

Getting The Right Binding Death Benefit Nomination

Along with pension reversionary nominations, binding death benefit nominations (BDBNs) are the most common means by which a member will allocate the distribution of their SMSF death benefits. Whilst many deeds enable the completion of a basic, pro-forma BDBN, many strategically provisioned deeds will enable complex estate planning strategies to be implemented via a BDBN. Emphasis must be placed on the fact that the trust deed for the fund must enable the type of BDBN outlined in order for the member to be able to complete one.

A basic BDBN

A basic BDBN, commonly found as the default document in an SMSF deed, provides little opportunity for estate planning strategies other than to nominate one or more individuals to receive a benefit. A basic BDBN is usually the only option available for members of public offer funds.

The basic BDBN does not cater for the situation where a beneficiary predeceases the member, nor does it enable the member to leave specific assets to a beneficiary. The basic BDBN, therefore, is very limiting from a planning perspective.

Standard BDBNs

A standard BDBN is more advanced than the basic, enabling not only for the member to nominate one or more beneficiaries to receive their death benefits, but also catering for the situation where a beneficiary predeceases the member.

Whilst a standard BDBN contains provision for multiple layers of beneficiaries, it does not provide for the allocation of specific assets to beneficiaries.

Complex BDBNs

A complex BDBN provides for a greater range of eventualities, as well as different layers of beneficiaries and can cater for:

- the provision of benefits to multiple beneficiaries
- the allocation of benefits to an alternate beneficiary, if one or more beneficiaries predecease the member
- the allocation of specific assets to beneficiaries

Which is best?

Which BDBN best suits your client will depend on their independent circumstances. For some, a basic BDBN may be adequate – for others, a complex BDBN may be required.

So what can a complex BDBN provide for?

The following are some examples of how a complex BDBN can enable advanced estate planning strategies for members of an SMSF.

Example # 1 - Eventualities

Bethany and Oliver have been married for 30 years. Bethany has a child, Darren, from a prior relationship.

Although Darren is a stepson of Oliver, Oliver considers him to be his son, but there is a possibility that Darren may not be a SIS dependant of Oliver at the time of Oliver's death.

If Bethany predeceases Oliver, Darren may need to prove financial dependency to be deemed a dependant of Oliver.

If he is not a dependant at that time, a BDBN in favour of Darren will be invalid.

So as to cover the various eventualities, Oliver prepares a BDBN in which he directs the benefits in the event of his death to pass firstly to Bethany and secondly to Darren, if Bethany predeceases Oliver with a condition that the benefit is only to be passed to Darren if he is a SIS dependent at the time.

Thirdly to Oliver's legal personal representative (estate)

By constructing his BDBN in such a way, Oliver has covered a range of possibilities, such as:

- if Bethany survives Oliver, the benefits will pass to her

- if Bethany predeceases Oliver, the benefits will either:

- pass to Darren if he is a SIS dependant of Oliver at that time

- be dealt with under the third level if Darren is not a SIS dependent; and

- in that event, the benefits will pass to Oliver's estate and then, presumably, to Darren in accordance with the instructions contained in Oliver's will.

In such a scenario, the appointment of a death benefit guardian could prove very important as a final safeguard, particularly if the SMSF contains other members/trustees.

Example # 2 - Range of beneficiaries

Elizabeth, who has an SMSF which holds a number of 'collectable' assets, prepares a BDBN which will enable her to direct:

- specific assets to certain beneficiaries

- the remainder of her SMSF to a different beneficiary, with further provisions in certain circumstances

In her BDBN, Elizabeth directs:

- her Van Gogh 'Starry Night' to her daughter Julianne

- her 1933 Gold Double Eagle to her son Wayne

- the remainder of her SMSF to her partner Nicholas with a proviso:

- if Nicholas has predeceased her, or is no longer her partner: the benefits will pass to Julianne and Wayne in equal proportions.

Conclusion

Estate planning in an SMSF, using a BDBN does not merely need to be the nomination of a single 'layer' of beneficiaries. Multiple layers, specific terms and the gifting of specific assets can be attended to utilising a range of BDBN options available, provided the trust deed permits.