

OPENING UP THE STRATEGY OPTIONS FOR BDBNS

Provided their Trust Deed permits, SMSF members can construct Binding Death Benefit Nominations in a similar fashion to a Will, enabling complex estate planning strategies for their SMSF

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.

In this article we will examine the different kinds of BDBNs available to members of SMSFs.

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.

The Basic BDBN

The 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.

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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.

The Standard BDBN

The 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 the Standard BDBN contains provision for multiple layers of beneficiaries, it does not provide for the allocation of specific assets to beneficiaries.

The Complex BDBN

The Complex BDBN provides for a greater range of eventualities, as well as different layers of beneficiaries.

A complex BDBN can cater for:

- the provision of benefits to multiple beneficiaries;

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Complex BDBNs provide for a greater range of eventualities and for different layers of beneficiaries.

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- the allocation of benefits to an alternate beneficiary, if one or more beneficiaries predecease the member; and
- the allocation of specific assets to beneficiaries.

Which is best?

Which BDBN best suits your client will depend on their independent circumstances. For some, the 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

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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;
- 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; and
- 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 pass to Darren if he is a SIS dependant of Oliver at that time; or
 - will 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 a 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; and
- 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 a 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, as detailed in the table below.

More information

Should you have any queries, or require more information, please contact the team at Topdocs on 1300 659 242.

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RANGE OF BDBN OPTIONS

Basic BDBN	Standard BDBN	Complex BDBN
One level of beneficiary - Primary beneficiary only	Two levels of beneficiary - Primary beneficiaries and secondary surviving beneficiaries where a primary beneficiary pre-deceases the member	Three levels of beneficiary – Primary beneficiaries and secondary surviving beneficiaries where a primary beneficiary pre-deceases the member, as well as final surviving beneficiaries where the secondary beneficiary pre-deceases the member
Payment of benefits often limited to lump sums	The ability to pay benefits as lump sums and/or pensions	The ability to nominate specific individual assets to members
The BDBN <u>may</u> be non-lapsing	The BDBN does not lapse	The ability to cater for conditional BDBNs
The ability to pay part or all to the LPR (estate of the member)	The ability to pay part or all to the LPR (estate of the member)	The ability to pay benefits as lump sums and/or pensions
		The BDBN does not lapse
		The ability to pay part or all to the LPR (estate of the member)

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