

Article Information

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Superannuation death benefits - Review succession plans

Regardless of the size of your superannuation benefits, it is vital that you sort out your estate plans to ensure that you have a well prepared estate plan so that the right assets go to the right beneficiaries. You need to make sure that you get holistic estate planning advice and have arrangements in place to review your estate plans regularly. Estate plans are not to be set and forgotten.

First and foremost it is important to understand that the payment of your superannuation death benefits are covered by the rules of your SMSF trust deed and do not automatically form part of your Estate for distribution in accordance with the terms of your Will. As trustee of your SMSF, you will need to make sure that you have read and understood your SMSF's trust deed and that you comply with it at all times.

On your death, one option is to rely on the SMSF trustee's wide discretion to determine who, within the operation of the law, will receive your death benefit and how much each beneficiary will receive.

The alternative is to remove the trustee's discretion which gives you greater control in deciding how your superannuation death benefits will be cashed. This may be relevant if:

- You want certainty over your estate plan;
- You have a blended family and want all family members to benefit from your superannuation on your death;
- It is anticipated that there will be conflict amongst your potential beneficiaries;
- It is a possibility that there may be conflict amongst the remaining trustees of your SMSF upon your death;
- There is a risk that those controlling the SMSF post your death may not cash your death benefits in accordance with your preferences.

Subject to the specific terms of your SMSF trust deed, ways in which you could consider removal of trustee discretion include:

- Having a valid and current binding death benefit nomination (BDBN) in place;
- Specifying in your SMSF trust deed how death benefits will be distributed; or
- Nominating a reversionary beneficiary to whom your pension will automatically revert to on your death.

To ensure that your death benefits are cashed in accordance with your wishes, it is critical to ensure that your estate plans are comprehensive and that you understand the ownership and control of your assets on your death. It is also important that any superannuation death benefit advice you receive is consistent and complimentary to your overall estate plans and is not in isolation to the other.

At a minimum, we recommend that trustees have their SMSF trust deed reviewed to ensure maximum flexibility when dealing with death benefit payments. It is also recommended this be done alongside a review of any BDBN(s) to ensure that they too are valid and provide certainty in how death benefits will be dealt with upon your death.

When considered in light of an ageing Australia, the value of assets invested in SMSFs and recent court cases, having the correct SMSF documentation and process is essential to minimise the risk of litigation from disappointed beneficiaries to allow a safe passage of death benefits to your intended beneficiaries.

So what should form part of a comprehensive SMSF estate plan? At a minimum it should contain:

- An up-to-date Will
- An up-to-date enduring power of attorney
- An up-to-date SMSF trust deed, including prior variations
- An up-to-date death benefit nomination (if applicable)
- Up-to-date pension documentation (if applicable)
- All trustee documentation, including details of directors and any trustee changes

How can we help?

If you have any questions, require assistance or would like further clarification with any aspect of your end of year superannuation tax planning, please contact Rod Jones, Private Client Services Partner an accredited SMFS Specialist Advisor™ (SSA™) by the Self-Managed Superannuation Association of Australia.