

DEATH BENEFIT NOMINATIONS - FAQs

2025-26 Financial Year

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FREQUENTLY ASKED QUESTIONS

Please note that these FAQ'S only relate to death benefit nominations in respect of self-managed superannuation funds ("SMSFs") on the SUPERCentral/Townsend's system and which are governed by either the SUPERCentral or the Townsends Lawyers Governing Rules.

Q1. What is a death benefit nomination?

It is a direction to the trustee of the superannuation fund as to how your fund super benefit is to be allocated after your death. On your death, your benefit must be allocated to or amongst your dependants (including your estate).

The direction can be a binding nomination or a non-binding nomination.

A binding nomination binds the trustee (so that the trustee must comply with the nomination) while a non-binding nomination provides the trustee with information as to how you would like your super benefits to be allocated which the trustee can consider (but need not follow) when making its allocation decision.

Q2. Must a member make a death benefit nomination?

There is no requirement that a member make a death benefit nomination. The member may make a death benefit nomination and may at any time revoke or change that nomination.

Q3. Do I need to make a death benefit nomination?

This is purely a decision for the member. If you do not make a death benefit nomination then the trustee of your SMSF will decide whether to pay your death benefits to your estate or to your dependents (or both) and, if more than one recipient is selected, in what proportions.

Q4. What are my options?

Effectively there are three: not making a death benefit nomination; making a binding death benefit nomination, or making a non-binding death benefit nomination.

Q5. Which option should I take?

This is really a question that should be answered as part of your estate planning. In many cases, careful consideration needs to be given to what is likely to happen to all that you own or have an interest in on your death, and how you provide for your family. Interests in superannuation are a part of that and it could be that a binding nomination should form a key part of your carefully developed holistic estate plan.

Q6. In which way is a binding nomination different?

A binding nomination obliges the trustee to pay your benefits in the amounts and in the proportions you specify.

If you make a non-binding nomination or if you make no death benefit nomination, the trustee will decide who will take your benefits on your death.

A binding nomination adds certainty to who will receive your superannuation benefits, if that is what you want.

Q7. So, if the trustee will decide who will take my benefits, why bother making a non-binding nomination?

A non-binding nomination is your opportunity to let the trustee (who makes the decision unless you make a binding nomination) know who you would prefer to take your benefits. If a surviving spouse is the trustee and your choice is to leave 100% of your benefits to your surviving spouse then the trustee/surviving spouse may be greatly aided and directed by your non-binding nomination.

Q8. Do I need to use a particular type of form to make a binding nomination or a non-binding nomination?

Under the SUPERCentral/Townsend Lawyers Governing Rules, the nomination must:

- (a) be in writing;
- (b) be signed and dated;
- (c) sufficiently deal with relevant issues; and
- (d) be given to and accepted by the trustee of your SMSF.

For these reasons it is unwise to use anything other than a form prepared for you by your solicitor or fund trustee because, particularly in the case of a binding nomination, once you die a deficient death benefit nomination cannot be validated. It is also advisable to have the document witnessed by an adult who is likely to survive you and who is not benefiting from the nomination.

Q9. Can I nominate anybody to receive my benefits in my SMSF in the event of my death?

No. Only your dependants or your estate are eligible to receive your benefits.

Your dependants are:

- (a) your spouse, including a de facto or same-sex spouse;
- (b) any of your children (including adopted children, step children and ex-nuptial children);
- (c) any child of your spouse (including adopted children, step children and ex-nuptial children);
- (d) any individual who is financially dependent on you at the time of your death; and
- (e) any individual who is in an "interdependency relationship" with you at the time of your death.

Your estate is the legal personal representative of your deceased estate. This will be the executor or the administrator of your estate. If all or part of your death benefit is allocated to your estate then the amount allocated will be applied in accordance with your last will and testament, or, if there is no last will and testament in accordance with the rules relating to intestate distribution.

Q10. Can I nominate grandchildren?

Generally, no. However, if your grandchildren were financially dependent upon you or they are in an interdependency relationship with you then your grandchildren will qualify as your dependants and so could be nominated. Some financial or domestic dependence on you by a grandchild would need to be

evident. You may want to consider implementing strategies to ensure they qualify. If you do not have a spouse or surviving children then it will be easier to demonstrate that grandchildren are dependent on you and can be nominated to receive your benefits on your death. Alternatively, they can take your benefits as beneficiaries of your deceased estate if your benefits are paid to your estate.

Q11. What happens if I nominate adult children rather than my spouse?

Although adult children are permissible dependants whom you can nominate, adult children are generally not "tax dependants" under tax law, and so nominating them may not be as tax effective unless the child concerned is financially dependent upon you or they are in an interdependency relationship with you.

Q12. What happens if I nominate a dependant who is bankrupt or is in an arrangement with his or her creditors?

The dependant will no longer be eligible to receive your benefits. The trustee will then decide who receives these benefits.

Q13. Will my re-marriage, a change of spouse or the death of my nominee affect an earlier death benefit nomination I have made?

Yes. The death benefit nomination will no longer be effective. The trustee will then decide who receives these benefits unless you make a new nomination.

Q14. Will a binding nomination lapse and require renewal?

Under the superannuation regulations, death benefit nominations must be renewed every three years.

However, the ATO has confirmed that the regulations imposing the three-year renewal are not applicable to SMSFs. This was also the conclusion when the issue was considered by High Court in the *Hill v Zuda* Case ((*Hill v Zuda Pty Ltd* [2022] HCA 21)

It is therefore reasonable to assume that that while your SMSF remains an SMSF (and its governing rules allow for non-lapsing binding nominations, such as under the SUPERCentral/Townsend's Lawyers Governing Rules) you can make a binding nomination that does not have to be renewed every three years.

You should have a regime to check and reconsider any nomination you make from time to time if you have a significant life expectancy, as it is possible that the trustee may be influenced or bound by an outdated death benefit nomination that neither you nor the trustee want at the time of your death.

Q15. Must the nomination be witnessed by two independent witnesses?

Binding nominations in SMSFs operate under different rules compared to nominations in public offer or industry funds.

Usually, binding nominations made in relation to public offer and industry funds must be witnessed by two independent witnesses (in the manner in which a Will and Testament must be witnessed) and cannot operate for more than three years after they are signed.

Binding nominations in SMSFs are not necessarily subject to the two witness, or the three-year duration requirements. The SUPERCentral/Townsend's Lawyers Governing Rules do not impose these requirements on binding nominations. Consequently, binding nominations in SMSFs which use the

SUPERCentral/Townsend's Lawyers Governing Rules do not require two witnesses, and operate indefinitely.

However, as a matter of prudence the member making the binding nomination should initial the foot of each page of the nomination, and the signing by the member of the binding nomination should be witnessed by an independent adult witness.

Q16. Are binding nominations non-lapsing?

Binding nominations in SMSFs which use the SUPERCentral/Townsend's Governing Rules are non-lapsing: that is, they are not subject to the three-year duration rule.

Q17. Can I revoke a binding nomination?

Yes. A binding nomination is binding on the trustee not on you. A death benefit nomination or a revocation of a nomination must be in writing, appropriately signed and dated, and given to and accepted by the trustee of your SMSF during your lifetime.

You can revoke a binding nomination at any time.

Q18. If I give a new nomination will this automatically revoke any earlier nomination I have made?

Yes. However, for complete certainty each nomination should state that it revokes all prior nominations.

Q19. Does the nomination form signed by me have to be witnessed?

No, under the SUPERCentral/Townsend's Lawyers Governing Rules. It would however be prudent to have at least one independent witness, who will not benefit from the nomination and is at least 18 years old. The witness should not be a fellow trustee or director of the trustee company.

For any other SMSF, you must check the specific requirements under its trust deed to see if the nomination form has to be witnessed and by whom.

Q20. Can my attorney under power sign my death benefit nomination?

Yes, under the SUPERCentral/Townsend's Lawyers Governing Rules, provided the power of attorney appointing that attorney does not limit their powers in that regard and the attorney has been granted an enduring power of attorney.

Q21. Can my enduring attorney under power change my death benefit nomination without my consent?

Yes, under the SUPERCentral/Townsend's Lawyers Governing Rules, provided the power of attorney is an enduring power of attorney and the power does not limit their powers in that regard. It is important that you only choose an attorney in whom you have absolute trust to look after your interests.

If you do not wish your attorney to have this power, then you may wish to consider amending the power of attorney to remove the power to change your death benefit nomination.

Q.22. Can't I just do all this in my Will?

No. Your superannuation interests are not part of your estate because they are controlled by the trustee of your superannuation fund. You therefore need a formal death benefit nomination to deal with them. Of course if you nominate your estate as the nominee then your super benefits can be transferred to your estate following your death and your executor will then be able to deal with them pursuant to your Will. Whether this would be an appropriate course of action depends on a number of factors in relation to which you should seek advice.

Q23. Must I have a separate nomination in respect of each SMSF?

Yes. As the rules relating to binding nominations may be different in each SMSF, a nomination which satisfies the requirements of one SMSF may not satisfy the requirements of another SMSF. Additionally, each binding nomination is SMSF-specific.

Consequently, you must have a separate binding death benefit nomination in respect of each SMSF. While the binding nominations must be SMSF-specific they can, if you wish, and subject to the governing rules, be identical as to their terms.

Q24. If my pension is reversionary, how does this affect my binding death benefit nomination?

Under the SUPERCentral/Townsend's Lawyers Governing Rules a binding death benefit nomination does not override a reversionary pension. If your pension is reversionary to your dependant say, Sacheverell then the pension will transfer to Sacheverell on your death.

If Sacheverell predeceases you or has ceased to be your dependant, then the binding death benefit nomination would apply (as the pension cannot transfer to the deceased estate of your dependant and also cannot transfer if the individual has ceased to be your dependant at the date of your death).

For more information or assistance with death benefit nominations, and estate planning generally, please call SUPERCentral on (02) 8296 6266 or Townsend's Business & Corporate Lawyers on (02) 8296 6222.