even if done in accordance with the deceased's wishes, the children of the current marriage could contest it.

BENEFICIARIES

Please also refer to our FAQ sheet "Who can be a beneficiary of a super fund?" for further technical information.

Who can I nominate as a beneficiary?

A Binding Death Benefit Nomination or Statement of Wishes may be used to make an allocation of a member's death benefit to the following:

- A spouse (including a de facto spouse or same sex partner);
- A child (including an adult child);
- Someone who is financially dependent on you at the date of your death;
- A person with whom you are interdependent; and/or
- Your legal personal representative.

Who can't I nominate as a beneficiary?

Examples of people who are **NOT** classified as dependants include:

- Siblings – brothers or sisters
- Parents
- Grandchildren
- Business Partners
- Friends
- Charities
- Spouses of dependants

In certain circumstances these people may be financially dependent or interdependent with you so they are not necessarily excluded from receiving proceeds from your superannuation fund. If they are not otherwise dependent, the benefits must flow first to your estate (to be dealt with according to your will) rather than being paid directly from the fund.

Financially dependent

People who are financially dependent on you at the time of your death may receive your superannuation benefit. These people may include but are not limited to parents, grandchildren or a former spouse. The dependence must be proved.

Interdependent

Two people may have an interdependent relationship if they have a close personal relationship, they live together and they provide each other with domestic and financial support. Friends or flatmates would most likely not qualify under this definition. The interdependent relationship must be proved at the time of death.

OTHER IMPORTANT INFORMATION REGARDING NOMINATIONS

Who can witness my nominations?

A Statement of Wishes does not need to be witnessed.

A Binding Nomination must be signed and dated by you in the presence of two witnesses. These witnesses must be 18 years or older and **MUST NOT** be one of the nominated beneficiaries.

How long does my nomination remain in effect?

A Statement of Wishes remains in effect until rescinded or changed.

A Binding Nomination for a SMSF remains in effect for 3 years.

There is some discussion that a SMSF may have a Binding Nomination that does not lapse however this has not yet been tested. Best practice is for your nomination to be reviewed and re-executed every 3 years to ensure that your nomination remains current.

How do I amend or revoke my nominations?

You may amend or revoke any notice by giving the trustee a written notice which is signed and dated (and witnessed by two witnesses in the case of a Binding Nomination).