



YOUR GUARDIAN

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One of the most important articles ever published in our newsletters

What happens to my super when I die?

Well, they say there are two certainties in life - death and taxes. Now that tax has been all but eliminated for super benefits paid to those over 60, that just leaves death as the one certain thing we all face.

But what happens to your super balance or super pension when you die? A surprising number of people don't really know the answer to this, but it is important that it be considered as part of your overall estate planning.

Most people, for example, are not aware that their super is not normally dealt with as part of their estate. Or, that if they leave it to their adult children, who are not financially dependant on them, they will potentially be hit with taxes on the amount received.

Knowledge of the rules is a starting point if you are to plan your estate in such a way that your wishes are met and your estate taxes are minimised.

It is not difficult to achieve your aims if you take a methodical approach and consult specialists in estate planning.

In this paper we have set out below some of the major things to be aware of.

Super and Wills

Just about everyone who has ever worked in Australia has a super balance. But most would not realise that when they die it is not automatically dealt with in their will.

Superannuation balances are not directly held by you hence they cannot form part of your will. Instead, superannuation balances are held by your super fund trustees on your behalf – so when you die, they have the say in how that money is dealt with.

In the case of a self managed super fund, when you die, someone will take your place as trustee of your fund. That

person will be your legal personal representative of your estate, or may even be nominated in the Trust Deed.

If you don't have a will, it will usually be a family member who steps in to take responsibility, or the Public Trustee.

So how will they determine how to deal with your superannuation money? Will they take tax into account, other distributions as set out in your will, or their own preferences perhaps?

You can see why some form of planning is required if you want your money to be dealt with fairly and with the best outcomes for the loved ones you leave behind.

What Does The Deed Say?

The starting point for the trustee will be to review the rules set out in the Trust Deed. For example, the Deed may specify that all death benefit payments are to be paid as a lump sum to the estate. Or, it may limit the payment of death benefits to certain potential beneficiaries.

Is the Fund currently paying a Pension?

If the deceased member was receiving a pension from the fund, they may have nominated dependants to be **reversionary beneficiaries** – that is, the pension continues to be paid to the nominated dependants. This nomination is binding on the trustee and cannot be changed unless the pension is stopped and a new pension is commenced. The nomination also takes precedence over any binding nominations.

If it is not a reversionary pension, the Trustee will terminate the Pension and deal with the underlying assets in accordance with the Trust Deed and any Nominations.

Nominating Beneficiaries

If the Trust Deed allows for binding death benefit nominations, as most up to date Trust Deeds would, the next step would be to determine whether the deceased member had signed a Binding Nomination or a Non Binding Nomination as part of the super fund documentation. They will have to follow the Binding Nominations, but not necessarily the Non Binding Nominations. The difference between these is explained further below.

WARNING:

If there are no nominations, the Trustees will do as they please, which could be very difficult for them if there are competing claims by family members for part of your super balance.
Not to mention claims by ex-spouses!

Binding Nominations

In 1999 the law was changed to allow for the creation of Binding Nominations, whereby a member of a super fund could direct exactly how their super balance was to be dealt with, and, unless void for technical reasons, the remaining trustees were bound to follow those directions.

So while it sounds like a good idea to have binding nominations, they do require careful management. For example, they have a life of 3 years, after which they expire. Family situations can change, and if you forget about your binding nomination, your super money could go to someone that you are no longer on good terms with.

Alternatively, a financially dependant child may become not financially dependant, meaning that instead of paying no tax on their inheritance, they may be up for 15% tax on the amount received.

To be valid, these nominations must be independently witnessed when signed, and must be correct – that is, the total distribution must add up to 100%.

Non Binding Nominations

Non binding nominations are non binding on the surviving trustee, but then offer greater flexibility to the trustee to determine what is the best method of distributing the funds at that given time including the most tax effective means of dealing with the money.

It is important therefore that in the case of a non binding nomination, you trust the person who will take over as trustee to do the right thing in relation to your beneficiaries or potential beneficiaries.

Non binding nominations do not expire – but that is no reason not to review them on a regular basis.

No Nominations

Not having any nominations is of course very flexible, but could cause problems for the family and the trustee once you are gone, especially if there are competing beneficiaries.

Nominations by way of Deed

A death benefit nomination can also be 'hard coded' into the Trust Deed. In many ways this is similar to binding nomination, but it does not expire every three years. It is however more expensive to change as it would require an update of the deed if ever you chose to update the nomination.

To Whom Can I Leave my Super?

You are restricted in who you can nominate to receive your super. The rules are set out in the Superannuation Industry Supervision Act (known as the SIS Act).

Valid nominations are to the following categories:

- Spouse (current or de facto)
- Children
- Executor of the will
- Administrator of the estate
- Any other person financially dependant on the member
- Any other person with whom the member has an interdependency relationship

Can I Leave Super to My Estate?

Yes, you can leave your super balance to your estate, in which case it will be dealt with as determined in your will.

This must be a conscious decision however – the default position is that it does not go to your estate. There will potentially be significantly different tax outcomes by leaving super to an estate compared to leaving or dealing with it from within the super fund, so careful consideration should be given to this option.

How Will the Benefit Be Paid?

The trustee may have the option of paying out the death benefit as a pension, or as a lump sum, or as a combination of both to different beneficiaries.

From 1 July 2007, however, a pension will not be able to be paid to a non-tax dependant. At this point the trustee is likely to require tax advice to determine how the beneficiary will be taxed if they receive a lump sum versus a pension.

What About Tax?

Well, just when you thought that there would be no more taxes on super when you reach 60, the truth is that this is true only if the money is paid to you (with a couple of exceptions).

If when you die you still have super left to distribute, then whether or not any tax is paid by the recipient of your generosity will depend on their age, and also on your age at the time of death. It will also depend on whether or not they are a dependant for tax purposes.

We will examine the issue of taxation of death benefit payments in more detail in our next newsletter.

So you can see that there is some planning that can be done around this to reduce the likelihood and incidence of tax on balances left to your beneficiaries.

What About Insurance?

Where the deceased member had life insurance through the fund, that money will become an asset of the fund that can be dealt with in the same way as the other assets in the fund.

What is SuperGuardian's Role?

Our role in this area is simply to provide information – this article is not to be taken as advice, and it is not our role to provide advice.

We recommend you approach your adviser, lawyer or accountant for advice on estate planning issues, and even they may need to refer you to people who specialise in this field.

We would suggest that estate planning be undertaken in a holistic way – that is, your will, super, other assets held in trust or overseas should all be considered in the preparation of an estate plan.

Early next year we plan to facilitate this to some extent by giving our clients and their advisers the ability to access key documents such as binding and non binding nominations via our website, using the same logon details you use currently.

Season's Greetings

The Directors and Staff of SuperGuardian wish to thank our valued clients for their ongoing support throughout 2006.

We wish you all a happy, healthy and prosperous year for 2007.

Please note our office will be closed between Christmas and New Year and any email requests will be attended to when we return on January 2nd. Alternatively, please phone us on 1300 787 576 for any urgent queries.

Merry Christmas and thank you for your valued custom.



Olivia Molina
Director – Marketing



Brendan Daw
Director – Accounting



Phil Jaquillard
Director



David Minns
Director

For more information relating to this edition of Your Guardian, call **Phil Jaquillard** or **Ed Bernard** of our office on **1300 787 576**.



Adelaide
Level 8, Optus Centre
(cnr South Terrace)
435 King William Street
Adelaide SA 5000

Melbourne
Level 8
350 Collins Street
Melbourne VIC 3000

Sydney
Level 4
95 Pitt Street
Sydney NSW 2000

Postal
GPO Box 1215
Adelaide SA 5001

Tel 1300 787 576 (National)
08 8221 6540 (Adelaide)
Fax 08 8221 6552
Email info@superguardian.com.au

Internet www.superguardian.com.au