

How to prepare a BINDING DEATH BENEFIT NOMINATION/DIRECTION THAT IS BINDING

In setting out to avoid the common pitfalls here are some simple steps your advisor should follow.

Step One

The starting point is for your advisor is to obtain and review your:-

- Current will;
- Enduring Power or Attorney;
- Pension documents;
- Prior Non-Binding Nominations;
- Prior Binding (or Non-Lapsing) Nominations;
- Current Member Benefit Statement;
- Super Fund's current Governing Rules or Trust Deed.



Step Two

Having read the documents in Step One your advisor should then identify:-

- Who your eligible beneficiaries are from the Trust Deed;
- Who the Trustee of your Fund is? i.e. who is making the decision?
- If there is potential for any conflict to arise (if the Trustee is going to be or could end up being the same person as your Legal Personal Representative acting as the Executor of your Estate or Attorney under your Enduring Power of Attorney)?
- If there is a prospect or concern about you suffering from dementia does your EPA allow your attorney to confirm a Binding Nomination (or make a new one) and do you want your attorney to have this power?
- If you are a member of an Industry, Retail or Public Sector Fund does a prescribed form have to be used and what formalities must be followed?
- If the Estate is to be beneficiary what does your Will say?
- Are claims from creditors or beneficiaries on your Estate likely?



Step Three

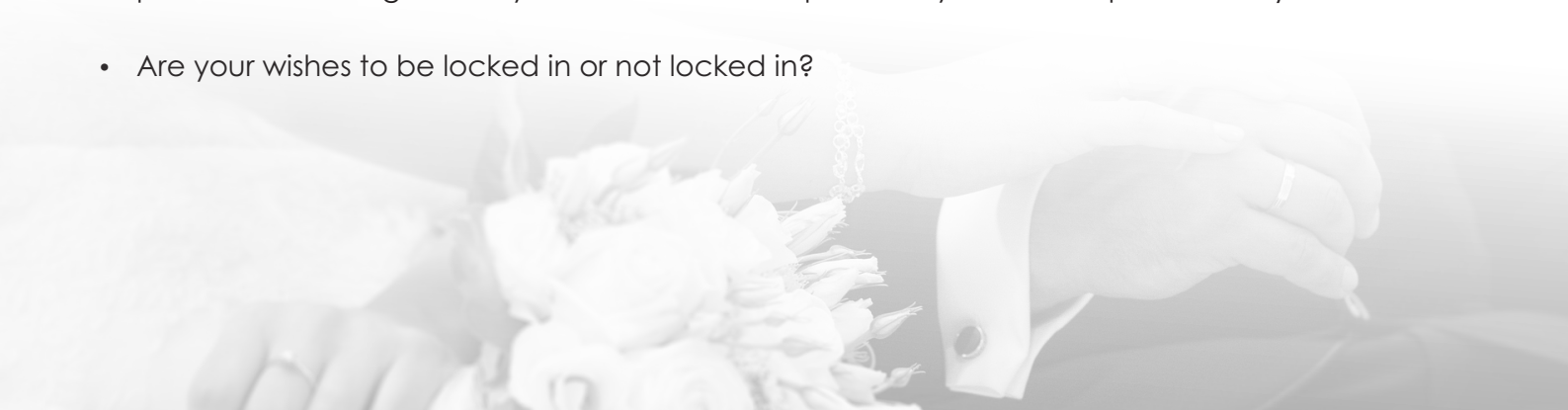
Having ascertained the lay of the land in completing Step One and Step Two, your advisor should then identify who is eligible to claim/dispute the death benefit payment.

The eligible classes (under superannuation law) are:-

- Spouses
- Defacto/Separated but not divorced/Same sex couples
- Children
- Biological/Adopted/Child of Spouse/Step Child/Formal Step-Child
- Financial dependants
- Step-Child/Grandchild/Foster Child
- Parties in "Interdependency Relationships" with a member (i.e. a close personal relationship/live together/provide domestic support and care/financial support)
- LPR
- Beneficiaries of your Estate under the Will/Intestacy Rules/Creditors/Family Provision Applicants.

Step Four

Your advisor should then ask you what you want to achieve and canvass the following with you in detail:-

- What are your goals?
 - Is your proposed beneficiary an eligible beneficiary under superannuation law (for example parents and siblings unless you are in an Interdependency Relationship with them)?
 - Are your wishes to be locked in or not locked in?
- 



If locked in how is this to be achieved (subject to the Fund Rules):-

- Binding Nomination
 - Non Lapsing Death Benefit Agreement
 - Reversionary Pension
 - Auto Reversionary Pension
 - Tailored SMSF deed?
 - Separate SMSFs?
 - Withdrawing from super before death?
-
- Who will be the trustees/directors on death or loss of capacity?
 - Will superannuation law continue to be satisfied on death or loss of capacity?
 - The tax profile of the death benefit payments
 - Have previous SMSF Deed Amendments and Trustee appointments been done properly? If not a previous set of rules may be the actual rules of the Fund;
 - When will a Binding Nomination lapse? The Fund Rules may provide for lapsing and for a Retail/Industry/Public Section Fund the Binding Nominaton will automatically lapse three years after signing or last written confirmation.



Step Five

Review regularly.



Talk to our professionals

(07) 4771 5664

law@connollysuthers.com.au



Paul Radford
Partner



Simon Turner
Litigation Consultant



Nicole Pearce
Solicitor