

Death benefits – information for fund members



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How is superannuation dealt with after death?

Superannuation benefits do not automatically form part of your estate upon your death. Consequently, your Will does not govern how your super is paid upon death, unless it is actually paid to your estate. If you consider it appropriate, you can direct the SMSF trustee(s) to pay your benefit to your estate, for example, via a binding death benefit nomination.

Your SMSF trust deed will outline how you can provide direction in relation to the distribution of your death benefit.

Who decides how superannuation benefits are paid?

Any decision regarding the distribution of your superannuation death benefits is determined by the trustee(s) of the fund, subject to the relevant superannuation law, the SMSF trust deed and any valid binding death benefit nomination you make.

A **valid binding death benefit nomination** should generally be:

- in writing
- nominating eligible person(s)
- signed and dated by you in the presence of two witnesses, being persons over age 18 that are not mentioned in the notice
- containing a declaration signed and dated by the witnesses stating that the notice was signed by you when they were present.

However, it is the SMSF trust deed that prescribes the format, form and procedures for the nomination. These should be adhered to when completing the nomination.

Non-binding nomination

A non-binding nomination provides guidance, but not direction, to the SMSF trustee(s).

Binding nomination

If your binding death benefit nomination is valid, the SMSF trustee(s) must pay the benefits according to the nomination. You may wish to obtain specialist legal advice in respect of preparing or completing any death benefit nomination that you wish to be binding on the SMSF trustee(s) to ensure that any such binding nomination will be held as valid. There has been much litigation in the area of binding death benefit nominations for members of SMSFs, with many being found invalid with unintended outcomes.

Lapsing versus non-lapsing nomination

A lapsing nomination is only valid for a specific duration and therefore needs to be reviewed and renewed periodically. A non-lapsing nomination is generally valid until a new nomination is received or the nomination is revoked.

Trustee discretion or invalid nomination

If you have not provided a direction for payment of death benefits, the remaining trustees generally have discretion to decide to whom and in what form your benefits are to be paid. In some cases, the deed may require the trustees to obtain consent from your legal personal representative, usually the executor of your estate. You may wish to obtain specialist legal advice in relation to the option of leaving it up to the trustee to determine the recipients of your superannuation death benefit. Whilst non-binding instructions may provide the trustee with some direction, the ultimate outcome may not be as intended. Recent cases have focused on the process taken by the trustee(s) in exercising their discretion in regards to a deceased member's death benefit.

Reversionary pension nomination

Existing pensions may automatically revert to a nominated beneficiary following your death if the terms of the pension specify a reversionary beneficiary. Nomination of a reversionary beneficiary is limited, generally to your spouse, but can also include your children depending on circumstances.

Who can receive death benefits?

Generally, your death benefits can only be paid to someone who is:

- your superannuation dependant
- the legal personal representative of your estate, to be dealt with in accordance with your Will, or
- as a combination of the above.

Where the SMSF trustee(s) cannot, after making reasonable enquiries, find either your legal personal representative or superannuation dependant, your death benefits may be paid to another individual.

Superannuation dependants

A superannuation dependant includes:

- your spouse (including de facto and same sex couples)
- your children of any age
- people financially dependent on you at the time of your death, and
- people who are in an interdependency relationship with you at the time of your death.

An interdependency relationship exists between two people where:

- they have a close personal relationship with you
- they live with you, even if not related, and
- one or each of them provides the other with financial and domestic support and personal care.

How can a death benefit be paid?

Your death benefit can be paid in the following manner (or a combination):

- lump sum payment
- death benefit pension
- reversionary pension.

All nominated beneficiaries can receive a death benefit as a lump sum, but only certain beneficiaries can receive a death benefit as a reversionary pension or new pension.

The following person(s) may receive a death benefit as a pension:

- your spouse, interdependent or financial dependant, or
- a child who is:
 - less than 18 years of age or
 - aged 18 – 24 (inclusive) who was financially dependent on the deceased or
 - aged 18 or more but suffering from a qualifying disability.

A death benefit paid as a pension to your dependant child under the age of 25 is tax free. However, once they reach 25, the pension is required to cease and must be paid to them as a lump sum, which will also be tax free. If the child has a qualifying disability, the pension can continue after age 25.

How are death benefits taxed?

Tax on your death benefit depends on how it is paid and whether the recipient is classified as a dependant under the Tax Act, commonly referred to as a “tax dependant”. In the case of death benefit pensions, tax can depend on the age of the beneficiary and your age at the time of death.

Tax dependants include:

- your spouse or former spouse (including de facto and same sex couples)
- your child under 18 years of age (including adopted, step, ex-nuptial)
- any other person who was an 'ordinary' dependant of the deceased or
- any other person with whom you had an interdependency relationship just before your death.

Adult children

Whilst adult children are superannuation dependants, generally they are not tax dependants. Consequently, superannuation death benefits they receive may be subject to tax (depending on the tax components of the superannuation death benefit).

Death benefits paid as a lump sum

The table below summarises the tax on lump sums paid directly by the SMSF to a superannuation dependant.

Tax components	Paid to a tax dependant	Paid to a non-tax dependant
Tax free component	Nil	Nil
Taxable component	Nil	15% + Medicare levy

Where beneficiaries receive a superannuation death benefit via your estate, the tax treatment is the same, except Medicare levy is not applied.

Death benefits paid as a pension

Where your benefit is paid as a pension, known generally as a "death benefit pension", the tax treatment is:

Tax components	Either the deceased or the dependant aged 60 or over	Both deceased and the dependant aged under 60
Tax free component	Nil	Nil
Taxable component	Nil	Treated as normal assessable income and taxed at marginal tax rates, but with a 15% tax offset

What is the difference between a reversionary death benefit pension and a death benefit pension?

A death benefit pension may include a reversionary beneficiary who automatically receives your pension on your death.

If your existing pension does not include a reversionary beneficiary, or you had an accumulation interest and it is decided your death benefit is paid as a pension, new pension commencement documents will be prepared.

If you wish to cease receiving a death benefit pension it must be withdrawn from the superannuation system by commuting it in full or in part to a lump sum. It is not possible for you to stop the death benefit pension, including a reversionary pension and transfer it to your accumulation account inside super. However, you can rollover the death benefit pension to immediately start another death benefit pension.

What are some of the considerations in relation to the transfer balance cap?

On your death, if a beneficiary becomes entitled to a death benefit pension, the value of the pension at the time they become entitled is measured against their transfer balance cap which is limited to \$1.6 million. The beneficiary must ensure that the value of pensions already measured against their transfer balance cap plus the value of any death benefit pensions, including reversionary, do not exceed their transfer balance cap. A reversionary pension is measured against a beneficiary's transfer balance cap, 12 months after your death and a death benefit pension is measured at the time it commences.

There are a number of strategies that can be used to keep the total value of pensions within the transfer balance cap of the beneficiary where they are entitled to a death benefit. These include:

- commute the death benefit pension to a lump sum or part lump sum and withdraw it from superannuation
- continue with the death benefit pension and commute any existing pensions to a lump sum payable out of the fund
- continue with the death benefit pension and transfer the balance of any existing pensions to accumulation phase.

Use of each of these strategies depends on the individual's circumstances and we recommend advice is sought before implementing any of them.

Frequently asked questions

1. Does my benefit get paid to my estate if I don't have a binding nomination?

No, the trustees will determine how to pay out your death benefit in line with the requirements of the SMSF trust deed.

2. What if a binding nomination and reversionary pension nomination contradict each other?

Generally, a reversionary pension nomination will override a binding nomination, though the answer may differ depending on the specific wording of the trust deed. It would be best to avoid inconsistency between the pension documentation and death benefit nomination.

3. Can an SMSF have a non-lapsing nomination?

This will depend on the specific wording of the trust deed. Most well written trust deeds allow for non-lapsing nominations. You should refer to the trust deed to ascertain and the format of such nominations.

4. Can I nominate a reversionary beneficiary when the pension commences?

Yes, the terms of the pension can include a reversionary beneficiary.

5. Can I add a reversionary beneficiary to my pension later on?

It depends, the pension agreement and trust deed must allow for the terms of the pension to be changed.

6. Who is my legal personal representative?

The executor of the Will or administrator of the estate of the deceased person.

7. What is the role of my legal personal representative, with regards to my superannuation, in event of my death?

Depending on the requirements of the deed, they may accept the responsibility as trustee and work with the existing trustees to pay your death benefit. Then they will be removed from that role.

8. What if my legal personal representative is already a trustee of the fund i.e. my spouse?

They will act in dual capacity until the death benefit is paid.

9. What if I have joint legal personal representatives?

They can either act jointly as trustee or determine who will act as trustee.

10. Do trustees need to wait for probate before paying the death benefit?

Superannuation does not form part of your estate and can be paid out immediately once the beneficiaries have been identified and due care and consideration has been given to the decision to pay the death benefit.

11. What if all trustees / members die at the same time?

You should seek appropriate advice – legally there is an order of death.

As only the trustees of the fund can organise payment of the death benefit, a legal personal representative will need to be appointed as trustee to enable them to look after the distribution of the death benefit

Seek specialist independent advice

A person's superannuation entitlements are becoming one of the most valuable, if not the most valuable, asset of an individual. Considering superannuation does not form part of a person's estate and cannot be directly dealt with under a Will, care and consideration should be given to how and to whom this asset is transferred. In addition to the potential legal challenges that can accompany a superannuation death benefit, there are also the tax consequences that may erode a beneficiary's entitlement. To this end, specialist superannuation and tax advice should be sought for appropriately qualified advisors who can demonstrate a specialised level of expertise in the SMSF area.

Further information



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