LawTalk Blog

Does my superannuation form part of my Will?

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Often your superannuation is the biggest asset you have when you die.

Many people do not know this, but your superannuation does not automatically form part of the assets under your Will in most cases. This is why it is extremely important that you have a binding death benefit nomination ("binding nomination") (if available) nominated with your superannuation fund.

A binding death benefit nomination is a written direction to the Trustee that sets out the dependants and/or legal personal representative that you want to receive your benefit in the event of your death. If your binding death benefit nomination is valid and in effect at the date of your death, the Trustee must pay your benefit to the beneficiaries you have nominated in the proportions set out in your binding death benefit nomination.

You can make a binding death benefit nomination at any time. A valid binding death benefit nomination remains in effect for three years from the date it is first signed, last amended or confirmed. A binding death benefit nomination does not take effect until it has been received and accepted by the Trustee.

Usually a person’s superannuation fund will pay super out to the nominated beneficiary pursuant to the binding nomination in addition to any life insurance payable.

If you do not have a binding nomination with your super fund, the trustee of the super fund decides how and to whom the benefit will be paid.

Depending on the super fund that you are with and their rules and regulations, the trustee of the superannuation fund may pay the super to the deceased’s estate enabling the executor to distribute the funds. If you have a valid Will with named beneficiaries then you do have some control over who will ultimately receive your superannuation as part of the assets of the estate. However as stated, your superannuation does not automatically form part of your Will unless you are resident in New South Wales.

There are tax implications for the distribution of the super and if you are a beneficiary of the payment you will be taxed differently depending on whether or not you are classified as a dependant of the deceased person or not.

If you are a dependant (for example a child under the age of 18, or a surviving spouse or de facto) you do not need to pay tax on any component of a superannuation death benefit if you receive it as a lump sum.

If you are not a dependant (for example an adult child of the deceased) you will be taxed in accordance with the rules accorded by the Australian Tax Office.

If you believe that you should be the beneficiary of a deceased person’s super or are the trustee of a person’s estate please contact us for advice and guidance.
