ESTATE FIRST LAWYERS
THE ESTATE PLANNING EXPERTS

Superannuation & Life Insurance

SUPERANNUATION FUNDS

Who will receive your superannuation on your death is not determined by your Will in the first instance. Superannuation is a trust and as such, when a member dies, it is up to the super fund trustees to determine who to pay the member's death benefit to. Superannuation law restricts the trustees of your super fund to distributing your super death benefits on your death to one or more of the following persons (called super dependants), being the deceased member's:

+ **Spouse** (whether married, registered partner or de facto with no minimum period of cohabitation and including a same-sex spouse);
+ **Child** (whether infant/adult/adopted and also a step-child (but only where the natural parent is still living));
+ **Financial dependants**;
+ **Interdependants** (generally someone with whom you had a close personal relationship and lived with, and where one or each of you provided the other with domestic support and personal care); or
+ **Legal Personal Representative (LPR)** (that is, your estate/executors to distribute in accordance with your Will).

So your Will only determines who receives your super if the Trustees determine to pay it to your Legal Personal Representative (LPR). However most retail and industry super funds offer you a mechanism to direct your super to your desired beneficiaries on your death, thereby taking away the super fund trustee's discretion in this regard. Each fund will have its own rules, but most funds offer members the following ways to direct the payment of their super entitlements on death:

+ **Preferred Nomination** – most funds allow you to make a preferred nomination which is influential on the super fund trustees but not binding in any way. This means that the Trustee of the Fund can take your wishes into account, but may still decide to pay your super death benefit to another eligible recipient. The forms are usually available from the fund's website and no formal requirements are required;

- **Binding death benefit nomination (BDBN)** – the forms are available from the super fund and if properly completed and signed and returned to the fund, they are binding on the Trustees. The BDBN follows a strict set of specifications. They have to be signed by the member before two witnesses. Most funds offer 3 year BDBNs, after which time they lapse. You need to renew them every 3 years to ensure that they remain valid. Some funds offer non lapsing BDBNs (i.e. they remain in place and binding unless amended or revoked by the member). Most self managed super funds (SMSFs) allow non lapsing BDBNs but you need to check the terms of the trust deed (see our Factsheet on **Estate Planning for Family Trusts, Companies and Self-Managed Superannuation Funds** for more information).
- **Reversionary Pension Nomination (RPN) -** if you are in pension phase, or transition to retirement pension phase, then your fund will most likely provide you with the further option of making a reversionary pension nomination. This means that you can direct the Trustees of the super fund to revert the pension you are receiving to your stated nominee upon your death, and they will then receive it. Not all super dependants are eligible to receive your super death benefit as an ongoing pension. For example, a spouse can be a reversionary pension recipient, but an independent adult child cannot. RPNs are normally binding and non-lapsing (for SMSF's, check the trust deed on this point). You usually create a reversionary pension at the time that you prepared the paperwork for the pension to begin, but each fund has its own rules. An RPN has to be created for each pension account. There can be significant taxation benefits in creating an RPN (as opposed to creating a BDBN) and these should be discussed with your financial advisor.

Remember that unless you have made a valid BDBN or RPN with your superannuation policy, directing the super fund trustees to pay your death benefits, on your death, to one or more eligible super recipients, they will generally have the discretion as to who to pay your superannuation death benefits to when you pass away (which may not be who you would have intended to benefit). In exercising their discretion the super fund trustees prefer the claims of persons being supported by the member, such as spouses and infant children (if applicable) to claims by, say, adult children. Some funds have a policy of paying your superannuation to your Estate if there is no valid BDBN in place (where it could then be exposed to any claim that may be brought against your estate after your death – see our Factsheet on '**Risk of Claim Against Your Estate (Family Provision Applications)**' for more information).

BDBNs and RPNs should never be prepared in isolation but should be considered as part of your overall estate planning strategy. Estate First Lawyers can provide you with thorough advice regarding your options and tailor your superannuation strategy to suit your needs.

If you have an SMSF, the super fund trustee who survives you may be your spouse or close family member. It may be convenient for you to simply allow them the discretion of who and how to pay your death benefit, particularly if you wish them to be the sole recipient. However, when catering for the payment of your death benefit to your children or to your estate, particularly on the death of both you and your spouse, a BDBN is strongly recommended. Estate planning advice is needed for your particular situation.

Taxation of superannuation death benefits

Certain components of your super (such as the concessional tax component and any life insurance component) currently attract tax in the hands of certain super dependants. Spouses and children under 18 years of age do not pay death benefit tax on the super proceeds, however independent adult children, for example, do.

Death benefits tax, when payable, currently attracts a tax of 17% on the concessional tax component and up to 32% on the life insurance component, so it is important to consider this in your estate planning. Your Will should also include provisions allowing your Executors to stream any superannuation entitlements forming part of your estate towards the satisfaction of the share of those beneficiaries who can receive your superannuation tax free (such as your spouse or dependent child).

Estate First Lawyers can advise you of the taxation of your superannuation death benefits and we can talk you through any other viable estate planning alternatives that may have a better tax outcome

LIFE INSURANCE

If you have an active life insurance policy (outside of super) at the time of your death, your life insurance provider will generally pay the proceeds of the policy to the beneficiary you have nominated (if any) with the life insurance company. If no nomination has been made (or the fund does not allow for nominations) then the owner of the policy will receive any proceeds to be paid (and if the owner of the policy is you as the life insured, it will be paid to your estate).   This applies to life insurance held outside of superannuation (note for life insurance held within super the comments above regarding your superannuation death benefit applies).

One big advantage of holding life insurance outside of superannuation is that usually the recipient beneficiaries will receive the benefit tax free (there are some limited exceptions to this but they relate to life insurance in some commercial transactions).

Please contact us on 1300 132 567 or email us at **info@estatefirst.com.au** to discuss your superannuation and life insurance within your estate planning.