ESTATE PLANNING – SUPER DEATH BENEFITS

Estate planning is the planning and documentation of your wishes for the distribution of your wealth following death, including assets you own personally as well as assets you control.

Estate planning is a specialist area and it is therefore important you obtain professional legal advice in relation to all areas of your estate plan. However we outline below some of the issues you should consider when reviewing your Super Death Benefits.

SUPER DEATH BENEFITS

WHO GETS YOUR SUPERANNUATION WHEN YOU DIE?

Strict rules govern how your super is distributed when you die – and it's important to follow those rules to make sure your money goes to whom you want.

One of the most important decisions you make when you join a super fund has nothing at all to do with investment. It revolves around the question of who to nominate as the beneficiaries of your super when you die.

It's a critical question – because if you don't get it right your savings could be given to someone other than your preferred beneficiaries.

FEW EXCEPTIONS

When a fund member dies, subject to the trust deed, his or her superannuation may only be paid to:

- The member's spouse
- The member's children
- A person who is financially dependant on the member
- A person with whom the member has an 'interdependency relationship'
- The member's estate

The beneficiaries you nominate when you join a fund are only a guide – the trustees of your fund will have the ultimate discretion as to who will receive your super. They will take into consideration any nomination of beneficiaries that you have made, but are not bound by your request.

The only exception is where your super fund allows you to make a "binding death benefit nomination". This is a nomination that the trustees are obliged to follow. You may only nominate a spouse, child, financial dependant, or your estate as a beneficiary.

If you want someone else, such as a friend or a charity, to receive your savings, you should consider nominating your estate as the preferred beneficiary of your superannuation entitlements.

Your super will then be distributed according to the terms of your Will. You will need to nominate the non-dependants as beneficiaries of your Will.

DEFINITION OF DEPENDANT UNDER SUPERANNUATION LAW

A 'dependant' for superannuation purposes is:

- The member's 'spouse' including de-facto partners but does not include previous spouse
- The member's 'children' including adopted children, step-children and children born outside marriage
- Any person who was 'financially dependant on the deceased' at the date of death; and
- A person with whom the member has an 'interdependency relationship' (s.10A of the SIS Act).
- An 'interdependency relationship' is defined as one between two persons (whether or not related by family) where:
    - They have a close personal relationship; and
    - They live together; and
    - One or each of them provides the other with financial support; and
    - One or each of them provides the other with domestic support and personal care.

PENSION OR LUMP SUM?

Depending on the terms of the deed, members may be able to specify whether beneficiaries are to receive a pension or a lump sum. The member may be able to specify that their spouse, children, or financial dependants are to receive a pension. They may also be able to nominate a combination of a lump sum payment and pension payment for each beneficiary.

If the deed doesn't provide for binding death benefit nominations, the form of payment will be at the discretion of the trustees. The trustees may consult the beneficiaries before deciding on the form of payment.

Superannuation law allows for death benefits to be paid in any or all of the following methods:

- As a lump sum to the member's spouse
- As a lump sum to the member's children (both adult and minor children)
- As a lump sum to any person who is financially dependent on the member at the date of his/her death
- As a lump sum to a person with whom the member has an interdependency relationship at the date of his/her death
- As a pension to any of the above persons. However, in the case of a dependant child, when the child turns 25 the balance in the fund will have to be paid as lump sum (tax free) unless the child is permanently disabled.

- As a lump sum to the deceased person's estate

A pension is not able to be reverted to a non-dependant on death. Death benefit payments to non-dependants have to be made as a lump sum.

TAXATION OF SUPER DEATH BENEFITS

The tax arrangements that apply to the payment of superannuation death benefits are summarised in the table below.

Age of deceased	Super death benefit	Age of recipient	Taxation on taxable component
Superannuation death benefit paid to dependants			
Any age	Lump sum	Any age	Tax free
Aged 60 and over	Income stream	Any age	Taxed element - tax free Untaxed element - marginal tax rates with a 10% tax offset
Below age 60	Income stream	Aged 60 and above	Taxed element - tax free Untaxed element - marginal tax rate with 10% offset
		Under age 60	Taxed element - marginal tax rate with 15% tax offset Untaxed element - marginal tax rate
Superannuation death benefit paid to non-dependants			
Any age	Lump sum	Any age	Taxable component - 15% tax rate Untaxed element -30%
Any age	Income stream	Any age	Not applicable, however income streams commenced prior to 1 July 2007 will be taxed as if received by a dependant

** Medicare levy also applies, where applicable. Tax free component is tax free.*