

What is a Binding Death Benefit Nomination?

A Binding Death Benefit Nomination, or BDBN (also referred to as a BDN), allows you to provide binding instructions to your Trust Fund regarding what will happen to your benefits upon your passing. BDBNs clearly outline who is to receive what and, in some ways, act much like a will for your assets and benefits in trust, including your superannuation.

Some key factors to keep in mind while considering a BDBN are as follows;

The beneficiaries must have an interpersonal relationship with you; this can be your spouse, children, grandchildren, or another person with whom you have a close personal relationship (i.e., live together, provide financial and domestic support or personal care). Alternatively, the beneficiary can also be your estate.

Binding Nominations can expire – some Trust Deeds specify that even Binding Nominations lapse after three years, which is one of the many reasons it's essential to keep your trust deed updated with the most current legislation and allowances. Please contact us if you would like to discuss updating your trust deed to implement a non-lapsing BDBN clause.

Binding Nomination must be sent to the Trustee. BDBNs are also dissimilar to a will in that you cannot just make one and have it be actioned upon your death – you must provide your BDBN to the Trustee.

BDBNs affect much more than your superannuation. BDBNs are also concerned with your assets inside a trust, which in an SMSF could be real estate, gold, shares, etc. As they are the trust's assets, these cannot be referenced in your will. They need to form part of your BDBN to be executed as per your wishes in the event of your passing.

Reasons for updating your SMSF Binding Death Benefit Nomination (BDBN):

Implementing a Self-Managed Super Fund BDBN directs your trustee to what will happen in the event of your death. This is crucial to put in place. It allows your executor to become your replacement trustee, able to implement and execute your wishes in a binding manner.

Why do I need an SMSF BDBN and not just a Will?

Courts and the Commissioner of Taxation have stated that superannuation benefits cannot be dealt with in a person's will. A deceased's superannuation and trust benefits must be disposed of in accordance with the Fund's deed and any document used by the Trustee to prepare and plan for a member's death. Additionally, wills can and have been contested in court – because the BDBN deals with the trust benefits, it is much harder for the distribution to be challenged.

In short, an SMSF BDBN enables:

- The appointment of a Replacement Trustee to act on behalf of the deceased member's SMSF estate. This person may include the deceased's executor or any other person the deceased has entrusted to distribute their superannuation estate according to their wishes. This person is the only person who can distribute the deceased member's superannuation benefits. Any other Fund trustee or person cannot hold up or disagree with any payment;
- The making of specific bequests of assets (e.g. a house, shares or gold) of the Fund to dependants of the deceased member or to be transferred into an SMSF Death Benefits Trust for the benefit of a dependent and their family. A well-thought-out superannuation plan will provide specific bequests such as '\$100,000 cash or shares to go to my eldest son' or 'My only daughter is to receive 30% of my superannuation benefits'. The more thought out and specific, the stronger the SMSF Will;
- The creation of income streams for a spouse with a life income only - great for blended families;
- The Trustee to create an SMSF Death Benefits Trust that comes from the SMSF, not the will, and avoids any legal challenge to the SMSF estate;
- The appointment of a professional to look after, manage and distribute the SMSF estate;
- Immediate SMSF Will death benefit transfers with no waiting time or probate required.

There are a few key areas that need to be considered when planning an SMSF BDBN;

Who will be your replacement trustee? It could be the executor of your will, but whoever it is, they should be well-versed in managing superannuation and distribution of estate assets. Even if your requests bind them, it's still a good idea to appoint someone who knows precisely how to fulfil those requests in the most effective and stress-free manner possible.

Do you have any specific bequests? You can provide a specific bequest to your spouse, children, grandchildren, or any other person who is currently provided financial support by you, including your children's family (a family allowance should evidence this). The specific bequest can be paid directly or could be used to create an income stream by transfer into a

Death Benefits Trust for their family or bloodline, or paid it into superannuation, if allowed under the superannuation laws.

Once all the specific bequests are met anything left over is to go to the Main Beneficiary or Beneficiaries (to be split equally). If the Main Beneficiary is not alive, you can nominate the next person who will receive your superannuation benefits. This may be your children, grandchildren or any person you support financially, or simply pass it to your estate.

