Death Benefit Nominations

Getting them right

Thursday 22nd February 2024

Welcome

SUPERGUIDE | WEBINAR

Presenter

Graeme Colley CA SSA

Graeme Colley is a well-known figure in the SMSF community with a long-standing reputation as an accomplished educator, technical expert and advocate for the sector. He is currently an ambassador for the Auditors Institute and brings over 30 years of taxation and superannuation experience gained from a wide range of senior positions in the public and private sectors.

Graeme contributes to many industry publications and is a joint author of the CCH Master Financial Planning Guide and Financial Planning in Australia. His academic teaching experience extends to the ATAX Masters course at the University of NSW and Master of Commerce (Financial Planning) at the University of Western Sydney.

Graeme is a qualified SMSF Specialist Advisor (SSA) and a Member of the Chartered Accountants Australia & New Zealand (CA ANZ).

IMPORTANT

Disclaimer

The information covered within this webinar is intended to be general in nature and is not personal financial (or financial product) advice. It does not take into account your objectives, financial situation or needs. Before acting on any information, you should consider the appropriateness of the information provided having regard to your objectives, financial situation and needs.

In particular, you should seek independent financial advice prior to making any investment decision.

You should consider the appropriateness of this information having regard to your individual situation and seek taxation advice from a registered tax agent before making any decision based on the content of this presentation. Any examples and calculations within this presentation are provided for illustrative purposes only. They should not be relied on.

Attendance at this webinar and/or viewing the content provided, is considered as acknowledgement, acceptance and agreement to this Disclaimer and the contents contained within.

Todays Webinar

Who can receive my superannuation death benefits?

What is a death benefit nomination in your super fund?

Who can make a death benefit nomination?

Are there different types of death benefit nominations?

Making sure the death benefit nomination is correct

Tax considerations with death benefit nominations

Trips and traps with death benefit nominations

SUPERGUIDE | WEBINAR

Introduction

SUPERGUIDE | WEBINAR

On your death, the law requires that your superannuation benefits are paid by the fund trustee to a limited range of people:

- your dependants, and/or
- your legal personal representative

You are able to decide who is to receive your death benefit by making a death benefit nomination if it's permitted under the fund's trust deed.

The death benefit nomination requires the fund trustee to pay your superannuation benefit as you have directed by the superannuation law.

Who can receive my superannuation benefit on my death?

Death Benefit Nominations

When did it become possible to make a death benefit nomination in a super fund ?

Awan M

The superannuation law* has allowed members of large and small superannuation funds to make death benefit nominations since it commenced in 1994.

However, you can only be make a death benefit nomination if it is allowed by the fund's trust deed. The death benefit nomination allows you to direct the trustee to pay any death benefits to your dependants or legal personal representative that you have nominated.

Not all superannuation funds allow you to make death benefit nominations and may limit the types of nominations you can make.

It is up to you to make a death benefit nomination.

*The Superannuation Industry (Supervision) Act and Regulations

Introduction to Death Benefit Nominations

Who is my dependant?

A 'dependant' for superannuation purposes at the time of your death is:

- your spouse
- your children
- a person in an interdependency relationship
- a person dependent upon you for support

Who is my legal personal representative?

Your legal personal representative is:

- the executor of your will
- the administrator of your estate
- the trustee of the estate of a person under a legal disability
- a person who holds an enduring power of attorney granted by you

SUPERGUIDE | WEBINAR

Question

Question 1

Can the beneficiary of my superannuation death benefit be a company?

Luke

No, it is not possible for your death benefit to be paid to a company.

The law requires that your superannuation benefit is paid in favour of:

- your legal personal representative, such as the executor of your estate who will distribute your benefit via your will
- one or more of your dependants

Death Benefit Nominations

Are there different types of death benefit nominations that can be made?

Funds with more than 6 members

For a superannuation fund that has more than 6 members such as an industry fund, retail fund or government fund the requirements for death benefit nominations are included in the superannuation law.

Funds with up to 6 members

For a superannuation fund that has no more than 6 members such as a self-managed superannuation fund (SMSF) or a small APRA fund (SAF) the requirements for death benefit nominations allow a degree of flexibility compared to funds with more than 6 members.

Death Benefit Nominations

Funds with more than 6 members

A valid death benefit nomination legally binds the trustee to pay your death benefit as you have instructed

The trust deed of the fund with more than 6 members may allow you to make a death benefit nomination. A valid nomination that directs the trustee to pay the death benefit as instructed is legally binding on the trustee of the fund.

The nomination is required to be in writing and meet certain conditions in the superannuation law which bind the trustee to pay your death benefits to the person or persons nominated in the notice. That person or persons is limited to your legal personal representative or one or more of your dependants.

If the fund's trust deed permits, the duration of the nomination can be in force for up to 3 years from the date of signing. Some funds may allow non-lapsing nominations which continue to be in force until they are revoked, replaced or amended.

Death Benefit Nominations

Funds with more than 6 members

The fund trustee needs to provide you with information.

The fund trustee is required to provide you with information to help you understand how death benefits are to be paid to your dependants and/or you legal personal representative.

What details are required to be included in the nomination I send to the fund trustee?

Your death benefit nomination must:

- be in writing.
- nominate who is to receive your super benefits on your death. This could include your legal personal representative or dependant(s) that you have nominated.
- state the proportion of your benefit that will be paid to anyone who is nominated in the notice.
- indicate whether it is lapsing or non-lapsing if relevant.
- be signed and dated by you in the presence of 2 witnesses each of who are at least 18 years old and are not mentioned in the nomination.

Note: most large super funds have pre-printed death benefit nominations available on their website for you to complete.

Example 1

- Christie is a member of the Teachers' Superannuation Fund which has more than 6 members.
- She wishes to make a binding death benefit nomination and nominate her husband to receive all of her benefits accumulated in the fund at the time of her death.

Is it possible for Christie to nominate her husband to receive all of her superannuation benefits?

If Christie's husband was to pre-decease her is it possible for Christie to nominate her children or her legal personal representative to receive her superannuation benefits?

Example 1 – Death Benefit Nomination

Christie accesses the Teachers' Superannuation Fund website to complete the death benefit nomination form.

- The completed form directs the fund trustee to pay 100% of her benefit to her husband on her death.
- She indicates that the nomination is non-lapsing which is available under the fund rules.
- Christie's two neighbours, Tom and Kelly, who are both over 18 and not mentioned in the nomination, witness her making the signature and sign the statement that they have witnessed Christie's signature.
- The trustee acknowledges the receipt of the nomination after it has been received.

Example 1 – Death Benefit Nomination

It would only be possible for Christie's children or her legal personal representative to receive her superannuation death benefits if it was allowed by the trust deed of the fund.

In most cases if a nominated person pre-deceases the member the trustee has discretion and will usually pay the benefit to the member's legal personal representative.

Death Benefit Nominations

Funds with up to 6 members

A valid death benefit nomination legally binds the trustee to pay your death benefit as you have instructed

The trust deed of the fund with up to 6 members may allow you to make a death benefit nomination. A valid nomination that directs the trustee to pay the death benefit as instructed is legally binding on the trustee of the fund.

The nomination is required to be in writing and meet certain conditions which are usually included in the fund's trust deed. These conditions could relate to:

- the type of death benefits that can be paid as a pension or lump sum,
- whether the nomination is binding or non-binding on the trustee,
- whether it is lapsing or non-lapsing bind the trustee to pay your death benefits to the person or persons nominated in the notice. That person or persons is limited to your legal personal representative or one or more of your dependants.

In many cases the duration of the nomination is non-lapsing until it is revoked, replaced or amended. The nominations may also lapse after a period stated in the nomination which may be determined by the fund's trust deed.

Example 2 – Death Benefit Nomination

Lan is a member of the Wang Superannuation Fund which is a self-managed superannuation fund.

She wishes to make a binding death benefit nomination that will pay a pension to her spouse, Hangsu. If Hangsu was to pre-decease her she would like her superannuation benefit to be paid to her legal personal representative for distribution to her estate

Is it possible for Lan to require the trustee of the SMSF to pay a pension to Hangsu?

If Hangsu was to pre-decease Lan is it possible to require the trustee of the SMSF to pay her benefit to her legal personal representative?

Death Benefit Nominations

What if there is no beneficiary nomination in place. What happens if both members of an SMSF pass away?

Rajesh

If there is no death benefit nomination in place or the nomination is invalid you would need to have a look at the fund's trust deed which may provide an answer.

Usually, in these cases the trustee of the fund will have discretion to distribute the deceased member's benefit as they see fit to either or both of the deceased member's dependants or their legal personal representative.

If both members of an SMSF who are also the fund trustees or directors of the trustee company have passed away the trust deed may indicate how a new trustee is appointed. Where the trustee is a company, the constitution of the company or the Corporations Act 2001 may provide a solution. In the case of individual trustees the legal personal representative(s) of the member(s) can be appointed as trustees or as a director of the trustee company.

How are Death Benefits Paid?

Death benefits may be paid as lump sums or pensions:

Beneficiary	Lump Sum	Pension
Spouse of the deceased member	Yes	Yes
Child of the deceased under age 18	Yes	Yes
Person in an interdependency relationship with deceased	Yes	Yes
Person dependent on the deceased for support	Yes	Yes
Legal personal representative	Yes	No
Child of the deceased older than 18	Yes	No
Disabled child of the deceased older than 18	Yes	Yes

How are Death Benefits Paid?

Lump sums

- Usually paid in cash from funds with more than 6 members.
- Can be paid in cash and/or the transfer of assets from a fund with up to 6 members

Pensions

- If you have commenced a pension then it can be reversionary or non-reversionary
- If the fund rules allow, your dependant may wish to commence a pension from the amount of their death benefit entitlement.

Questions

Question 2

What are the differences between a death benefit pension and a reversionary pension?

Andrew

Reversionary Pension

- Original pension payable to the member while they are alive
- Reversionary pension payable immediately to dependant on member's death
- The terms of the reversionary pension are subject to the terms of the fund's trust deed and any pension agreement
- May be converted (commuted) in whole or in part to a lump sum if permitted under the trust deed or pension agreement
- Capital value counted for Transfer Balance Cap purposes 12 months after the member's death

Death benefit Pension

- Dependant makes a decision to commence a death benefit pension from their death benefit entitlement
- The terms of the death benefit pension are subject to the terms of the fund's trust deed and any pension agreement
- May be converted (commuted) in whole or in part to a lump sum if permitted under the trust deed or pension agreement
- Capital value counted for Transfer Balance Cap purposes when the dependant commences the death benefit pension

Questions

Question 3

Is a reversionary pension or a death benefit pension, one better than the other from a tax and/or payment perspective?

Andrew

	Reversionary Pension	Death Benefit Pension
Is a reversionary account based pension or death benefit account based pension calculated in the same way?	Yes	Yes
Pension is tax free if the deceased member or the beneficiary pensioner are older than age 60	Yes	Yes
Taxable component of the pension is taxed at personal rates less a 15% tax offset if the deceased member and the beneficiary pensioner are both under age 60	Yes	Yes
Income on investments used to support the pension is tax free in the super fund	Yes	Yes
Pension can be converted (commuted) in whole or in part to a lump sum if the fund's trust deed or pension agreement permit	Yes	Yes
Capital value at the time of becoming entitled to the pension counted against the beneficiary pensioner's Transfer Balance Cap	Counted 12 months after pensioner's death	Counted at commencement of the death benefit pension
Balance of the pension as at 30 June in the financial year counted against the beneficiary pensioner's Total Superannuation Balance	Yes	Yes

Questions

Question 4

What happens if the beneficiary is a non-tax resident of Australia. How does tax apply to them?

Luke

As a general rule, if required under the Australian tax law, tax may be payable in Australia on death benefit lump sums and pensions paid to foreign tax residents. Any death benefit that has been taxed in Australia may also be taxable in the country of residency. Usually, a tax credit can be claimed in that country for the Australian tax paid.

Where Australia has a double tax treaty with the country in which the beneficiary resides then any death benefit will be taxed under the treaty. The treaty may require that the amount is not taxed in Australia but taxed in the country of residency. Therefore it is worthwhile to obtain advice or check the double tax treaty to see how the amount will be taxed.

Example 3 – Reversionary Pension

- Carlos is age 67
- He commenced an account based pension in 2020 which provides a reversionary pension to his spouse Ingrid.
- On 1 July 2023 the balance of Carlos’ pension is $1 million
- The annual pension is equal to 5% of the pension balance on 1 July 2023 which is $50,000
- On 1 March 2024 Carlos dies in a plane accident
- At the time of his death he has withdrawn $20,000 from the pension
- The balance of the pension on 1 March 2024 is $1.1 million after investment earnings have been added to his pension account

Example 3 – Reversionary Pension

- Ingrid will automatically receive a reversionary pension based on the balance at 1 March 2024.
- For the 2023-24 financial year the minimum pension of $50,000 is required to be withdrawn.
- As Carlos has already withdrawn $20,000, Ingrid will be required to withdraw $30,000 as a pension before 1 July 2024.
- The balance of the reversionary pension on 1 March 2024 of $1.1 million will be counted against Ingrid's Transfer Balance Cap on the anniversary of Carlos' death which is 1 March 2025.

Example 4 – Death Benefit Pension

- Ken is age 67
- He has not drawn anything from his super fund as he is still working.
- He has a death benefit nomination in place which nominates his spouse Barbara to receive the balance.
- The nomination does not specify whether Barbara is required to receive the death benefit as a lump sum or pension.
- Ken has a medical condition and dies on 1 March 2024.
- The balance in Ken's super fund on 1 March 2024 is $1.1 million.

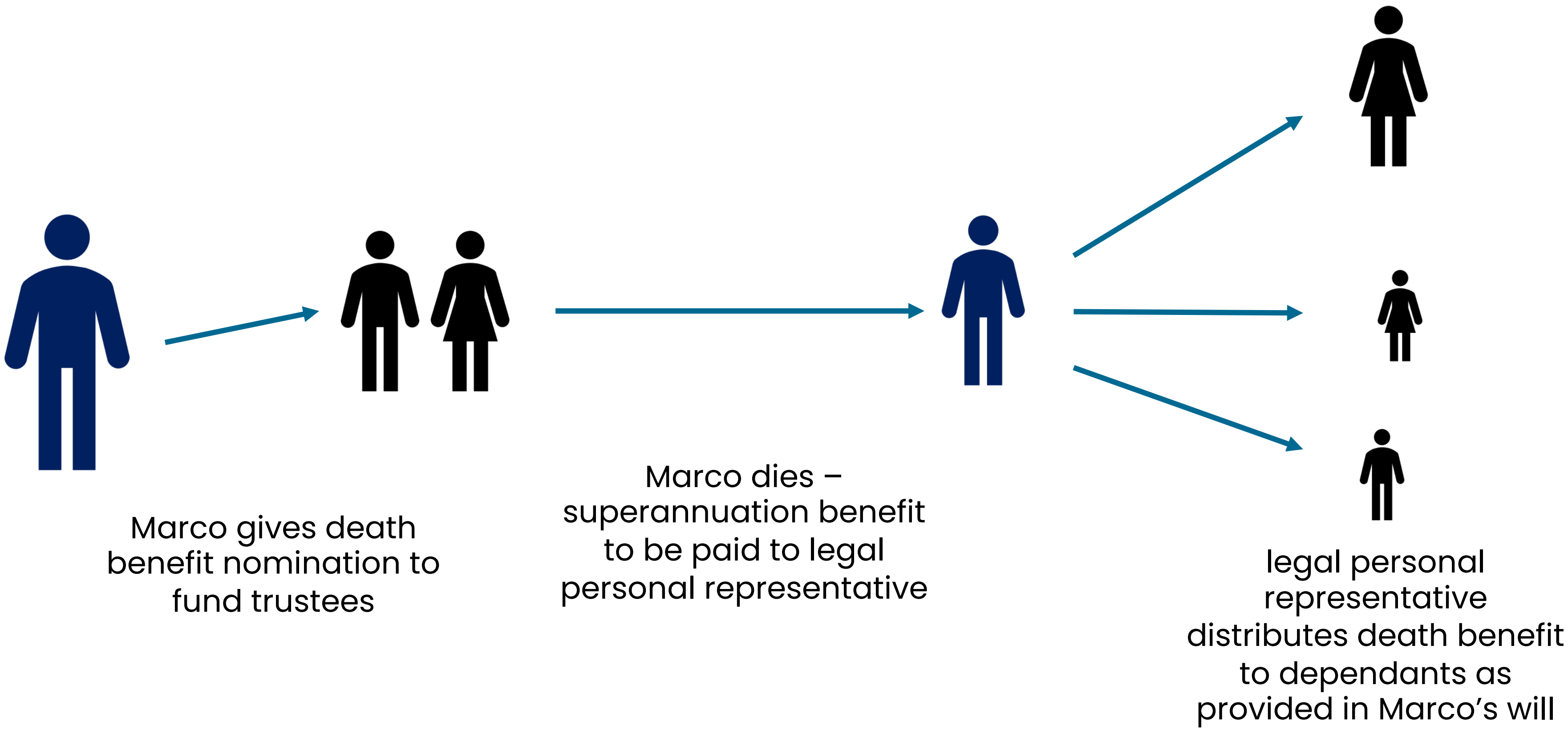
Example 4 – Death Benefit Pension

- Barbara who is 63 decides to commence a death benefit pension with the balance of Ken’s superannuation on 1 May 2024 .
- The balance of Ken’s superannuation on 1 May 2024 is $1.2 million which has increased with investment earnings.
- Between 1 May 2024 and 30 June 2024 will be required to received at least the minimum pension equal to 4% of the commencing balance on 1 May 2024.
- The death benefit pension Barbara is to receive is pro rated on a daily basis for the financial year.

Example 4 – Death Benefit Pension

- The annual amount of Barbara's death benefit pension is 4% of $1.2 million which is $48,000
- The pro rata amount is $48,000 x 61/366 = $8,000
- The balance of Barbara's death benefit pension of $1.2 million when it commences on 1 May 2024 will be counted against her Transfer Balance Cap on the 1 May 2024.
- The balance of Barbara's death benefit pension on 30 June 2024 will be counted against her Total Superannuation Balance.

Death Benefit Payable via an Estate



Questions

Question 5

Does your will override your super nomination?

Suzanne

Superannuation operates completely independently of your will. The payment of any superannuation benefit is determined by the trust deed of the superannuation fund and the decisions of the trustee.

Your superannuation nomination may direct the trustee to pay all or some of your death benefit to your legal personal representative. In that situation the relevant benefit will be paid to your estate and be distributed by the executor to your beneficiaries under the terms of your will.

Questions

Question 6

Is it better to nominate beneficiaries through direct nomination or through an estate and the will?

Anil

The answer to this very difficult question depends on the circumstances of the beneficiaries and the underlying reasons that the member has in mind. Here are some examples of why you may make a nomination which would allow a person to receive the death benefit directly or nominate your legal personal representative to administer the death benefit as required under your will.

Direct nomination:

- The beneficiary wishes to commence a pension from the superannuation fund.
- The death benefit is payable to a dependant as a tax-free lump sum.

Nomination of the legal personal representative so the benefit can be distributed under your will:

- The beneficiary is an adult child and the taxable component of the lump sum is taxed but not subject to Medicare. Medicare would be payable if the benefit was made via a direct nomination.
- A superannuation proceeds trust is established under the terms of the will.
- The member has no dependants who are eligible to receive the death benefit.

Resources

SUPERGUIDE Dashboard

Home / SMSFs / SMSF estate planning / SMSFs and estate planning: Key issues that SMSF trustees need

SMSFs and estate planning: Key issues that SMSF trustees need to know

Garth McNally • Updated 30 October 2023 Reading time: 5 minutes

On this page

- Replacing a trustee or director
- Review and act on death benefit nominations
- Death benefit payment time frames
- Other death benefit processes and requirements

The membership of self-managed super funds (SMSFs) usually consists of spouses and other family members. So when a member passes away, there are important trustee decisions that must be made and implemented at a time when those same members are grieving the loss of a loved one.

Further stress can arise due to the strict timeframes that apply to many of these processes, particularly around changes that may need to be made to the trustee structure. It may be that a replacement trustee needs to be appointed to ensure the fund continues to meet the legislative requirements.

Other decisions about how and when a death benefit payment needs to be paid can also cause angst and stress.

SUPERGUIDE Dashboard

Home / SMSFs / SMSF estate planning / SMSFs and estate planning: Issues to consider after the death of

SMSFs and estate planning: Issues to consider after the death of a SMSF member

Garth McNally • Updated 24 November 2023 Reading time: 4 minutes

On this page

- Insurance proceeds
- Taxation considerations
- Tax deduction for insurance premiums in the year of death
- The future of the fund
- The bottom line

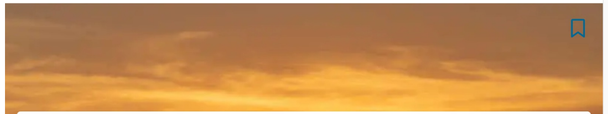
In this article we look at the estate planning issues that are relevant at the SMSF level. This includes how insurance proceeds must be dealt with, tax outcomes for the fund that need to be considered, the payment processes and requirements around member benefits and what considerations may be relevant to the future of the fund.

Insurance proceeds

It's not uncommon for SMSF members to hold some level of personal insurance cover within their fund, including life insurance, total and permanent disability (TPD) and in some cases, income protection insurance. Some SMSFs may even hold a trauma policy for fund members where that policy was taken out before July 2014

SUPERGUIDE Dashboard

Home / SMSFs / SMSF admin and compliance / SMSF death benefits: Who are my dependents and why



SMSF death benefits: Who are my dependents and why does it matter?

Garth McNally • Updated 1 March 2023 Reading time: 5 minutes

On this page

- Dependents
- Superannuation Law (SIS) dependent
- Taxation law dependent
- Death benefit nominations
- Non-binding death benefit nomination
- Binding death benefit nomination
- Hill vs Zuda – High Court case decision
- Non-lapsing binding nominations
- The bottom line

Most SMSF trustees suggest 'control' is the main reason they established their self-managed super fund; control around investment choice and control over how their retirement savings are managed and eventually paid from the fund.

However, when it comes to the payment of death benefits from an SMSF and who will

SUPERGUIDE Dashboard

Home / SMSFs / SMSF estate planning / Estate planning and SMSFs: What it is and why it matters

Estate planning and SMSFs: What it is and why it matters

Janine Mace • Updated 3 May 2021 Reading time: 4 minutes

On this page

- What is estate planning?
- Issues to consider in SMSF estate planning

Few people enjoy thinking about dying but, when it comes to your finances and super, it's a very important topic.

Planning what happens to your money is often neglected but doing so can result in your wealth being distributed to the wrong people – or even ending up with the government.

If you have your own SMSF, planning what happens when you or any other fund member dies should be a normal part of properly running your fund and not something left to after the event.

The good news is that SMSFs can be particularly helpful in achieving your estate planning objectives because of the increased flexibility they provide compared with public offer funds.

What is estate planning?