smartsuper Frequently Asked Questions

Who can be a beneficiary of a Super Fund?

Types of beneficiary

There are 4 types of Beneficiaries in a superfund.

1. Fixed or Fund Established Beneficiaries
2. Applicant and Trustee Agreed Beneficiaries
3. Trustee Discretion Beneficiaries
4. Binding Nomination Beneficiaries

In all cases the beneficiary MUST be a dependant as defined by SIS or the Income Tax act depending on the type of payment being made.

What is a "Dependant" under SIS?

A Dependant is generally defined as:

- a spouse (including a de facto spouse),
- a child (including a step child), or
- any other person who lived in an 'interdependency relationship' with the deceased.
  [The term 'interdependency relationship' defines a relationship as a close personal relationship between two people who live together, where one or both provides for the financial and domestic support and personal care of the other. Individuals maintaining a close personal relationship but not living together due to physical, intellectual or psychiatric disability are also considered to have an 'interdependency relationship'.]

What is a "Dependant" under the Tax Act?

A Dependant is generally defined as:

- a spouse (including a de facto spouse),
- a child (including minor child, a step child who is a minor or a child who is financially dependent on the deceased), or
- any other person who lived in an 'interdependency relationship' with the deceased. [see above]

The key distinction is an adult child who is not financially dependent is not a dependant for tax purposes but is for SIS.

Who is not a dependant?

Fundamentally, any person who falls outside the definition above.

Examples of people who are not dependants (presuming they are not financially dependant at the time of death) are:

- Siblings – brothers or sisters
- Parents
- Grandchildren
- Business Partners
- Friends
- Charities
- Partners of dependants (ie spouse of a dependant)

Types of Beneficiaries

Fixed (or fund established) beneficiaries

This is where the trust deed or governing rules specify who is entitled to a benefit on death. No party (member or trustee) can choose to pay to any other beneficiary. In practice, the deed or governing rules will specify the member's spouse or their estate.

This is quite common in older style corporate employer funds and public sector funds.

When the original pensioner dies, the income stream will usually revert to the party specified in the deed (provided they remain a dependant), or any remaining value will be paid to the estate as a lump sum.

Applicant and trustee agreed beneficiaries.

These are the common non binding beneficiaries

In this situation the applicant for the pension will nominate a person (who must be a dependant under SIS rules, ie. spouse, child of any age, financial dependant) and, subject to the trustee s agreement, this will be the person's to whom any benefit will be paid upon death (provided that they are still a dependant under SIS rules at the time). It can be paid to the estate regardless. This is usually the situation where a person is applying for a lifetime pension with a specified reversion upon death.

Normally the reversionary beneficiary will be the applicant's spouse. Once agreed and implemented, no change may be made by either party.

Trustee discretion.

Trustee discretion to determine who the beneficiaries are upon death of a member is most commonly applied to retail public offer and industry fund vehicles. Unlike fixed or pre-agreed beneficiaries the discretionary approach allows the trustee greater flexibility in determining who should receive a benefit and how much. Trustees may consider a number of factors, including changed circumstances, possible creditors of the estate and whether there are multiple claimants and their degree of dependency. Members may make a nomination, but it is the trustee who ultimately decides the beneficiaries and the proportion to which each person may be entitled. Trustees will focus on who was dependent upon the deceased at the time of death. Except for SMSFs, such decisions are subject to review by the Superannuation Complaints Tribunal (SCT) if dependants are not satisfied with the decision.

Binding nomination of beneficiaries.

The governing rules of super funds may allow a member to specify who should receive their benefits in the event of their death. The trustee does not need to agree. That is, the member may direct the trustee. The only constraint is that the person must be a dependant at the date of death (unless the legal personal representative is nominated). Members may change such nominations at any time. The trustee must adhere to these nominations provided they are validly made (in accordance with 515 regulations or governing rules). Unlike fixed and agreed beneficiaries, members may use their discretion to alter beneficiaries over time. For most trustees there are rigorous processes that must be adhered to where binding nominations apply under the deed. A trustee can only be bound by the nomination if it is valid. Under SIS there are requirements for witnesses, refreshing regularly (the law makes the nomination invalid every 3 years for SAFs unless the member refreshes the nomination – SMSFs can have lifetime binding nominations subject to the provisions of the deed), accurate descriptions of who should receive benefits and, if there is more than one beneficiary, the amount or proportions payable to each. If a nomination is not valid, there will usually be a default provision in the deed — this may be to trustee discretion or, an automatic re-direction to the person's estate (please note that the latter can have negative RBL and tax consequences).

