

Superannuation Death Benefits

Superannuation and Death

Superannuation benefits which are accumulated during your lifetime must be held in a complying superannuation fund until your retirement or death. These benefits will comprise contributions made during your working life together with any life insurance taken out through your superannuation fund.

Your superannuation fund is managed by a trustee in accordance with the provisions of the Trust Deed for the fund.

When you die, your superannuation death benefits must be paid out of the fund to an eligible beneficiary. Often the trustee will have a discretion as to which beneficiaries will receive your superannuation death benefits on your death, unless you have made a binding death benefit nomination directing the trustee to whom the benefits are to be paid.

Eligible Beneficiaries

Eligible beneficiaries are set out in the *(Superannuation Industry (Supervision) Act 1993 (SIS).)* On your death your superannuation death benefits must be paid to either:

- a) a spouse (including defacto and same sex couples);
- b) any child of any age (including a step-child and adopted child);
- c) a financial dependant;
- d) a person in an interdependency relationship; or
- e) your legal personal representative.

Two people are in an “interdependency relationship” if:

- a) they have a close personal relationship;
- b) they live together;
- c) one provides the other with financial support; and
- d) one provides the other with domestic support and personal care.

If your superannuation death benefits are paid to your legal personal representative, they will then be distributed in accordance with your Will. Therefore, if you want your superannuation death benefits to go to say your parents or siblings, you would need to nominate your legal personal representative as the beneficiary of your superannuation death benefits and then gift the benefits to them through your Will.

Tax Dependant beneficiaries

Although the SIS Act states who is eligible to receive your superannuation death benefits, not all the eligible beneficiaries are entitled to receive your superannuation death benefits tax free. Only the following beneficiaries are entitled to receive superannuation death benefits tax free:

- a) a spouse (including defacto and same sex couples);
- b) a child under 18 years of age;
- c) a financial dependant; or
- d) a person in an interdependency relationship.

Therefore an adult child who is not financially dependent on the deceased will pay tax on the superannuation death benefits of up to 30% plus the Medicare levy.

The following table shows which beneficiaries are eligible beneficiaries and which are tax dependant beneficiaries:

Beneficiary	Eligible Beneficiary?	Tax Dependant?
Spouse (including same sex)	Yes	Yes
Defacto spouse	Yes	Yes
Child under age 18	Yes	Yes
Disabled child of any age	Yes	Yes*
Child age 18 and over	Yes	No**
Financial dependant	Yes	Yes
Person in interdependency relationship	Yes	Yes
Where the deceased died in the line of duty	n/a	Any beneficiary is a tax dependant

* A disabled child over 18 years of age will only be a tax dependant if they were also a financial dependant or were in an interdependency relationship.

** Unless a financial dependant of the deceased.

Nominating your beneficiaries

There are essentially two options if you wish to nominate the beneficiaries whom you want to receive your superannuation death benefits. You can make a binding nomination or a non-binding nomination. Whether each option is available will depend on the terms of the Trust Deed and you would need to contact your superannuation fund to ascertain whether they are available.

Your superannuation benefits may be paid out as a lump sum, or in some circumstances as a pension.

Non-binding nominations

As the name suggests, non-binding nominations alert the trustee to whom you wish your superannuation death benefits to be paid, however the nomination is not binding on the trustee. The trustee will take your nomination into consideration but is not bound to follow your wishes. In most cases, the trustee will consider all the financial circumstances and the needs of all eligible beneficiaries. Each eligible beneficiary will have the right to make a claim on your superannuation death benefits.

Binding nominations

As the name suggests, by making a binding nomination you are directing the trustee to pay your superannuation benefits to eligible beneficiaries in a particular way. Binding nominations need to be signed by you in the

presence of two independent witnesses and often they need to be renewed every 3 years to remain binding. If they are not renewed then they lapse and are no longer valid. Some trust funds however, and many self managed superannuation funds, allow for non-lapsing binding nominations to be made. These will remain binding until they are revoked or replaced by another binding nomination.

While binding nominations may seem the obvious way to go, they should be approached with caution and you should seek advice from an estate planning lawyer.

It is very difficult to predict what the financial circumstances of each beneficiary and your estate will be at the time of your death. For example, a binding nomination may result in the trustee being forced to pay death benefits to a beneficiary who is in financial difficulty.

Your superannuation death benefits are often one of the largest assets in your estate and it is important you get proper advice to ensure that you have a comprehensive estate plan in place so that the right people receive the right benefits at the right time, with a minimum of tax.

This information sheet is provided for general information only and does not constitute legal advice. For advice on your circumstances please contact us on 5443 1566