

How to get SMSF binding nominations right



Without the right advice, your wishes could be challenged by family members after your death. **Simon Letch**

by [John Wasiliev](#)

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Deciding on beneficiaries is the easy part but it's vital to set things up properly, writes John Wasiliev, who answers your questions on superannuation.

Q: My husband and I have an SMSF in which we set up reversionary pensions to one another in 2014. Last year I nominated my daughter as beneficiary to my pension in a non-lapsing binding death benefit nomination. Is it correct that so long as the BDBN is correctly executed with two witnesses, it will supersede the reversionary pension, even if the latter was in place prior to the binding nomination? If it is not the case, what can I do to rectify the situation?*Betty*

A: Your question, says Peter Crump, a private client adviser with AMP Advice in Adelaide, is one that lawyers love asking at seminars and conferences, and the answer that wins the prize money is "it depends".

It depends on the fund's trust deed and any specifications in pension documentation which mention the priority given to binding action over reversionary nominations.

One school of thought is that a binding nomination cannot take effect if there is a reversionary nomination in place, since the reversionary nomination effectively removes the ability to make a death benefit payment from the pension after the death of the original pensioner. If the pension automatically reverts to the survivor (which is the basis of a reversionary pension), there is no death benefit to be paid.

Unfortunately, there is no easy answer to the question without having the full set of documents relating to your fund, says Crump. This includes the trust deed and any documents which relate to the pension account, including any acceptable wording for the BDBN.

Crump's suggestion would be that appropriate legal advice should be sought to ensure the expected outcome will occur from the documents after they are executed. In the absence of this advice, there is a risk the benefit payment process could be challenged by either your husband or your daughter.

According to lawyer Julie Hartley, an associate with Townsends Law (a firm that offers SMSF trust deeds under the SUPERCENTRAL brand), Crump is right in saying the answer to whether a reversionary pension and BDBN takes precedence in the event of any inconsistency depends on the trust deed and the terms of the pension.

Under the SUPERCENTRAL trust deed governing rules, says Hartley, a reversionary pension will prevail over a BDBN notwithstanding the order of signing.

That said, it is important to remember a reversionary nomination will only apply to your pension interest since, as mentioned by Crump, a valid reversionary pension will not revert to funds in accumulation phase and accordingly will not generally form part of the your death benefit. If you have any amount in an accumulation account, this will be covered by the BDBN if there is one, otherwise default allocation rules will apply.

The surviving SMSF trustee would also rely on a binding nomination if the pension reversion fails, which could happen if the reversionary beneficiary has predeceased you or is not eligible to receive the pension. So the need to consider a BDBN should not be overlooked.

General advice only. Email journalist John Wasiliev with your questions at superquestions@fairfaxmedia.com.au. John is a veteran writer on superannuation and has written for the AFR for more than 30 years.

AFR Contributor

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