Superannuation - Rights and Entitlements

Binding nominations and planning for death benefits

Your superannuation interests

Superannuation is held in a trust for members and is governed by legislation, the fund?s governing rules and the terms of any insurance or pension. While alive, access is generally restricted until a condition of release is satisfied.

Members are entitled to information about their account, investments, fees, insurance and benefit rules. Rights vary by fund and product, so current statements and governing documents should be reviewed.

What happens on death?

A member?s remaining super balance and applicable insurance are paid as a superannuation death benefit. Super does not automatically form part of the deceased estate and is not controlled by the will unless the trustee pays it to the legal personal representative.

Who decides who receives it?

- A valid binding death benefit nomination may require the trustee to pay as directed.
- A non-binding nomination records the member?s wishes but leaves discretion with the trustee.
- Without an effective nomination, the trustee decides under legislation and the fund rules.
- A reversionary pension nomination may direct an eligible income stream to continue to a nominated beneficiary.
- Self-managed super funds are also governed by their trust deed and trustee decision-making rules.

Binding death benefit nominations

What does ?binding? mean?

If the fund permits binding nominations and the nomination is valid and effective when the member dies, the trustee generally must pay the death benefit to the nominated eligible beneficiary or beneficiaries in the stated proportions.

Common validity requirements

- Use the fund?s current approved form and comply with its governing rules.
- Nominate only a person who is an eligible superannuation dependant at death, or nominate the legal personal representative.
- Sign and date the nomination in the presence of two adult witnesses who are not nominated beneficiaries.
- Ensure the witnesses sign the required declaration and the allocations total 100 per cent.
- Renew a lapsing nomination before expiry; many fund nominations lapse after three years, but rules vary.
- Update details and confirm the fund has accepted and recorded the nomination.

Eligible recipients

Eligible direct recipients generally include a spouse or de facto partner, a child, a person in an interdependency relationship, or a person financially dependent on the member at death. The legal personal representative may be nominated so the benefit is paid to the estate.

Eligibility is tested at death

A nomination can fail if the relationship or dependency required by law no longer exists when the member dies. Definitions for superannuation payment and taxation are not identical, so eligibility to receive a benefit does not determine its tax treatment.

Choosing the right nomination

Binding, non-binding or reversionary?

- Binding nomination: greater certainty, but formal requirements and expiry may apply.
- Non-binding nomination: guides the trustee while allowing discretion if circumstances change.
- Non-lapsing binding nomination: may remain effective if offered by the fund and valid under its rules.
- Reversionary nomination: may govern continuation of an eligible pension rather than a lump-sum death benefit.
- Legal personal representative: brings the benefit into the estate for distribution under the will, subject to estate liabilities and claims.

Reasons to nominate the estate

An estate nomination may support testamentary trust planning, equalisation between beneficiaries or distribution to someone who cannot receive super directly. It can also expose the benefit to estate administration, debts, delay and family provision claims. The executor and will must be suitable.

Tax and payment form

Tax depends on matters including the recipient?s tax-dependency status, the taxable and tax-free components, the member?s age and whether payment is a lump sum or permitted income stream. A person may be eligible under superannuation law but not treated as a tax dependant.

SMSFs require special care

For a self-managed super fund, review the trust deed, nomination requirements, trustee succession, corporate trustee arrangements and control after death. An otherwise well-drafted nomination may fail if it does not comply with the deed or if control of the trustee is unresolved.

Review, disputes and practical steps

When to review

- Marriage, separation, divorce, a new relationship or the birth or death of a dependant.
- Changing super funds, consolidating accounts or commencing a pension.
- Making or updating a will, enduring power of attorney or testamentary trust plan.
- A nomination approaching expiry or a change to fund rules or beneficiary eligibility.
- Significant changes to account balance, insurance, tax position or family circumstances.

Death benefit disputes

Potential beneficiaries may be notified of a trustee?s proposed decision and may have rights to object. Complaint and review pathways can include the fund?s internal dispute process and the Australian Financial Complaints Authority, subject to jurisdiction and strict time limits. Court proceedings may arise in some matters, particularly involving SMSFs, estates or validity disputes.

Practical checklist

- Obtain current statements, insurance details, nomination forms and fund rules.
- List all funds and pensions; nominations do not automatically transfer between products.
- Identify each intended beneficiary and confirm legal and tax status.
- Coordinate the nomination with the will, executor choice and estate-liquidity needs.
- Follow signing and witnessing instructions exactly and retain confirmation from the fund.
- Schedule periodic reviews and tell trusted representatives where records are kept.

Key sources

- Superannuation Industry (Supervision) Act 1993 and Regulations 1994 (Cth).
- Australian Taxation Office guidance on superannuation death benefits.
- Moneysmart guidance on who receives superannuation after death.

Your will and super nomination must work together

Monardo Legal | (02) 8006 5244