

## smart smsf strategy #4: estate planning



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For many Australians, superannuation will become one of the largest assets that you ever own. Given the size of the asset, upon your death, it is important to have peace of mind that your benefits will be passed to the right people at the right time.

It may surprise you therefore to hear that your Will may be completely ineffective when it comes to dispersing your superannuation benefits. Whilst you may have included the provision of distributing your superannuation benefits within your Will, in reality, your super assets are actually a non-estate asset, meaning that the monies are not automatically passed to your estate to be distributed by your Will.

You can arrange for your Will to deal with your super assets if you specifically nominate your estate (or legal personal representative) as the beneficiary, otherwise it is left to the discretion of the remaining Trustee(s) as to where your benefits are paid.


Having a self managed super fund can add a layer of complexity in estate planning,

albeit in many situations a good one, as it offers a greater range of choice as to how your benefits can be paid (assuming you have a great trust deed which allows it to).

Typically there are four nomination choices available to members (subject to the Fund's trust deed):

1. **No nomination made** - discretion as to where your benefits are paid is left to the remaining Trustee(s).
2. **Non binding death benefit nomination** - a direction to the Trustee as to where you would like your monies paid, however as the name would suggest it is not binding over the trustee. The decision remains with the surviving trustee(s).
3. **Binding nomination** - this nomination is binding over the trustee, however the Commissioner for Taxation has stated that binding nominations do not apply for SMSFs.
4. **Non lapsing binding nomination** - this is where you provide instructions to the Trustee as to where and how you want your benefits paid. If these are accepted by the Trustee, the Trustee is required to follow the instructions upon you passing away.

To illustrate the point of how important it is to get estate planning right within your SMSF, we will consider *Katz v Grossman*. Very briefly, following the death of his wife, Mr Katz appointed his daughter, Linda Grossman as an additional trustee. Mr Katz put in place a non binding nomination leaving the monies equally between his two children - Linda and her brother Daniel Katz. Upon Mr Katz passing away, Linda, being the only surviving trustee appointed her husband as an additional fund trustee, meaning that Linda and her husband had complete control over the fund including the death benefit left by her father. Linda refused to confirm that she would give effect to her deceased father's non binding nomination (his wishes) effectively leaving the decision as to where his monies would be paid to herself and her husband with Daniel being left out in the cold.

It is easy to see from this case, just how important it is to get your estate plan right especially for your super benefits. It also highlights the importance of your individual trust deed - remember that not all trust deeds are created equal (refer BM ed 21). The starting point of course is to seek professional advice, preferably from a SMSF Specialist Advisor®. 

## How SUPER is your Self Managed Super Fund?



Make the most out of your SMSF, talk to  
**Jo at Cornerstone FG**

Check out our website [www.cornerstonefg.com.au](http://www.cornerstonefg.com.au)



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