

Update 6 February 2007: Who will receive the super?



Fleming Muntz
Solicitors



Summary

A superannuation fund payment is often the largest asset of an estate, but in many cases a will-maker overlooks taking steps to control who will receive benefits from a superannuation fund.

Death benefit nomination

Most superannuation trust deeds entitle a member to nominate a beneficiary – in some cases that nomination can be made binding upon the trustee. It is important to review the beneficiaries appointed in the same way that a will is regularly reviewed.

In self-managed superannuation funds, and some industry funds, the provisions of the trust deed entitle a beneficiary to make a *binding* nomination. It is important to remember that a binding nomination must be renewed each three years.

What are the benefits?

If properly signed, a current binding nomination effectively requires the trustee to pay superannuation benefits to the nominated beneficiary, without any discretion.

In some instances, to avoid having to renew a binding nomination repeatedly, it is possible to amend the superannuation trust deed to specify the beneficiaries to whom death benefits are to be paid. In that event the payment becomes automatic without the need for nomination.

Who should benefit?

A will-maker should take advice from his or her solicitor and accountant on the most tax effective, yet flexible, way to pass on superannuation benefits.

It is also critical to ensure that superannuation benefits received into an estate are dealt with by an appropriate provision in the will dealing with payment of benefits *only* to eligible persons. Without this “streaming” provision, the payment may have unanticipated tax consequences for beneficiaries or the estate.

How can Fleming Muntz help?

As part of an estate planning review, we assess current superannuation benefits and entitlements, and prepare an appropriate form of nomination for a will-maker. If benefits are to be paid into an estate, we ensure that the will adequately deals with distribution of benefits in the most tax effective manner.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to fmlaw@flemingmuntz.com.au.

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