

# Nomination of Beneficiary Explanatory Document



The nomination of beneficiary form is your instruction as to what is to happen with the balance of your account when you die. Superannuation monies after you die do not automatically go to your Estate and are not ordinarily covered in standard Wills. The Trustees of your SMSF may have the discretion to distribute it to any 'dependant' unless you provide a Binding Nomination.

For this reason, this document can be extremely important and should be considered as part of your estate planning. This document is not compulsory – if you do not nominate a beneficiary it will be at the Trustees discretion as to how your superannuation monies are dealt with after you die. If you do complete this document, you may update and replace it at any time.

## Binding and Non-Binding Death Benefit Nominations

The attached nomination form should not be completed without consideration of a variety of factors, including who to nominate as beneficiary(s), who will act as Trustee on your death, the terms of the fund trust deed, your current Will and the tax consequences when payments are made.

The Bell Direct SMSF Service is not licensed to advise on these matters. This is a complex area, and we urge you to seek professional estate planning advice to assist you with your decision.

Some of the factors you should consider include:

- The Nomination can be to either:
  1. 'Dependants' which includes: spouse (including defacto); children (including those over 18 years but with possible tax consequences); tax dependent or any person with an interdependency relationship.
  2. 'Legal Personal Representative' which includes: the executor of the Will or the administrator of the estate.
- Friends, siblings, parents and other relatives are not normally dependants' and should only be nominated if there is an interdependency relationship.
- A portion of a death benefit paid to an adult child can be taxable to the beneficiary. There may be ways to minimise tax, so we urge clients to seek professional advice when nominating adult children.
- You may wish to make a non-binding death benefit nomination. If this is the case, the document will guide the Trustees in terms of your wishes, however they still have the ability to exercise discretion as to who and how the death benefits are paid. Trustees cannot be legally bound to the instruction contained in a non-binding death benefit nomination.

- If the nomination is to be binding, two independent persons need to witness and sign the forms where indicated. A binding nomination legally binds the Trustees to act exactly in accordance with your wishes.

**Please also note** that if you nominate a person who cannot receive a benefit as they are not either your dependent according to legislation, or your legal personal representative (i.e. executor of your Will) then the nomination will be invalid and it does not bind the Trustee. The Trustee then has discretion when distributing your superannuation monies.

- Superannuation legislation states that death benefit nominations are only valid for 3 years. As such, where the governing rules of the SMSF and/or the death benefit nomination documents incorporate the requirements in Reg 6.17A(7) of the *Superannuation Industry (Supervision) Regulations 1994* the nomination will expire at the end of 3 years and a new form will need to be completed, even if your nominated beneficiary has not changed. Many recently prepared deeds exclude the requirements in Reg 6.17A(7), making it possible to have indefinite/non-lapsing nominations, so it is important to review your deed prior to completing your nominations. We do recommend however that a person's nominations and estate plans still be reviewed at least every three years, even if non-lapsing nominations are allowed.

## Death Benefit Agreements

If you wish to put in place a binding agreement that will not expire and be permanent until you revoke or replace the agreement, you may wish to have a 'Death Benefit Agreement' outlining your wishes in relation to your superannuation monies after death. It has all the same characteristics as a binding death benefit nomination, but does not potentially expire every three years.

The Agreement is a schedule to your trust deed, and on execution, the agreement forms part of the deed. To put in place this Agreement, your trust deed must allow for it. If you have had a deed prepared or updated on your behalf by SuperGuardian since February 2010, then you are automatically able to have a Death Benefit Agreement prepared. If you have an old deed, it may need to be updated to allow for such an Agreement to be created and have effect.

If you wish to create and execute such an agreement, please contact your SMSF Client Manager and the relevant documents will be created and sent to you for execution.

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