



# Is my superannuation covered by my Will?

When discussing assets to be distributed by a Will, it is not uncommon for a client to say to us: “I want my beneficiaries to get my super too” or “my Will gives them my super”.

Many people are surprised to hear that in most cases, your superannuation is not automatically covered by your Will. This is why it is extremely important to consider making a binding death benefit nomination (“binding nomination”) with your superannuation fund.

## What does that mean for a person making a Will?

It is not as simple as having a valid Will in place. Your Will (unless worded very specifically to do so), will not automatically determine who gets your retirement savings. Where a person dies and does not have a binding nomination in place then the trustee of your super fund will use their discretion in accordance with the terms of the fund to decide on and make the final decision as to who should be paid your death benefit.

It is important to understand that a trustee has the discretion to distribute to a spouse or children of a deceased person but without any nomination being provided by you, has no obligation to give set amounts to one or the other.

## How do you make sure that YOU are the one who decides where that money goes?

Most super funds allow you to make a binding nomination, which is a formal written document that sets out the dependents and/or legal personal representative that you want to receive your benefit in the event of your death.

If your binding nomination is valid and in effect at the date of your death, the super fund must pay your benefit to the beneficiaries you have nominated in the proportions you have specified. You can make a binding nomination at any time – when you sign up to a new fund, or at a later time.

Such documents have reasonably specific signing and witnessing requirements, and do not take effect until received and accepted by the super fund. Some funds do not allow for a valid binding nomination to be non-lapsing; and many funds require binding nominations to be updated every 3 years or otherwise in accordance with the terms of the trust Deed.

You can't choose to name just anyone in a binding nomination. In most super funds, you can name:

- your “legal personal representative” (which means your estate, so that distribution of your superannuation will be determined by your Will)
- your current spouse or partner
- your children (of any age)
- someone who is in an interdependent relationship with you
- anybody financially dependent on you at the time of your death

In most super funds, if you have not made a binding nomination, the trustee of the super fund will decide from the categories listed above to whom the funds will be paid.

If superannuation is paid to a person's legal personal representative (whether due to a decision of the trustee of the super fund, or because the deceased made a binding nomination to that effect) then if there is a valid Will, the Will determines who receives the superannuation.

## Should I do a binding nomination?

We will often recommend a person make a binding nomination to their fund, as often this will be the quickest and easiest way to get significant funds to a spouse or child after a person's death. However, sometimes it isn't quite as simple as making the nomination. The taxation of superannuation benefits is a complex area.

The amount of tax payable on a superannuation distribution after a person's death can vary widely depending on who receives it. However, broadly speaking, if the superannuation benefit is paid to a spouse or a child under 18, there is often little to no tax payable whereas payment to an adult child who is not financially dependent on their parent will be subject to taxation.

Of course, you should always get advice specific to your circumstances.

To ensure your superannuation is both maximised and ends up where you want it to go when you pass away, we recommend speaking to one of our experienced [Estate Planning lawyers](#) for advice tailored specifically to your circumstances. Alternatively, you can [contact us here](#).