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Superannuation & Death: What You Need To Know

What happens to your super when you die? It might not be a question that has cropped up in your mind during your present circumstances, but it is something that you should be concerned about.

Upon the untimely death of someone, their superannuation may be one of the elements of the estate that can be bequeathed and divided between their loved ones (trustees of the estate and beneficiaries.

This is not done through your will though, as it isn't automatically included unless specific instructions have been given to your super fund. Often this is done through a binding death benefit nomination. These payments are usually paid out in lump sum payments and split between beneficiaries as dictated by the deceased.

However, like any property or asset that can be challenged, the death benefits from superannuation and SMSF can be a legal quandary if the appropriate succession planning measures have not been put into place.

Death benefits are one of the most commonly occurring legal issues that plague the superannuation and SMSF sectors for individuals. Many court cases involving death benefits result from poor succession planning, as individuals who were not stated to be recipients of the payments miss out on what may heirs.

In the event of an individual's death, the deceased's dependent can be paid a death benefit payment as either a super income stream or a lump sum. The non-dependents of the deceased can only be paid in a lump sum. The form of the death benefit payment (and who receives it) will depend on the governing rules of your fund and the relevant requirements of the Superannuation Industry (Supervision) Regulations 1994 (SISR).

If succession planning around who the superannuation is to be left to is in place by the deceased, those who may be classed as dependents and non-dependents can become legally blurred.

In any event, dependents are defined differently depending on what kind of law they are being examined under (superannuation law and taxation law).

Under superannuation law, a death benefits dependant includes:

• The deceased spouse or de facto spouse
• A child of the deceased (any age)
• A person in an interdependency relationship with the deceased (involved in a close relationship between two people who live together, where one or both provides for the financial, domestic, and personal support of the other).

Under taxation law, a death benefits dependant includes:

• the deceased's spouse or de facto spouse
• the deceased's former spouse or de facto spouse
• a child of the deceased under 18 years old
• a person financially dependent on the deceased
• a person in an interdependency relationship with the deceased

Depending on the type of law that the beneficiary is classified under affects how they can interact with the death benefits.

How Do I Make Sure My Beneficiaries Will Receive The Death Benefits That I Want Them To Have?

Death benefit payments need to be nominated by the holder of the superfund, as superannuation is not automatically included in your will. If you fail to make a nomination, your super fund may decide who receives your super money regardless of who is in your will.

That's why succession planning is important when it comes to death benefits, no matter the situation. Even if you are at your healthiest, you'll want to be prepared for any eventuality.

To get your succession planning right, here are 5 tips that will help you during the process.

- **Locate and/or consolidate your superannuation funds - if you do not consolidate your funds, ensure that there is a binding death benefit nomination (BDBN) in place for each fund.**
- **Prepare a BDBN - this is a notice given by you as a member of a superannuation fund to the trustee of your superfund, nominating your beneficiaries on your death and how you wish for the death benefits to be paid.**
- **Seek advice before making changes to your level or type of insurance cover - you may be compelled to disclose medical conditions which may impact your ability to obtain cover or impact the cost of your cover if you remove or change your insurance cover.**
- **Review your binding death benefit nomination (BDBN) each year during tax time**
- **Seek advice on a superannuation clause under your will - though superannuation is not an estate asset, the death benefit may be paid to the estate under certain conditions, which you should consult with a super professional about.**