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SUPERANNUATION AND DECEASED ESTATES

Superannuation is a growth industry. As a direct result of the introduction of compulsory superannuation in the early 90's, superannuation coverage for the majority of employees in Australia is now a reality.

The value of superannuation assets in Australia is a very large sum. Those superannuation assets are invested in a variety of superannuation funds including industry, employer and increasingly, self managed superannuation funds.

As the value of superannuation increases, so superannuation is also an increasingly important part of the value of a person's estate. Where once the main asset of an estate was the deceased's main residence or house, today, and increasingly in the future, a person's superannuation benefits are likely to form the most significant portion of the total assets in the estate.

It is therefore critical that the specific

nature of superannuation be properly taken into account in the estate planning context, particularly in relation to the drafting of the person's Will.

The operation of the relevant Commonwealth legislation restricts the trustee of a superannuation fund from paying a superannuation death benefit otherwise than to a fund member's legal personal representative or a dependent of the member (as defined in the relevant legislation).

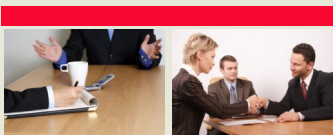
Importantly however, the decision generally rests with the trustee of the fund as to how to pay that benefit. That is, subject to the limits imposed by legislation, the trustee of a superannuation fund retains a discretion as to whom to pay the benefits on death.

This means that in drafting a Will, due regard needs to be had to the discretionary nature of the trustee's



ability to pay the death benefit. That is, it is possible that the superannuation death benefit of a deceased person may not actually form part of that deceased person's estate in the sense of being one of the assets over which the deceased person has control via instructions contained in that person's will. However, this situation can be changed by the use of death nominations, and binding death nominations, provided that they are in place with the trustee of the superannuation fund.

For more information contact Rankin Nathan Lawyers Estate Planning Team on 1300 727 813.



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