BINDING DEATH BENEFIT NOMINATION

What is a Binding Death Benefit Nomination

A Binding Death Benefit Nomination is a written direction that you complete with your relevant Superannuation Fund which specifies who you want to leave your Superannuation to if you were to pass away.

Why do I need a Binding Death Benefit Nomination?

A Binding Death Benefit Nomination is binding on the Superannuation Fund. This means that you can control who gets your Superannuation, which for many people can be one of your biggest assets when you pass away. You may also have life insurance attached to your Superannuation which can be a considerable amount. A Binding Death Benefit Nomination is also important if you have a Testamentary Trust Will. Your Superannuation does not form part of your estate, therefore it is important that you have a Binding Death Benefit Nomination in place to stipulate who is to received your superannuation and life insurance entitlements. This can be a powerful tool where your Superannuation is one of your valuable assets and you therefore have control over who receives this benefit after you are gone.

Things to Consider

One important thing to note about a Binding Death Benefit Nomination is that it can lapse. The difficulty with this is that there is legislation which provides that a Binding Death Benefit Nomination is only valid for three years, meaning that they have to be renewed every three years. However, each Superannuation Fund makes their own rules – with some funds they lapse every two years and some funds allow you to make non-lapsing nominations (but where you don't specify this they generally default to lapsing nominations). This can get confusing – so it is best to speak to a lawyer and with your Superannuation Fund to ensure that you have all of your bases covered.

The way you have your Binding Death Benefit Nomination set up should depend on your unique circumstance, the state you live in and which Superannuation Fund you are a member of.

Hill v Zuda

This case answered a very important SMSF question that has had practitioners questioning for sometime. The High Court of Australia on 15 June 2022, held that a SMSF is not bound to follow the prescribed form (including the 3 year expiration) of a Binding Death Benefit Nomination as determined by regulation 6.17A of the Superannuation Industry (Supervision) Regulations. It was held that SMSF Binding Death Benefit Nominations can last indefinitely if the SMSF trust deed is drafted appropriately .

The decision of this case means the form of the Binding Death Benefit is prescribed solely by the SMSF's governing rules which will differ in each trust deed. The Binding Death Benefit Nomination will be valid as long as it follows the prescribed form of the SMSF's governing rules.

Practical Steps for Advisers

1. If a SMSF has a deed where there is even a suggestion that the 3 year limitation applies and/or regulation. 6.17A might apply - update the deed.
2. If a Binding Death Benefit Nomination states that it does not last indefinitely - update it.
3. "SMSF Wills or "death benefit Wills" serve little purpose - prepare a Binding Death Benefit Nomination instead.
4. Current Binding Death Benefit Nominations should be reviewed to ensure that they comply with the governing rules of the SMSF trust deed.