Superannuation plays a key role in retirement planning, yet many overlook its importance or fail to document who will receive it after their death. A Binding Death Benefit Nomination is a written instruction where a superannuation fund member nominates one or more individuals to receive their superannuation benefits upon their death. This nomination is legally binding on the trustee of the superannuation fund, requiring them to pay the death benefits to the individuals specified in the nomination form. If there is no nomination in place, the trustee has the discretion to determine how the death benefits are distributed, which can lead to disputes among beneficiaries, particularly in blended families. Why is a Binding Death Benefit Nomination Important? A Binding Death Benefit Nomination is important for several reasons, including: 1. Clarity of Intentions Removes any ambiguity regarding your wishes. 2. Minimising Disputes It reduces the likelihood of disputes among family members or other beneficiaries. 3. Faster Distribution Clear instructions in your nomination form streamline the process of paying out the death benefits and help minimise delays. Who Can You Nominate? For a Binding Death Benefit Nomination to be valid, you should nominate eligible beneficiaries of your superannuation, which may include: Your spouse (including de facto partners) Your children (including stepchildren and adopted children) Your legal representative Someone who is financially dependent on you Eligibility criteria can vary between superannuation funds. How Long Does a Nomination Last? In most cases, a Binding Death Benefit Nomination is valid for three years and will lapse if not renewed. If your nomination is valid at your death, the trustee is legally obligated to follow your instructions and distribute the death benefits accordingly. You can also change your nomination if your preferences change. Updating a Binding Death Benefit Nomination It is essential to update your nomination when your circumstances change, such as: 1. Marriage or entering a de facto relationship Ensure your nomination includes your new spouse or partner if applicable. 2. Divorce or separation Remove an ex-spouse or partner if you no longer want them to receive your superannuation benefits. 3. Birth of children Add new dependents to your nomination, such as biological, step, or adopted children. 4. Death of a nominated beneficiary Replace a deceased beneficiary with someone else. 5. Change in financial dependency Update your nomination if someone becomes or ceases to be financially dependent on you. 6. Significant changes in your family structure For example, if you become a stepparent, grandparent, or guardian of a dependent. What is a Non-Binding Death Benefit Nomination? A non-binding death benefit nomination, while similar in purpose, is not legally binding on the trustee of the superannuation fund. It serves as a guide or a preference for the trustee when deciding how to distribute your superannuation benefits. The trustee still has the discretion to determine who receives the death benefits, considering factors such as your relationship with potential beneficiaries and any financial dependency, meaning your superannuation benefits may not be distributed strictly according to your wishes if you use a non-binding nomination. While a non-binding nomination offers some flexibility, it also carries the risk of delays or disputes in the distribution process, particularly if your intentions are not clear or your beneficiaries are in conflict. Contact Us For more information, contact us at Bambrick Legal today. We offer a free, no-obligation 30-min consultation for all enquiries. You can also read more about our estate planning services here. Related Blog – When & Why Update Your Will & Estate Planning When someone passes away before they reach retirement age, they often have life insurance and money held in a superannuation fund. Unlike other classes of asset, these funds are not typically included in a deceased estate. Instead, they are dispersed according to either the judgment of the fund's trustee, or in accordance with a binding death benefit nomination (BDBN). This article outlines the process of making a BDBN, and to what extent this written direction is actually binding on the assignation of death benefits. Death Benefits A fund member does not own their account in a super fund: rather, the trustee of the super fund holds the assets in a trust. As such, the trustee is legally entrusted to decide who should receive death benefits after the death of the policy-holder or fund member. In practice, death benefits are dispensed according to fund policy, statutory regulations or the wishes of the fund member, depending on whether the fund member makes any directions as to who should benefit in the event of their death. A trustee can choose one or more parties to receive the death benefits, or hand over the funds to an executor or administrator of the deceased estate for distribution according to the deceased's will. If a benefit is paid into an estate where the deceased left no will, the funds will be distributed according to the relevant intestate succession legislation. Alternatively, instead of the trustee making a decision in isolation, they can do so with reference to the deceased's wishes. Some superannuation funds have a standard practice where a fund member nominates a beneficiary in the event of their death. Non-Binding Nomination Commonly, a super fund death benefit nomination is a non-binding direction intended to inform the trustee, but not restrict them from making a judgment based on other variables. The trustee will weigh the deceased's wishes against the entitlement of each family member and with regard to the circumstances of the beneficiaries. The trustee can take as long as they need to investigate and make a decision as to who should benefit. Binding Death Benefit Nomination A death benefit can also be distributed according to a binding death benefit nomination. A BDBN stays current for three years after the date it is signed. Unless it is renewed, a BDBN will lapse and the decision-making power reverts back to the trustee. Some companies allow for a non-lapsing BDBN, which will endure until replaced or cancelled. Validity Of A binding death benefit nomination A death benefit nomination is only legally binding when it is in writing and signed, dated and witnessed appropriately. Witnesses must be over the age of eighteen and be an impartial party who is not the designated death benefit nominee. The binding death benefit nomination is also only valid once the trustee receives the documentation. A BDBN compels a life insurance company or super fund to pay a death benefit to an identified individual or several parties. There is another significant test of a binding death benefit nomination's validity. Superannuation law states that only a dependent of the deceased is eligible to inherit their death benefits. As a general rule, dependents include a de facto partner or spouse of the deceased, a child or anyone in an interdependent relationship with the deceased. Interdependence is defined as two individuals living together in a close personal relationship, or where one or both partners provide personal care or domestic or financial support. As the term suggests, this type of nomination is legally binding and in theory, the trustee has no choice but to follow the wishes of the deceased in a timely manner. This can be a reassuring option for someone who wants to ensure the financial security of their nominee without waiting for probate and without the danger that the provision might be legally contested. Notional Estate Claims There is one caveat to the finality and security of a binding death benefit nomination. In New South Wales, there are statutory provisions that allow deceased estates to reclaim death benefits assigned according to a BDBN. The Succession Act 2006 recognises both a deceased's actual estate and when necessary, the deceased's notional estate. Essentially this means that if there are insufficient assets in an estate to provide for a successful Family Provision Claim, the court can reclaim notional estate assets for distribution to existing beneficiaries and successful claimants. For example, in the 2012 decision of Kelly v Deluchi, a testator left very little in his actual estate to pay for appropriate legacies to his children. However, he had considerable funds held in a self-managed super fund. The testator's children made a Family Provision Claim in the hope of reclaiming the notional estate. The court held that the funds could be declared a notional estate asset and used to pay legacies to the deceased's children. Please telephone our Contested Wills Team on 1300 038 223 or contact the offices of Armstrong Legal to discuss your legal needs. Our experienced solicitors can advise you on the implications of making a binding death benefit nomination, or any other aspect of death benefits, notional estate claims or succession law. Contrary to popular belief, your Will does not determine who is to receive your superannuation in the event you were to pass away. Instead, another document, known as a superannuation Death Benefit Nomination, dictates which fortunate surviving soul reaps the rewards of your unspent retirement. But there are a few types of Death Benefit Nominations and it's important you choose the right one. What is a Binding Death Benefit Nomination? A Binding Death Benefit Nomination is a document submitted to your super fund (or pension fund) directing them with who you would like your super to be paid to if you pass away. The binding nature of this type of nomination leaves your super fund with no discretion. That is, they must pay your remaining super balance exactly as stated in your nomination. Who Can My Super Be Paid to? If you die, your superannuation can only be paid to a limited number of people. These types of people are defined as dependants under superannuation legislation. Specifically, a superannuation dependant includes: Your spouse or de facto spouse Your child of any age A person who was in an interdependency relationship with you at the time of your death An interdependency relationship is defined as a close personal relationship between two people who live together, where one or both of you provide financial, domestic or personal support to the other. If you do not have any superannuation dependants, or would like your superannuation to be paid to someone who is not a superannuation dependant, you will need to nominate for your super to be paid to your Legal Personal Representative / Estate. This way, your superannuation is then combined with all of your personal assets and distributed in accordance with your Will. Advantages of a Binding Nomination The main advantage of a binding death benefit nomination is that it provides you with great certainty as to who will receive your remaining super/pension balance if you die, because the trustee of your super fund is bound to distribute it in line with the beneficiaries you have nominated. Disadvantage of a Binding Nomination The main disadvantage of a binding death benefit nomination is that there may be changes in your relationship between the time that you make the nomination and the time that you pass away. And, if you have not updated your binding nomination to reflect the change in your relationship, your super may be paid to an unintended recipient, because your super fund is bound by your nomination. How to Make a Binding Nomination To make a binding nomination with your super fund, you should be able to find a binding death benefit nomination form on your super fund's website under forms & documents (or similar). Because you are still alive and kicking, the dollar value of the eventual superannuation death benefit is unknown at the time of making the binding nomination. Therefore, the form will ask you to specify the people you would like to nominate as beneficiaries and the percentage (rather than a dollar value) of your balance to go to each. For example, you may nominate your spouse to receive 100%, or each of your four children to receive 25% – it's up to you. Just be mindful of the potential tax implications of who you nominate. If you have a self-managed superannuation fund (SMSF), you will need to use your own death benefit nomination form or template. You should contact the administrator of your SMSF or a legal professional to assist with this. Is it better to spend a couple of hundred to ensure a valid nomination, than try to download something off the internet to save money and risk it being invalid; especially given your superannuation could be one of your largest assets on the day you die. Who Can Witness a Binding Nomination? For a binding death benefit nomination to be valid, it must be witnessed by two people prior to submitting it to your super fund. The two witnesses must be over the age of 18 and neither can be listed as nominated beneficiaries on the form. The death benefit nomination will only become valid once it has been received by the superannuation fund trustee. Can a Binding Nomination be Challenged? The trustee of a superannuation is unable to override or use discretion regarding the payment of death benefits where a binding nomination is in place. The only exception to this is if the binding nomination is invalid. There are a number of reasons why a nomination may be invalid; for example, where one or more of the nominated beneficiaries are not classified as dependants, if the nomination has been incorrectly witnessed or not witnessed at all, or if the nomination has expired, to name a few. Additionally, despite a binding death benefit nomination being binding on the trustee, it remains exposed to the risk of a challenge from bitter family members or friends who believe it is unjust that they did not receive their slice of the pie, or even the whole pie for that matter! Note: it is not a requirement for the forgotten party to necessarily be, act or feel 'bitter' in order to mount a challenge. Do Binding Death Benefit Nominations Expire? Binding Death Benefit Nominations are valid for three years, at which stage they expire. Your superannuation fund should notify you when your nomination is due for renewal or about to expire. Generally, if a binding nomination lapses, it will be treated as a non-binding nomination. Though this should be confirmed by your superannuation fund. The reason for Binding Death Benefit Nominations having an expiry date is intended as a protection mechanism for members. As mentioned earlier, you might have made a binding nomination and had a relationship change in the meantime; therefore an expiry date forces you to review the nomination at least every three years. Binding Death Nomination Tax Implications There are no tax implications relating specifically to binding nominations, but there can be tax implications relating to death benefits in general, known as death benefits tax. Death benefits tax is generally payable at a rate of 15%, plus the Medicare Levy. However, the specific amount of death benefits tax payable, if any, is based on who your death benefit is paid to, the form in which it is paid (income stream or lump sum) and the tax components of your super balance, plus any life insurance proceeds. In most cases, death benefits will be received tax-free by a tax-dependant (e.g. spouse or child under 18), but may incur tax if paid to a non-tax dependent (e.g. child over 18). Other Types of Death Benefit Nominations A Binding Death Benefit Nomination is one type of death benefit nomination. The other two types of death benefit nominations that can be made are Non-Binding Death Benefit Nominations and Non-Lapsing Binding Death Benefit Nominations. A Non-Binding Death Benefit Nomination is a nomination made to your super fund that is not binding on the trustee. This means that the trustee will consider your beneficiary nominations, but will retain ultimate discretion as to which of your dependants will receive your super in the event of your death. A Non-Lapsing Binding Death Benefit Nomination is the same as a Binding Death Benefit Nomination, but it does not expire. That is, the 3-year validity of the nomination does not apply to Non-Lapsing Nominations. Another estate planning tool used within superannuation is a reversionary pension. A reversionary pension is not a death benefit nomination, but it works in a similar way. It basically allows your retirement income stream to automatically transfer to the reversionary beneficiary upon your death, without needing a death benefit nomination in place and without passing through your estate. What if I Die With No Super Death Benefit Nomination? If you die without providing your super fund with any type of death benefit nomination, the trustee of your super fund will decide who receives your super in the event of your death, which will be based on your relationships and eligible superannuation dependents at the time of your death. What Should I Do Now? Contact your superannuation provider and ask them: Do I have any death benefit nominations in place? Who have I nominated as the beneficiaries? What type of death benefit nomination is it (binding/non-binding/non-lapsing)? What type of death benefit nominations does your super fund offer? If you have an superannuation income stream (pension), you might also ask if it is reversionary. Once you have obtained information on what you currently have in place and what is available to you, you can then work with an estate planning specialist solicitor to put in place your overall estate plan, ensuring it is consistent with your wishes. Our financial planning firm, Toro Wealth, specialises solely in helping 50 to 70 year olds optimise their financial position in the lead up to retirement. If you're interested in learning more about our service and cost, click here. Discover More Content on SuperGuy: Hi, I hope you enjoyed reading this article. If you want my team and I to help with your retirement planning, click here. Thanks for stopping by - Chris Contrary to popular belief, your Will does not determine who is to receive your superannuation in the event you were to pass away. Instead, another document, known as a superannuation Death Benefit Nomination, dictates which fortunate surviving soul reaps the rewards of your unspent retirement. But there are a few types of Death Benefit Nominations and it's important you choose the right one. What is a Binding Death Benefit Nomination? 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If you do not have any superannuation dependants, or would like your superannuation to be paid to someone who is not a superannuation dependant, you will need to nominate for your super to be paid to your Legal Personal Representative / Estate. This way, your superannuation is then combined with all of your personal assets and distributed in accordance with your Will. Advantages of a Binding Nomination The main advantage of a binding death benefit nomination is that it provides you with great certainty as to who will receive your remaining super/pension balance if you die, because the trustee of your super fund is bound to distribute it in line with the beneficiaries you have nominated. Disadvantage of a Binding Nomination The main disadvantage of a binding death benefit nomination is that there may be changes in your relationship between the time that you make the nomination and the time that you pass away. 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However, the specific amount of death benefits tax payable, if any, is based on who your death benefit is paid to, the form in which it is paid (income stream or lump sum) and the tax components of your super balance, plus any life insurance proceeds. In most cases, death benefits will be received tax-free by a tax-dependant (e.g. spouse or child under 18), but may incur tax if paid to a non-tax dependent (e.g. child over 18). Other Types of Death Benefit Nominations A Binding Death Benefit Nomination is one type of death benefit nomination. The other two types of death benefit nominations that can be made are Non-Binding Death Benefit Nominations and Non-Lapsing Binding Death Benefit Nominations. A Non-Binding Death Benefit Nomination is a nomination made to your super fund that is not binding on the trustee. 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Our financial planning firm, Toro Wealth, specialises solely in helping 50 to 70 year olds optimise their financial position in the lead up to retirement. If you're interested in learning more about our service and cost, click here. Discover More Content on SuperGuy: Hi, I hope you enjoyed reading this article. If you want my team and I to help with your retirement planning, click here. Thanks for stopping by - Chris If you die with super remaining, your super fund will distribute this money You can nominate where you want your money to go, but in some cases the fund has discretion on who to pay Super Consumers Australia says the process should be straightforward and clearly communicated by your fund A death benefit is made up of any super you have left over when you die and any death cover. Your super fund can pay it to your beneficiaries, such as a spouse or child. You can tell your fund where to direct your money when you die, but it's easy to overlook making a nomination and the process can be confusing. Many people assume that your will dictates where any remaining super goes, but this isn't the case. Binding vs non-binding Death benefit nominations in super may be binding or non-binding. A binding nomination means your super fund must pay the money to the people you nominate and in the proportion you choose. If you make a non-binding nomination, your fund will refer to your wishes but has some discretion where to pay your money. Many funds only offer non-binding nominations. Lapsing vs non-lapsing Nominations may be lapsing or non-lapsing. A non-lapsing nomination stays in place until you die, while a lapsing nomination generally only lasts for three years. You can then renew the nomination. It may also be a good time to update it as your circumstances (e.g. family structure) may have changed. Most funds only offer lapsing nominations. Why do nominations lapse? The logic is that sometimes relationships end or circumstances change, and a person's original nomination may no longer reflect their wishes. If you made a binding nomination and it lapses, but you don't renew, it becomes non-binding. Some of the super funds Super Consumers Australia talked to said they're proactive about informing members if their nomination is about to lapse. MLC said it sends members a notice to renew (if appropriate), and the status of the nomination is also shown on each annual statement. Similarly, Aware Super statements include an 'Action alert' if a nomination has lapsed or is about to lapse. A spokesperson for Sunsuper said fund members can see the status and expiry date of any nomination they've made on the online dashboard or in their annual statement. The fund also contacts members 90 days before a nomination lapses, and again if the nomination does lapse. Invalid death benefit nominations For your death benefit nomination to be valid (remember a fund doesn't have to follow an invalid nomination), it needs to be: in writing signed dated witnessed by two adults (who aren't beneficiaries) sent to the trustee (your super fund) complete (the different proportions need to add up to 100%). You can usually download a nomination form from your fund's website or contact them for more details. It's also important to know that you can't nominate just anyone to be a beneficiary. A beneficiary can only be a legal personal representative or a dependent beneficiary. This rule means you can't nominate someone like a parent, sibling, grandchild or friend unless they're financially dependent on you. If you want any remaining super to go to someone who isn't a dependent, you can nominate a legal personal representative to distribute your remaining super in accordance with your will. The legal personal representative is the executor of your will or the administrator of your estate, or a person who you've granted enduring power of attorney. This person doesn't have to be a lawyer. A beneficiary can only be a legal personal representative or a dependent beneficiary ... you can't nominate someone like a parent, sibling, grandchild or friend unless they're financially dependent on you Some funds have tried to avoid invalid nominations by having a column on their nomination form where you tick the category of relationship you have with each person you nominate. This makes clear you can only nominate a dependant (spouse, child, someone financially dependent or interdependent on you) or your legal personal representative. You have more freedom in your will to distribute any leftover money however you see fit (i.e. you can leave money in a will to a sibling, friend or parent that isn't financially dependent on you), but be aware that wills have their own rules. You may want to seek advice on drafting your will and any tax implications. The key things to remember about death benefit nominations in super:Your super isn't automatically covered by your will.You can either leave super to a dependant or to a legal personal representative (in this case, your super becomes part of your estate).Your nomination may lapse (usually after three years). When this happens your nomination can still be used as a guide by your fund, but you can renew it for greater peace of mind.Making a valid nomination can be very technical; talk to your fund if you're unclear about the process or how to make a valid nomination. What if your nomination is invalid or missing? In this case, your super fund will distribute any remaining super. Having your super fund control where your money goes may sound alarming, but often this may be a fairly straightforward process. "Disputed death benefits are rare," says a spokesperson for Aware Super. "We do work hard to try and make that process as transparent and straightforward as possible." The fund can check if you have made a will and use that as a guide. They will also identify if you have any dependents, such as children or a spouse; again, they can only give the money to your dependents. If you die with no dependents, the money will go to your estate. Where things may become tricky is if it's unclear whether someone is your dependent (for example, if you're in a spouse-type relationship with someone but you're not married to them) or if you want your money to go to someone who isn't a dependent. Funds have to make the process clear Given the importance of leaving your money to the right people after you die, Super Consumers Australia director Xavier O'Halloran says funds have a responsibility to help people make valid nominations. "We had a person contact us recently who was completely confused by what her fund had told her. This led us to have a much closer look at how funds are communicating with their members about what happens to a person's super when they die." Disputes over how a super fund distributes the money If you're unhappy with how a fund is distributing someone's remaining super, you can contact the fund in the first instance. If you're still not satisfied, you can complain to the Australian Financial Complaints Authority (AFCA). You can then take the matter to court if you disagree with AFCA's decision. Death benefit nominations are the third most common cause of complaints about super at AFCA. The Australian Law Reform Commission has recognised that the fund's discretion to pay death benefits as they see fit "in many cases gives rise to many complaints." Death benefit nominations are the third most common cause of complaints about super at AFCA AFCA has the power to make super funds change their decisions on who gets the money. While the AFCA process is designed to be quicker and easier than going to court, having a tribunal dig into your family's relationships and finances may be a stressful process. It can also take much longer than if a valid nomination was in place. With this in mind, the best thing to do is to ensure your nomination is valid and your loved ones won't have to go through this process after you die. Bethany's story Bethany is a CHOICE member who contacted us after she couldn't get answers from her fund, Australian Super, about its death benefit nomination process. One of the fund's forms noted that they would use "their discretion" to distribute any remaining super if members died without a valid nomination. "There is no explanation on the form as to what 'their discretion' means or if there's a cost to it," Bethany says. "I have no choice but to sign the form with this clause and another clause that I knowingly agree to [the fund exercising its discretion], and understand it. Well, I don't!" Bethany also sought more information from the fund on why it only allowed lapsing nominations. She says the only reply was "It's a fund rule," and the staff member she spoke to couldn't find any information about how the fund would use its discretion. In an email to Super Consumers Australia, an Australia Super spokesperson said it would consider the member's wishes but would use its discretion when paying out an account balance and any insurance. "The Fund works within the strict legal guidelines to determine who receives a payment," the spokesperson said. How do super funds exercise their discretion? If there is no valid and binding death benefit nomination, your super fund has the discretion to distribute the money how they see fit. This discretion doesn't mean the super fund can do whatever it likes with the money; it is still bound by superannuation law on this point. The super funds we spoke to outlined their processes for working out who to pay when they have discretion. Some funds noted that they're legally required to comply with the trust deeds they created. These deeds are essential for any kind of trust (an arrangement where someone looks after your money on your behalf); they set out how the fund will operate. Still, very few people would think to locate and read their fund's trust deed. If there is no valid and binding death benefit nomination, your super fund has the discretion to distribute the money how they see fit A spokesperson for Aware Super says it'll look at the late member's Death Certificate to see if they had a spouse or any children. The fund will also use any invalid or non-binding nomination as a guide. Further, the fund can refer to any discussions the member had with a financial planner at the fund. Finally, it can contact potential beneficiaries for further information. The approach at HOSTPLUS is similar; the fund will consider any beneficiaries it can identify from the deceased's finances, the person's will and any non-binding nomination they made. Finally, the fund will bear in mind "the purpose for which death benefits are provided for" in this context, which is, broadly speaking, to assist any people who were financially dependent on the person who died. AFCA and the courts will both apply the law as written rather than judging whether how the fund has distributed money is fair. When AFCA determines if a person was in an interdependent relationship with someone (and entitled to receive their remaining super), it'll use a four-part test set out in the relevant legislation and ask: Did they have a close personal relationship? Did they live together (unless disability prevented this)? Did one of the people provide the other with financial support? Did one of the people provide the other with domestic support and personal care? AFCA and courts may also look at a longer list of considerations (where they're relevant), namely: how long the relationship was whether or not a sexual relationship existed any property the pair owned, used or acquired the degree of mutual commitment to a shared life any children they cared for and supported public recognition of the relationship the level of emotional support they offered each other whether the relationship was one of convenience whether the people intended the relationship to be permanent any statutory declaration they were in an interdependent relationship Recent decision: Mother found not to be a dependant AFCA or a court can't direct money to go to someone who doesn't fit the definition of dependant or who isn't in an interdependent relationship with the dead member, even if it seems fair or reasonable for this to happen. An example of how the law works is a sad case which AFCA recently decided. The deceased member was a young man who had endured many health problems and lived at home for his whole life. The tribunal noted that "his mother provided him with emotional support and was his constant companion as he underwent medical treatment and stays in hospital". Ultimately, however, AFCA found that the young man had bought a home with his fiancée and intended to move out of his mother's house before he died. This meant that the mother/son relationship wasn't categorised as interdependent and that she couldn't get any of his death benefit money. All of the money went to his fiancée instead. This case shows how strictly these criteria can be interpreted. Ashleigh Petrie's case People have raised questions about the fairness of death benefit distributions after a recent case involving a magistrate and his younger partner who had passed away. The case involved super fund REST which paid the death benefit for 23-year-old Ashleigh Petrie to her fiancé, the magistrate, instead of her mother. This was despite Petrie having nominated her mother as her beneficiary and the magistrate earning a $324,000 annual salary. After a dispute which has spanned more than a year, the mother appealed the decision to AFCA.The mother and the magistrate later agreed to a financial settlement on how Petrie's super would be divided. The super fund apparently considered the nomination to be invalid as a parent isn't automatically a dependant. It's possible AFCA (or a court) could have eventually ordered at least some of Petrie's super go to her mother if they find she was financially dependent on her late daughter. In this case, Petrie had financially supported her mother, who was living in modest circumstances, by transferring her money for groceries and clothes. In reviewing the decision, AFCA could have also looked at whether the young woman and the magistrate were correctly considered spouses by the super fund; they were engaged but had only lived together for four months. If they weren't in a de facto relationship, Petrie's partner would not be considered a dependant and thus not a valid person to get her death benefit. Taking the stress out of death benefit nominations While death benefit distributions are generally straightforward, the best way to have peace of mind about where your money goes after your death is to have a valid nomination in place. The key things to remember are: you can either leave super to a dependant or to a legal personal representative (which allows for your super to become part of your will) your nomination may lapse (usually after three years). When this happens your nomination can still be used as a guide by your fund, but you can renew it for greater peace of mind making a valid nomination can be very technical; talk to your fund if you're unclear about the process or how to make a valid nomination. For more than 60 years, we've been making a difference for Australian consumers. In that time, we've never taken ads or sponsorship. Instead we're funded by members who value expert reviews and independent product testing. With no self-interest behind our advice, you don't just buy smarter, you get the answers that you need. You know without hesitation what's safe for you and your family. And you'll never be alone when something goes wrong or a business treats you unfairly. Learn more about CHOICE membership today Stock images: Getty, unless otherwise stated. Contrary to popular belief, your Will does not determine who is to receive your superannuation in the event you were to pass away. Instead, another document, known as a superannuation Death Benefit Nomination, dictates which fortunate surviving soul reaps the rewards of your unspent retirement. But there are a few types of Death Benefit Nominations and it's important you choose the right one. What is a Binding Death Benefit Nomination? A Binding Death Benefit Nomination is a document submitted to your super fund (or pension fund) directing them with who you would like your super to be paid to if you pass away. The binding nature of this type of nomination leaves your super fund with no discretion. That is, they must pay your remaining super balance exactly as stated in your nomination. Who Can My Super Be Paid to? If you die, your superannuation can only be paid to a limited number of people. These types of people are defined as dependants under superannuation legislation. Specifically, a superannuation dependant includes: Your spouse or de facto spouse Your child of any age A person who was in an interdependency relationship with you at the time of your death An interdependency relationship is defined as a close personal relationship between two people who live together, where one or both of you provide financial, domestic or personal support to the other. If you do not have any superannuation dependants, or would like your superannuation to be paid to someone who is not a superannuation dependant, you will need to nominate for your super to be paid to your Legal Personal Representative / Estate. This way, your superannuation is then combined with all of your personal assets and distributed in accordance with your Will. Advantages of a Binding Nomination The main advantage of a binding death benefit nomination is that it provides you with great certainty as to who will receive your remaining super/pension balance if you die, because the trustee of your super fund is bound to distribute it in line with the beneficiaries you have nominated. Disadvantage of a Binding Nomination The main disadvantage of a binding death benefit nomination is that there may be changes in your relationship between the time that you make the nomination and the time that you pass away. And, if you have not updated your binding nomination to reflect the change in your relationship, your super may be paid to an unintended recipient, because your super fund is bound by your nomination. How to Make a Binding Nomination To make a binding nomination with your super fund, you should be able to find a binding death benefit nomination form on your super fund's website under forms & documents (or similar). Because you are still alive and kicking, the dollar value of the eventual superannuation death benefit is unknown at the time of making the binding nomination. Therefore, the form will ask you to specify the people you would like to nominate as beneficiaries and the percentage (rather than a dollar value) of your balance to go to each. For example, you may nominate your spouse to receive 100%, or each of your four children to receive 25% – it's up to you. Just be mindful of the potential tax implications of who you nominate. If you have a self-managed superannuation fund (SMSF), you will need to use your own death benefit nomination form or template. You should contact the administrator of your SMSF or a legal professional to assist with this. Is it better to spend a couple of hundred to ensure a valid nomination, than try to download something off the internet to save money and risk it being invalid; especially given your superannuation could be one of your largest assets on the day you die. Who Can Witness a Binding Nomination? For a binding death benefit nomination to be valid, it must be witnessed by two people prior to submitting it to your super fund. The two witnesses must be over the age of 18 and neither can be listed as nominated beneficiaries on the form. The death benefit nomination will only become valid once it has been received by the superannuation fund trustee. Can a Binding Nomination be Challenged? The trustee of a superannuation is unable to override or use discretion regarding the payment of death benefits where a binding nomination is in place. The only exception to this is if the binding nomination is invalid. There are a number of reasons why a nomination may be invalid; for example, where one or more of the nominated beneficiaries are not classified as dependants, if the nomination has been incorrectly witnessed or not witnessed at all, or if the nomination has expired, to name a few. Additionally, despite a binding death benefit nomination being binding on the trustee, it remains exposed to the risk of a challenge from bitter family members or friends who believe it is unjust that they did not receive their slice of the pie, or even the whole pie for that matter! Note: it is not a requirement for the forgotten party to necessarily be, act or feel 'bitter' in order to mount a challenge. Do Binding Death Benefit Nominations Expire? Binding Death Benefit Nominations are valid for three years, at which stage they expire. Your superannuation fund should notify you when your nomination is due for renewal or about to expire. Generally, if a binding nomination lapses, it will be treated as a non-binding nomination. Though this should be confirmed by your superannuation fund. The reason for Binding Death Benefit Nominations having an expiry date is intended as a protection mechanism for members. As mentioned earlier, you might have made a binding nomination and had a relationship change in the meantime; therefore an expiry date forces you to review the nomination at least every three years. Binding Death Nomination Tax Implications There are no tax implications relating specifically to binding nominations, but there can be tax implications relating to death benefits in general, known as death benefits tax. Death benefits tax is generally payable at a rate of 15%, plus the Medicare Levy. However, the specific amount of death benefits tax payable, if any, is based on who your death benefit is paid to, the form in which it is paid (income stream or lump sum) and the tax components of your super balance, plus any life insurance proceeds. In most cases, death benefits will be received tax-free by a tax-dependant (e.g. spouse or child under 18), but may incur tax if paid to a non-tax dependent (e.g. child over 18). Other Types of Death Benefit Nominations A Binding Death Benefit Nomination is one type of death benefit nomination. The other two types of death benefit nominations that can be made are Non-Binding Death Benefit Nominations and Non-Lapsing Binding Death Benefit Nominations. A Non-Binding Death Benefit Nomination is a nomination made to your super fund that is not binding on the trustee. This means that the trustee will consider your beneficiary nominations, but will retain ultimate discretion as to which of your dependants will receive your super in the event of your death. A Non-Lapsing Binding Death Benefit Nomination is the same as a Binding Death Benefit Nomination, but it does not expire. That is, the 3-year validity of the nomination does not apply to Non-Lapsing Nominations. Another estate planning tool used within superannuation is a reversionary pension. A reversionary pension is not a death benefit nomination, but it works in a similar way. It basically allows your retirement income stream to automatically transfer to the reversionary beneficiary upon your death, without needing a death benefit nomination in place and without passing through your estate. What if I Die With No Super Death Benefit Nomination? If you die without providing your super fund with any type of death benefit nomination, the trustee of your super fund will decide who receives your super in the event of your death, which will be based on your relationships and eligible superannuation dependents at the time of your death. What Should I Do Now? Contact your superannuation provider and ask them: Do I have any death benefit nominations in place? Who have I nominated as the beneficiaries? What type of death benefit nomination is it (binding/non-binding/non-lapsing)? What type of death benefit nominations does your super fund offer? If you have an superannuation income stream (pension), you might also ask if it is reversionary. Once you have obtained information on what you currently have in place and what is available to you, you can then work with an estate planning specialist solicitor to put in place your overall estate plan, ensuring it is consistent with your wishes. Our financial planning firm, Toro Wealth, specialises solely in helping 50 to 70 year olds optimise their financial position in the lead up to retirement. If you're interested in learning more about our service and cost, click here. Discover More Content on SuperGuy: Hi, I hope you enjoyed reading this article. If you want my team and I to help with your retirement planning, click here. Thanks for stopping by - Chris Contrary to popular belief, your Will does not determine who is to receive your superannuation in the event you were to pass away. Instead, another document, known as a superannuation Death Benefit Nomination, dictates which fortunate surviving soul reaps the rewards of your unspent retirement. But there are a few types of Death Benefit Nominations and it's important you choose the right one. What is a Binding Death Benefit Nomination? 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If you do not have any superannuation dependants, or would like your superannuation to be paid to someone who is not a superannuation dependant, you will need to nominate for your super to be paid to your Legal Personal Representative / Estate. This way, your superannuation is then combined with all of your personal assets and distributed in accordance with your Will. Advantages of a Binding Nomination The main advantage of a binding death benefit nomination is that it provides you with great certainty as to who will receive your remaining super/pension balance if you die, because the trustee of your super fund is bound to distribute it in line with the beneficiaries you have nominated. Disadvantage of a Binding Nomination The main disadvantage of a binding death benefit nomination is that there may be changes in your relationship between the time that you make the nomination and the time that you pass away. 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Our financial planning firm, Toro Wealth, specialises solely in helping 50 to 70 year olds optimise their financial position in the lead up to retirement. If you're interested in learning more about our service and cost, click here. Discover More Content on SuperGuy: Hi, I hope you enjoyed reading this article. If you want my team and I to help with your retirement planning, click here. Thanks for stopping by - Chris