

Superannuation considerations in estate planning

Superannuation is not an asset that is presumed to be dealt with under a person's Will, and careful consideration should be given to superannuation entitlements when completing one's estate planning.

Superannuation entitlements on a member's death can be dealt with in a number of ways. The best way is for a member to complete a Binding Death

Benefit Nomination during their lifetime. A Binding Death Benefit Nomination is a legal document binding the trustee of a superfund to pay a member's entitlements in a particular way upon their death, and removes all discretion of a trustee in the payment of the entitlements.

Superannuation can only be nominated under a Binding Death Benefit Nomination to a member's dependent, as defined under the Superannuation Industry

(Supervision) Act 1993 (Cth). A dependent includes a spouse, de facto partner, both adult and minor children, and financial dependents, including a person who the member had an interdependent relationship with. If a member does not have any dependents or does not wish for their entitlements to be paid to a dependent as defined by the Act, their superannuation entitlements can be paid to their Legal Personal Representative to then be dealt with in accordance with the provisions of their Will.

Importantly, a member's stepchildren are not always considered "children", and therefore eligible beneficiaries, under the Act. Upon the death of a stepchild's biological parent, the relationship of "stepchild" and "stepparent" is brought to an end, and a nomination to stepchildren as beneficiaries by a step parent is no longer considered valid.

Superannuation can be paid in a number of ways on

the death of a member. For spouses, de facto partners, children under the age of 25 or a person who had an interdependent relation with the member, superannuation entitlements can be paid by way of a lump-sum or by a pension. Entitlements of a member can only be paid to adult children or the member's Legal Personal Representative by way of a lump sum.

Payments to a member's beneficiary under a Binding Death Benefit Nomination may be subject to tax. Ordinarily, payments to a spouse, minor children or financial dependents of the member are not subject to tax, while payments to adult children may be subject to tax, payable on a portion of the entitlement that they receive.

Binding Death Benefit Nominations can be a useful tool in protecting a person's estate. A valid Binding Death Benefit Nomination can remove the members superannuation entitlements from their estate and in turn removes it as an

asset that could be subject to a family provision claim under Part IV of the Administration and Probate Act 1958 (Vic).

Superannuation is a complex but important area of estate planning and should be given careful consideration when structuring one's estate. Wightons Lawyers can assist with all aspects of estate and succession planning, including advice surrounding superannuation. We invite you to contact our office on 5221 8777 to discuss how we can assist.

This article is general information only and is not legal or tax advice or a substitution for such advice. Always seek professional advice suited to your own circumstances.



Emily Ranner.



Wightons Lawyers

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With multiple Wills and Estates accredited specialists and offices in Geelong, Corio, Ocean Grove and Winchelsea we are uniquely stationed to provide expert advice throughout the greater Geelong region.

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