



WILLPOWER PLUS

Binding Death Nominations



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Binding Death Nominations

1. *What is a Binding Death Nomination (BDN)?*

A member of a superannuation fund may be able to nominate the person who receives the member's superannuation entitlement (called a 'death benefit') payable upon the member's death. There are many types of nominations: binding and non-binding, lapsing or non-lapsing, unilateral or contingent (or layered).

A binding nomination (whether lapsing or not) has advantages over a non-binding nomination as it enables the member to bring his or her superannuation entitlement into a comprehensive plan for inheritance on his or her death. Apart from other features, such as certainty, a comprehensive plan may allow for savings in tax. *For further information see "Maximising Superannuation Death Benefits" InfoSheet*

2. *What happened before Binding Death Nominations and now without one?*

Traditionally, members of superannuation funds did not have any control over the destination of the superannuation 'entitlement' payable on his or her death. The trustees of the super funds decided who received the entitlement, and the share that any recipient received. *For further information see "Need convincing about the benefits of a binding death nomination?" newsletter vol22 no.3*

This was undesirable for various reasons, but it remains the position if a member decides against making a BDN or the super fund has not yet changed its rules to allow one to be made. *For further information see "the best laid mice and men" newsletter vol18 no.2*

3. *When did BDN's come about, and what difference does it make?*

BDNs have existed for many years but they were popularised by a change to the legislation made on 31 May 1999.

By a BDN, a member compels the superannuation fund to pay the member's 'death benefit' to the member's dependant or the member's executor. A person may be a dependant in many ways, including



financially, physically and emotionally.

4. *What are the requirements for making a BDN?*

The rules of the superannuation fund will set out the conditions for making of BDNs. Except for a self managed fund, the conditions are usually that:

- 4.1 the governing rules of the superannuation fund must permit a BDN (and not just a non-binding nomination).
- 4.2 the notice must be in writing, signed and dated by the member.
- 4.3 the member's signature must be witnessed by two persons, each of whom must be at least 18 years, and neither of whom can be a nominated beneficiary.
- 4.4 each witness must make a declaration stating that the notice was signed by the member in his or her presence.

If the BDN is a lapsing variety it must be renewed at least every 3 years – i.e. it automatically lapses after 3 years unless remade.

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5. *Is there a problem with some superannuation funds?*

The change to the law that encouraged BDN's occurred in 1999. However, some superannuation funds still haven't updated their governing rules to allow their members to make BDN's.

Some funds have restrictive rules preventing the nomination of alternative beneficiaries (to cover the possibility that the first nominated person may die before the member at a time when the member can't remake the BDN).

Arguably, these funds are not acting in the best interest of their members.

6. *What is the role of a lawyer in preparing a BDN?*

A BDN is an important legal document. It has much in common with documents that lawyers traditionally prepare, and are familiar with. For instance:

- 6.1 A BDN will often dispose of substantial 'assets' in circumstances where care is required with the preparation of the document.
- 6.2 There are potential adverse consequences, especially tax consequences, with the appropriate distribution of the 'assets' in the superannuation fund.
- 6.3 A person who is likely to be nominated as a beneficiary under a BDN, at least as an alternative nomination, may well be the member's executor (called the legal personal representative). This means that the contents of the member's will become important in the preparation of the BDN.
- 6.4 The automatic lapsing of some BDNs after 3 years may require a specific direction to an attorney to remake a BDN to save it lapsing. This involves consideration of a Power of Attorney,

and the ability of the attorney to exercise such a power. *For further information see Q15: Can the attorney be given directions? in the "Powers of Attorney" InfoSheet*



- 6.5 Execution of a BDN involves the same type of solemnity as a will, with the requirement for 2 adult independent witnesses. *For the problems that can arise if these arrangements are not made properly by a solicitor, see "the best laid plans for mice and men" newsletter vol18 no.2 and the article: "making a valid death benefit nomination"*

7. *What happens to the BDN once it is made?*

The original BDN must be sent to the member's superannuation fund. *For more information see the article "Making a valid death benefit nomination".* A copy should be kept with the member's other important documents.

The date of the BDN should be diarised to ensure that it is remade before it otherwise automatically lapses (which, except for a SMSF, is almost always three years after it is made).

For further information see the paper "Estate Planning Aspects of Superannuation"



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