

Superannuation is NOT covered in your Will.



Make sure you have a Binding Death Benefit Nomination.

Infosheet by Wills and Estates Lawyer, Cathy Fon

15 February 2022

Do my superannuation benefits form part of my estate and so go the beneficiaries I set out in my Will?

The short answer to this is **no**.

Most of us presume that if we sign a Will, **all** our assets will go to our beneficiaries when we die. This is mostly true ... BUT, and this may surprise you, superannuation does **not** pass according to your Will. It is paid out in accordance with the rules set down by the law and your superannuation fund.

What happens to my superannuation benefits?

When someone passes away, their superannuation fund will make a decision about who the death benefits are to be paid to. They do this in one of two ways:

1. Where a deceased person has nominated their beneficiaries in a **Binding Death Benefit Nomination**, if this is done correctly, the super fund **MUST** pay the benefits to the nominated beneficiary.
2. Where there is **no Binding Death Benefit Nomination**, the super fund will make its own enquiries about the deceased, their family situation, whether they supported other relatives or friends financially (etc) and they will decide who are the most appropriate beneficiaries to receive the benefits.

You should have a current Binding Death Benefit Nomination (BDBN).

It is **ALWAYS** better that you nominate your own beneficiaries rather than depending on the super fund to decide and make their own choice.

If your nomination has been completed correctly, your fund is **'bound by law'** to follow it, and must pay the death benefits exactly as you wished. Having a BDBN allows the payments to be finalised much more quickly than if you didn't have one. This is advantageous for your beneficiaries.

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It is very important the Binding Death Benefit Nomination (BDBN) is done correctly.

Keep in mind these things in particular:

1. You should check with your fund (either in person, by phone or online) and ask whether you have a current nomination in place. It must be shown as a **BINDING Nomination**; a 'preferred' nomination is no good. If not, you will need to prepare a new form.
2. Each fund has its own Binding Death Benefit Nomination form which must be used. It can be found on their website or by phoning them to ask that it be sent to you.
3. The form must be signed by you and your signature must be witnessed by two adults. The witnesses cannot be your beneficiaries. They do not need to be a JP or a solicitor, just two adult aged people who watch you sign the form and then sign it themselves.
4. The form then needs to be sent to the fund, who will confirm that it has been filled out correctly. If there is an error, you will need to complete a new form.
5. The nomination usually lapses after three years. Therefore, **you must remember to fill out a new form EVERY THREE YEARS and send it off to the fund again.**
6. You can **ONLY** nominate your spouse and/or children, or any financial dependants. If you do not have anyone suitable in this category, you must state that your benefits are to be paid to your 'Legal Personal Representative' or 'Estate'.
7. The same sort of process is necessary if you have a Self-Managed Super Fund.
8. A new nomination may also be needed if your circumstances change – e.g. You marry, or you and your partner separate or divorce.

Talk to a Lawyer

We always recommend that you talk to a solicitor (or your accountant or financial planner) about your superannuation. We usually do this when we are discussing a new Will but a one-off appointment to talk about super is always a good idea.

If you employ us to prepare your Binding Death Benefit Nomination forms and lodge them with the appropriate Super funds, we charge \$165 inc gst per Super Fund.

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Cathy Fon is a Wills + Estates lawyer at O'Shea Dyer Solicitors, Townsville. Cathy was Admitted in 2005 and has worked part-time as a lawyer for many years since. Cathy has been working exclusively in Wills + Estate since 2019.

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