

# What happens to your super when you die?

Your super could be one of your most valuable assets – but what you may not realise is that it might not form part of your estate when you die. Instead, the trustee of your super fund could end up deciding how your death benefit is distributed, which is why it's important you take steps now to ensure the right people receive your super when the time comes.

## Does my Will cover my super?

Many assets, including your personal possessions, property, bank accounts and investments, become part of your estate when you die and are automatically governed by your Will. Your super however, is not. This means the balance of your super fund – including any life insurance benefit – may not pass to the beneficiaries set out in your Will, unless you nominate your legal personal representative (such as your executor) to receive your super death benefit.

Alternatively, you can nominate who will receive your super death benefit directly with your super fund. Many funds allow members to make death benefit nominations which, subject to certain conditions, must be followed by the super fund trustee.

### What is a super fund trustee?

The people or company appointed to manage a super fund on your behalf. Where there is no death benefit nomination in place – or an invalid nomination – the fund's rules will set out how the death benefit should be distributed. This could include payment to your estate or the trustee deciding how your benefit should be split among potential beneficiaries.

## Who can I choose to receive my super?

### One or more of your dependants

By nominating a dependant, your death benefit will be paid directly to them. You can choose to have one dependant receive 100%, or multiple dependants receive a specified percentage each. They include:



Your spouse (married or de facto)



Your children



Anyone financially dependent upon you at the time of your death



Anyone in an interdependency relationship with you at the time of your death

### Your legal personal representative

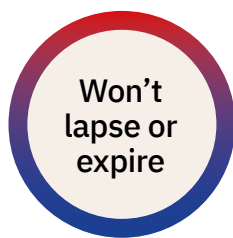
In this instance, your super death benefit will form part of your estate and be administered by your executor in accordance with the instructions in your Will. If you were to die intestate (without a valid Will), the laws of intestacy will determine who receives your super.

## Types of death benefit nominations

Super fund trustees generally allow members who are yet to retire to make one of two types of death benefit nominations – ‘non-lapsing’ or ‘binding’ nominations. Both types allow you to nominate which of your dependants or your legal personal representative should receive your death benefit when you pass away. However, there are some differences between the two options.

### Non-lapsing death benefit nominations

Non-lapsing nominations don't expire, so as long as your nomination is properly made and valid at the time of death it will be legally binding on the trustee. However, it is important to regularly review your nomination to ensure it continues to reflect your wishes if your circumstances change.



#### To be valid the nomination must

- Be consented to by the trustee.
- Comply with any additional fund rules (for example, be in writing and signed, dated and witnessed by two individuals who are 18 years or older and who are not nominated in the form).

### Binding death benefit nominations

Binding death benefit nominations are different from non-lapsing death benefit nominations, as they are only valid for a maximum of three years. This means you will need to re-confirm your nomination at least every three years in order for it to remain valid and binding on the trustee.



#### To be valid the nomination must

- Be in writing and signed and dated in the presence of two witnesses who are 18 years or older and who are not nominated in the form.
- Contain a signed and dated declaration by the witnesses that the form was signed by you in their presence.
- Specify the proportion of the benefit to be paid to each nominated beneficiary.



All nominated beneficiaries must be either a dependant or your legal personal representative.

### What if the person I nominate is not a dependant at the time of my death?

If you nominate someone to receive your death benefit but at the time of your death they are no longer a dependant (for example, if you nominate your spouse but subsequently divorce), your nomination will be deemed invalid and the super fund's default rules will apply.

This could involve the trustee paying your death benefit to your legal personal representative for inclusion in your estate or the trustee exercising their discretion on how your death benefit should be paid.

Alternatively, if you nominate multiple beneficiaries and one of those beneficiaries is found not to be a dependant at the time of death, the trustee may deem that only that part of the nomination is invalid. In this case, the trustee would still pay your death benefit to your other nominated beneficiaries, but would then apply the fund's default rules to the part of the death benefit deemed invalid.

## Benefits of making a nomination



Peace of mind and certainty that your super will be paid to the people you choose.



Quick payment to your beneficiaries.



If you have nominated dependants, your death benefit will be paid directly to your chosen beneficiaries rather than your estate. This reduces the risk of the benefit being exposed to claims by creditors or anyone who may wish to contest your Will.<sup>1</sup>

## Important things to remember



- 1 If your circumstances change, your super death benefit may end up going to the wrong person. For example, if you nominate your husband or wife but at the time of death you have separated but not divorced, they are still legally your spouse and would receive your death benefit.
- 2 If you make a binding death benefit nomination you will need to re-confirm your nomination at least every three years for it to remain valid. If you fail to renew your nomination the fund's default rules will apply and your death benefit may not end up being paid as you would have wanted.

## How your financial adviser can help

- Provide you with more details on who you can nominate as a beneficiary.
- Discuss the best options for your personal circumstances.
- Act as a witness for your nomination form.
- Run through other estate planning needs, like Wills and Powers of Attorney.



<sup>1</sup> Please note that in NSW, the application of 'notional estate' could cause the deceased's super death benefit paid directly to a dependant to be taken into account for the purposes of making a family provision order by the court.

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