

A Guide to Binding Death Benefit Nominations

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

What is a Binding Death Benefit Nomination?

In general, the Trustees of your Superannuation Fund have absolute discretion to decide who receives your death benefits upon your death. A Binding Death Benefit Nomination ("Binding Nomination") provides you with the ability to direct the Trustees of your Superannuation Fund to distribute your death benefits to particular individuals after your death. A valid nomination binds the Trustees and prevents dependants challenging the decision of the Trustees other than in any Family Court proceedings pending at the date of your death.

Why a Binding Nomination?

Binding Nominations give you relative certainty in relation to estate planning decisions, removing the control otherwise held by a third party. This is because without a Binding Nomination the Trustees have absolute discretion in distributing death benefits from your Superannuation Fund. A Binding Nomination gives you the final say as to whom and how your Superannuation is paid after your death.

Trustees face difficulties in deciding the distribution of benefits where there is no Binding Nomination. There are no guidelines to assist Trustees as to which of your beneficiaries take priority. Various factors are to be taken into account by the Trustees, involving legal and moral considerations, which can be a difficult process for potential beneficiaries.

Choice of Beneficiary

Under the Superannuation law you can nominate any of your dependants, such as your spouse, de facto spouse, your children of any age or a person financially dependant on you at the time of your death. You can also nominate your Estate, which can be a tax effective way of distributing your Superannuation assets while providing asset protection.

Benefits can be split amongst your beneficiaries provided that you give details of the dependants and the proportional share you want to allocate to each of those dependants. You should also seek advice from your financial advisor with respect to your nominations to ensure that any distributions do not create unnecessary tax liabilities.



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It is also important that you make contingent Binding Nominations. If this is not done and your non-contingent nominee dies before or at the same time as you, the Binding Nomination lapses and your objectives will not be achieved.

What is the effect of a Binding Nomination?

When you make a Binding Nomination, it is important to ensure that you have considered the needs of all of your dependants when it comes to distributing your assets. This is because the Trustees have no discretion and assume that you have made your decision carefully. The Trustees do not have the power to consider the needs of any of your dependants whom you have not named as nominees.

However, Binding Nominations are not always absolute. The Family Court can, before and after the death of a fund member, overturn a Binding Nomination. Binding Nominations are not valid if they are contrary to a Family Court Order and are not automatically revoked if you divorce.

How long are Binding Nominations effective?

Binding Nominations made in relation to Superannuation Funds that are not self-managed Superannuation Funds, are valid for three years. If your Binding Nomination expires and is not properly renewed, the Trustees of your Superannuation Fund have the discretion to pay your benefits as if you never had a Binding Nomination. You can also revoke or change your nomination at any time by sending your Superannuation Fund a new Binding Nomination.

If you have a self-managed Superannuation Fund, then it is important to ensure that your Trust Deed provides for how and to whom you want your Superannuation benefits paid when you die. This may require amending the Trust Deed. Such a provision does not need to be updated unless you want to change your nominated beneficiaries.

How to make a Binding Nomination

A Binding Nomination is available if there is a provision in your Superannuation Fund Trust Deed. The formal requirements of a valid Binding Nomination are that the notice is in writing, is signed and dated by you in the presence of two witnesses, with each witness being over the age of 18, neither of whom is mentioned in the notice, and that it contains a declaration signed and dated by the witnesses that you have signed the notice in their presence. Trustees are required by law to follow up on a nomination that does not satisfy these requirements.

If you are interested in making a Binding Nomination either contact your Superannuation Fund manager or, if you have a self-managed Superannuation Fund, review the Trust Deed to ensure it provides for Binding Nominations.

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