



## Superannuation & Your Will

There is a common misconception that your superannuation will automatically follow the terms of your Will.

Each superannuation fund has different rules and guidelines for how they treat superannuation when you pass away. It is important to understand the way in which these funds will deal with your superannuation, and what steps you can take to streamline the process for your loved ones.

Superannuation can be paid in one of two ways when you pass away. It can be paid into your estate, to be dealt with under the terms of your Will; or paid directly to a dependant beneficiary, meaning it does not form part of your estate and is not controlled by your Will.

There is no single “better” option. The right approach depends entirely on your personal, family and financial circumstances. It is also important to remember that you may have a component of death insurance attached to your superannuation.

### Why is this decision so important?

Where superannuation is paid directly to a dependant beneficiary, there can be tax advantages compared to payment into the estate. In some situations, direct payment may also avoid the need for a Grant of Probate (depending on how you hold your other assets), simplifying the administration process for a surviving spouse or family members.

On the other hand, if you want your superannuation to benefit people who are not classed as

dependants under superannuation law, it generally needs to be paid into your estate. For example, where you wish to divide assets unequally between children or direct different assets to different beneficiaries.

## How do I control where my superannuation goes?

This is done through a death benefit nomination. A death benefit nomination directs your superannuation fund to pay your benefits either to your estate or directly to one or more eligible beneficiaries.

## Binding vs non-binding nominations

There are two main types of death benefit nominations: binding and non-binding.

A binding nomination requires the superannuation trustee to follow your instructions, provided the nomination is valid and has not lapsed. Some funds require binding nominations to be renewed periodically, while others allow non-lapsing binding nominations. Understanding your fund's specific rules is critical.

A non-binding nomination gives the superannuation Trustee discretion when deciding where to pay your superannuation benefits (including any applicable death insurance component). The trustee will also exercise this discretion if you do not have a nomination in place at all, determining whether the benefit is paid to one or more dependants or to your estate. It is important to understand that trustees have broad discretion and may consider claims from a wide range of family members. In some circumstances, this can result in superannuation being paid to someone you may not have intended to benefit. For example, if you separate from your spouse and pass away before a divorce is finalised, the trustee may decide to pay your superannuation to your former partner if a new binding nomination has not been made.

Both binding and non-binding nominations will fail if the nominated person is not eligible under superannuation law. Importantly, a valid binding nomination can also fast-track payment, reducing delays for beneficiaries.

## What if I want my superannuation to follow my Will?

If you want to pay your superannuation into your estate to be dealt with by the terms of your Will, you need to nominate your **Legal Personal Representative**, sometimes also referred to as your **LPR**.

Your nomination will read something along the lines of "I nominate 100% of my superannuation death benefit to my Legal Personal Representative."

Your Legal Personal Representative is the executor of your Will. You must refer to them in the correct way, or your binding death benefit nomination will fail.

There may be tax implications of paying your superannuation into your estate rather than to a dependant. It is recommended to check with your accountant before making a decision.

## Who qualifies as a “dependant”?

If you want to pay your superannuation directly to a dependant beneficiary, they must satisfy the criteria of “dependant” and be one of the following:

- a spouse or de facto partner;
- a child of the deceased;
- a person in an interdependency relationship with the deceased.

## How do I make a binding nomination?

Your superannuation fund can provide the forms needed to make a binding nomination. If you are a member of a Self-Managed Superannuation Fund, we can prepare the correct forms for you.

It is imperative that the forms are completed correctly and properly witnessed. You should also check whether the forms are subject to a lapsing date and, if so, diarise this date to ensure a new form is completed and lodged with your superannuation fund before it expires.

If you are reviewing your estate planning, updating your Will, or need assistance with superannuation death benefit nominations, contact Andersons Solicitors <https://www.andersons.com.au/contact/>.