Superannuation

Death benefit nominations

Aon Hewitt Financial Education Series

Your super account is generally your second biggest asset behind your home, but did you know that the balance doesn't form part of your Estate upon your death? The Trustees of your super fund have discretion over who it will pay your super benefit to. You need to ensure that you complete and lodge a valid death benefit nomination with your super fund.

Who can receive my super upon my death?

A super death benefit can be paid to:

- Your dependant(s) as explained further below; or
- Your legal personal representative such as the executor of your Will or administrator of your estate). This option effectively means that the instructions in your Will shall be followed; or
- Another person, only if the Trustees haven't found either of the above persons (and subject to the super fund's rules).

A dependant (under super law) includes:

- A spouse which includes a de-facto spouse (of opposite or same sex);
- A child which includes an adopted child, step-child or an ex-nuptial child (of you or your spouse);
- Any person who was financially dependent on you at the time of your death;
- A person who had an interdependency relationship with you immediately before your death. This is discussed in more detail below.

The death benefit must also be paid out in accordance with the rules of the super fund as set out in the Trust Deed. In some cases, the Trust Deed may place further restrictions on who may be paid a death benefit. This is particularly relevant if your super is invested through a Self-Managed Super Fund (SMSF).

Tax may be payable on the death benefit depending upon who you leave the funds to. For more information, please refer to the 'Withdrawing from Super' fact sheet under the Superannuation Financial Education Series.

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What is an interdependency relationship?

An interdependency relationship between two people is characterised by:

- A close personal relationship
- Living together even if they are not related by family
- Financial support
- Domestic support
- Personal care of a type and quality above the care and support that might be provided by a mere friend or flat mate

An interdependency relationship may:

Include a partner who doesn't meet the definition of a spouse and may also exist where there is a close personal relationship between two people who don't live together, provide financial support, domestic support or personal care due to one or both of them having a physical, intellectual or psychiatric disability or they are temporarily living apart due to one (or both of them) temporarily working overseas or serving a jail sentence.

The Superannuation Industry (Supervision) (SIS) Regulations specify that the following issues are taken into account in determining whether an interdependency relationship exists:

- all of the circumstances of the relationship between the persons, including:
  - The nature of the relationship, including the duration of the relationship, whether or not a sexual relationship exists, the ownership, use and acquisition of property, the degree of mutual commitment to a shared life, the care and support of children, the reputation and public aspects of the relationship, the degree of emotional support, the extent to which the relationship is one of mere convenience, any evidence suggesting that the parties intend the relationship to be permanent, financial support and domestic and personal support.
  - The existence of a statutory declaration signed by one of the persons that the person is or was in an interdependency relationship with the other person.
  - An employment contract or contract for services on behalf of another person or organisation such as a government agency, a body corporate or a benevolent or charitable organisation.

There is no need for one person to be wholly dependent on another for that person to qualify as a 'dependant'. Financial dependency can be established where a person relies wholly or in part on another. Also, there is no requirement for a person receiving a death benefit payment to show a need for the money received from the deceased member.

How can I provide more control over who will receive my super?

You are able to provide your super fund with either a non-binding or binding nomination, where you nominate who you would like your super benefits paid to in the event of your death.

Non-binding nomination

A non-binding nomination is one which isn't binding to the Trustees. In other words, the Trustees of the super fund don't need to follow the directions in a non-binding nomination. Generally, the Trustees will take the non-binding nomination into consideration when determining who receives the benefits and the amounts.

A non-binding nomination also includes the cases where no nomination has been made, or where a binding death nomination is invalid.

If there has been a change in family or financial circumstances since the nomination was made, then the Trustees wouldn't place as much weight on the nomination. For example, if a spouse was nominated as the beneficiary and since the nomination was made you had separated or divorced, then the Trustees would consider the other dependants including any new partner when making a decision.

If you left a valid Will, then the Trustees would generally take that into account along with any other relevant considerations. The Will may be used to determine what proportion each dependant should receive or whether the death benefit should be paid to the Estate. However as noted above, the Trustees don't need to follow the directions in your Will.

Binding nomination

A binding nomination is one which is binding upon the Trustees. To be an effective binding nomination there a number of conditions which must be met, and these will be included on the form.

Binding nominations are generally only valid for three years, and a new nomination will need to be completed and submitted every three years.

You can revoke or change your nomination at any time by sending your super fund a new binding nomination.

It's important to regularly review your beneficiary nomination and contact your financial adviser should your personal circumstances change.

What happens if I am in the pension phase?

You are also able to make binding or non-binding nominations for your account based pension, much like a super fund. However, there is one additional type that overrides any binding or non-binding nomination, called a reversionary nomination.

A reversionary beneficiary nomination provides certainty that the intended beneficiary will continue to receive the pension as an income stream, provided they satisfy the definition of being a SIS dependant. Generally, the reversionary nomination is limited to your spouse, and this may not be appropriate if the intended beneficiaries were children and/or if a lump sum was the preferred method to pay the death benefit payment.

Unlike a binding or non-binding nomination which can be amended at any time, a reversionary beneficiary nomination can only be made at the time the account based pension is established and it is retained until the account based pension is paid upon death. To amend a reversionary status, or change from a non-reversionary nomination to a reversionary nomination, the account based pension must be rolled back into a super account, and a new account based pension will need to be re-established.

When determining the appropriateness of making a reversionary nomination, you should consider whom the intended beneficiaries are and if they require flexibility around payment. It could also have Centrelink implications. You can discuss these matters with your financial adviser.