



ADLV LAW

FIERCELY ON YOUR SIDE

SOLUTION BRIEF

Making a Binding Death Benefit Nomination

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This information sheet will help you execute a Binding Death Benefit Nomination (BDBN). A BDBN enables you to direct how you want your superannuation dealt with when you pass away.

This is a general guide on certain legal aspects and is not a replacement for specific legal or financial advice relevant to your circumstances.

01

Why should I have a BDBN?

The sole purpose of superannuation is to accumulate wealth to fund your retirement. However, you need to consider who will benefit if your superannuation is not exhausted when you die.

You should keep in mind that superannuation is not part of your 'estate', and therefore you cannot use your Will to directly specify how your super must be dealt with. Many people do not realise this.

Therefore, executing a BDBN is an important part of your estate planning. A BDBN gives you the ability to direct the trustee of your super fund as to who must receive your super when you die.

Without a BDBN the trustee of your super fund has discretion to pay your super however they choose (though generally limited to your dependants). They may pay your super to someone you do not intend to benefit.

For example, there have been many cases where one child ends up as the trustee of the super fund, and chooses to payout all the super to themselves, and cut out the other children completely. The other children are shocked to find they have no ability to challenge this decision, because the trustee has the discretion available to do this when there is no BDBN in place!

A BDBN tells the trustee of your super fund which beneficiaries they must payout your superannuation to when you die.

If you make a valid BDBN then your super fund trustee must follow the directions in your BDBN.

If you have a self-managed super fund, your BDBN can apply indefinitely, provided the SMSF deed allows it to.

02

Who can I nominate as a beneficiary in a BDBN?

Unfortunately, you cannot direct your superannuation benefits to absolutely anyone you like.

The person that you nominate must be one of your dependants or your legal personal representative (i.e., your estate).

A dependant includes:

- Your spouse or de facto partner at the time of your death;
- Your financially dependent children; and/or
- Any person in an interdependent relationship with you.

A child can be your adopted child, stepchild, ex-nuptial children or child of your spouse.

An interdependent relationship refers to someone who is in a close personal relationship with you, who lives with you, and one of you provides the other with financial support, domestic support or personal care.

You can nominate as many people as you like to benefit from your superannuation. You can specify a fixed amount, a proportion of your super, or a specific asset that the person will receive. You should ensure that the nominations you make add up to 100% of your superannuation, otherwise the balance will be left to the trustee's discretion.

Your 'legal personal representative' is the Executor of your Will or the administrator of your estate.

The benefit of nominating your legal personal representative as a beneficiary is that the asset will then pass into your estate and be dealt with through your Will. This means you can pass an asset to a beneficiary who is not one of your dependants (e.g., grandchildren or a friend), or impose conditions on the gift (e.g., deferring when the beneficiary receives the gift).

03

How to make a legally effective BDBN

You make a BDBN by recording your wishes in a written 'BDBN Notice' which is addressed to the trustee of your super fund.

BDBN Notices are important legal documents, and great care must be taken to ensure they are correctly signed and delivered to the trustee so they are effective.

There have been many instances where BDBN Notices have been signed by a member, but was ultimately not legally effective because of some minor error that was made along the way.

To make your BDBN Notice legally effective, you need to:

- Make sure your super fund deed allows for making a BDBN;
- Make sure your SMSF deed does not have any special requirements or restrictions about how you must make a valid BDBN Notice;
- Make sure your BDBN Notice meets the following formal requirements:
 - The Notice must be in writing;
 - The Notice must be signed and dated by the member (you) in the presence of 2 witnesses, with the witnesses both being over 18, and neither of them being people mentioned in the Notice; and
 - The Notice must contain a declaration signed and dated by the 2 witnesses that the Notice was signed by the member in their presence; and
- Properly deliver the BDBN Notice to the trustee of your fund.

If your BDBN Notice does not meet any one of the above requirements, it will be invalid.

Once you have made a valid BDBN Notice by doing the above things, it is important to clearly record that the trustee of the super fund has received and acknowledged the BDBN Notice. This is a step that many people forget to do!

It is also important to note that under the terms of some SMSF deeds, a BDBN is only valid for a certain period of time. You will need to make sure that your BDBN is either non-lapsing (if allowed by the Deed) or that you complete a new BDBN if the previous one has expired. If there is a time

limit on how long your BDBN is valid for, you might want to consider updating the terms of the SMSF Deed so that you can make a non-lapsing BDBN.

The trustee will acknowledge the BDBN Notice by passing a simple resolution, and this will remain as a record for the trustee as the final step to make the BDBN legally effective. We generally provide this resolution whenever we prepare a BDBN Notice for our clients to ensure this requirement is satisfied.

04

Revoking or amending a BDBN

You can amend your BDBN at any time by completing a new BDBN Notice as described above. This will revoke any existing BDBN.

You can revoke your BDBN by giving written notice to the trustee of the super fund, which must be signed and dated by you in the presence of 2 witnesses, both of whom must be over 18 years of age.



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TALK TO US

What next?

If you would like to speak to someone about putting in place a valid BDBN, call us on 1300 654 590 or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.

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