Superannuation death benefits

Nowadays every working adult has superannuation benefits, but it is important to understand how these are dealt with upon death.

Common misconceptions

Some common misconceptions relate to the relationship between a person's Will and their superannuation: who can receive the superannuation death benefits, the role of binding and non-binding death benefit nominations and what the tax treatment may be.

Do superannuation death benefits automatically form part of a deceased person's estate?

The superannuation death benefits of a deceased fund member will only form part of their estate and be disposed of according to their Will if:

> the member has executed a valid binding death benefit nomination (**BDBN**) that directs the trustee of the superannuation fund to pay superannuation death benefits to the member's legal personal representative (**LPR**), that is, the executor appointed under a Will or administrator appointed by the court; or

> in the absence of any BDBN, the fund's trustee exercises its discretion to pay the superannuation death benefits to the LPR

If there is no BDBN in place nominating the LPR, then the fund's trustee may decide to pay the superannuation death benefits directly to one or more of the member's superannuation dependants.

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Who qualifies as a superannuation dependant?

> Spouse

> Child

> Anyone financially dependent on the member

> Anyone in an inter-dependant relationship with the member

Is a BDBN always appropriate?

The short answer is 'no'. However, there are many circumstances which warrant the use of a BDBN, for example, where you wish to benefit one person over another, or your Will might be challenged.

Generally, we recommend that a member of a superannuation fund has a properly executed BDBN that provides for the payment of their superannuation benefits on their death. This avoids any doubt in relation to how these superannuation death benefits are to be dealt with after a member's death. It also ensures that the superannuation death benefits are disposed of in accordance with the wishes of the member, rather than the trustee of the superannuation fund.

However a BDBN does not allow the fund trustee any flexibility, and in some cases it could create problems. For instance, where there is marital separation and the member dies before the divorce is finalised and before the BDBN has been altered to reflect the change in circumstances.

Further, a BDBN may not be necessary if, for example, the superannuation benefit is subject to a pension and there is a validly nominated reversionary pensioner. For these reasons, it may be appropriate sometimes to have a non-binding nomination or no nomination at all.

Who can make a BDBN and how long does it last?

A member can only make a BDBN if the governing rules of the superannuation fund provides and allows for it. Usually, a BDBN will lapse after three years unless it is renewed in accordance with the rules. In the case of a self managed superannuation fund, the BDBN may lapse but this depends upon the terms of the fund's deed.

Regardless of whether a BDBN lapses or is non-lapsing, a member should ensure that it is reviewed on a regular basis and amended to reflect any changes in the member's circumstance.

Peter's Story

Peter has no superannuation dependants, one living sister, Jane, and two living parents. Peter is in his 20's and has not made a Will.

Peter nominates Jane to receive his entire superannuation death benefit, with no alternative recipient. Jane is not financially dependent on Peter and nor is she in an interdependency relationship with him.

Peter dies in a motor vehicle accident. Jane, knowing Peter has nominated her as the beneficiary of his Superannuation, contacts his superannuation fund requesting payment of Peter's death benefits.

Jane was surprised to discover the nomination was invalid resulting in his superannuation death benefit being paid to his LPR.

As Peter had no Will, the superannuation death benefit will be dealt with according to intestacy laws, resulting in his parents receiving the entire benefit to the exclusion of Jane.

Are lump-sum superannuation death benefits always paid tax free?

The short answer is 'no'. However, if a lump sum superannuation death benefit is paid directly to a 'tax dependant' of a member, the payment is generally received tax free.

A 'tax dependant' is the same as a 'superannuation dependant', except that:

> a child must be under 18 years of age or under a disability;

> they must be financially dependant on the deceased; or

> they must be in an interdependent relationship with the deceased.

There are generally two situations in which a lump sum benefit may be taxable:

> The proceeds are paid to a child of the member who is aged 18 or over and is not otherwise a 'tax dependant'.

> The proceeds are paid to the member's LPR and the member's Will distributes some or all of the superannuation death benefit to a non-superannuation dependant, or to a non-tax dependant.

To the extent that non-tax dependants receive a superannuation death benefit, the taxable component of the lump sum will generally be taxed at 15% (plus Medicare levy). The extent to which there is a taxable component will depend on the make up of the superannuation death benefit.

Higher tax is payable on life insurance held within a superannuation fund.

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Conclusion

There is considerable complexity in superannuation and tax laws in relation to superannuation death benefits. There are also a number of pitfalls. Superannuation benefits need to be considered as part of your estate planning in conjunction with your Will.

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