Browne Linkenbagh

# *BINDING DEATH* NOMINATIONS

**THE BLUE MOUNTAINS' LEADING WILLS & ESTATES LAW FIRM**

***PROTECTING WHAT MATTERS MOST***

# *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 payable upon the member's death (called a 'death benefit'). There are various types of nominations: binding and non-binding, lapsing or non-lapsing.

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 HAPPENS WITHOUT A BDN?

Without a nomination, the trustee of the super fund decides who receives the death benefit, and the share that any recipient received.

This is undesirable because it deprives the member making a decision about their money.

## 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.

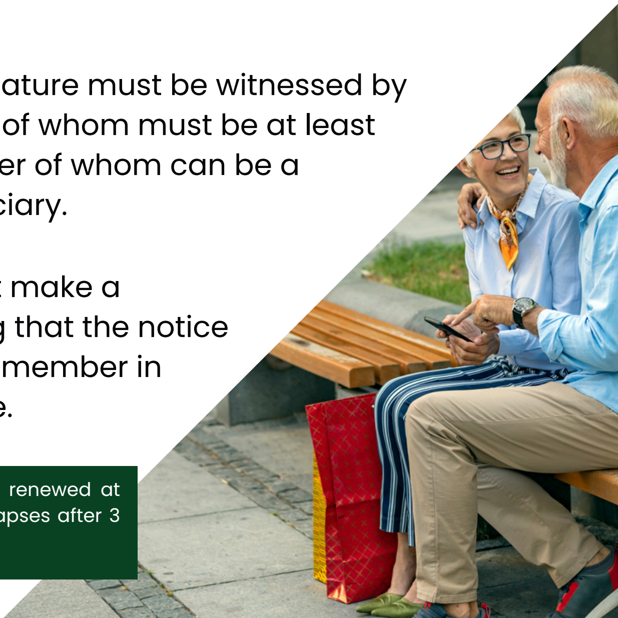
A person may be a dependant in many ways. The most important is financial dependency.

Browne Linkenbagh

# 4. WHAT ARE THE REQUIREMENTS ***FOR MAKING A BDN?***

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

1. the governing rules of the superannuation fund must permit a BDN (and not just a non-binding nomination).
2. the notice must be in writing, signed and dated by the member.
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. 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.

## 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 don't allow members to make non-lapsing nominations. Arguably, these funds are not acting in the best interest of their members.

Browne Linkenbagh

Browne Linkenbagh

# 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 may be nominated as a beneficiary under a BDN may 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.

Browne Linkenbagh

## 7. WHAT HAPPENS TO THE BDN ONCE IT IS MADE?

The original BDN must be sent to the member's superannuation fund. A copy should be kept with the member's other important documents.

The date of a lapsing BDN should be diarised to ensure that it is remade before it otherwise automatically lapses.

## 8. WHAT IS RECOMMENDED FOR LAPSING -V- NON-LAPSING NOMINATION?

Every person is different, and, before making a decision, the person's individual circumstances need to be considered. However, as a very broad general rule, a non-lapsing nomination is not ideal for a young person but probably the better option for a person who is close to retirement.

# GET
# IN TOUCH

## CONTACT US :

(02) 4784 2177

www.brownelinkenbaghlegalservices.com.au

Info@browne-link.com.au

**Leura Office:**
21 Grose Street Leura 2780

**Sydney Office:**
Level 24, Tower 3
World Towers
Barranagarroo

***By appointment only***

Browne Linkenbagh