Superannuation is an important part of estate planning

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The proceeds of superannuation accounts do not automatically fall into the estate of a deceased person and are not automatically dealt with in your Will.

To ensure that superannuation proceeds are properly dealt with, it is important to understand:

- how superannuation can be dealt with – who can be the beneficiaries;
- the process surrounding payouts of superannuation proceeds;
- who might be able to make a claim against superannuation proceeds (which can be in addition to claims against an Estate or disputing a Will);
- how superannuation payments are administered; and
- importantly, the use of binding and non-binding death benefit nominations in superannuation and the benefit and pitfalls of nominations.

Nominations

Binding and/or non-binding death nominations for superannuation accounts are often not given enough careful thought. How can you make them effective and ensure the proceeds pass to desired beneficiaries? What happens if a named beneficiary dies? What are the tax issues and practical issues arising in each individual situation? What discretion does a trustee have and/or how can you make sure what you want to happen actually happens?

With self-managed super funds it is also imperative that the role of the Super fund trustee is understood and a succession plan for the role of the SMSF's trustee is in place. The wrong person in charge can lead to super proceeds ending up in strange places.

These considerations should be part of overall estate planning. Estate planning documents dealing with superannuation assets need to work hand in hand, and be reviewed together.

Disputes

With the wealth held in superannuation funds often measured in hundreds of thousands of dollars, disputes about superannuation are becoming increasingly common. This is especially the case where there are gaps or errors in the documentation of binding death benefit nominations, notices to trustees, changes in trustees of SMSFs and in relation to dependency relationships. Who can you nominate, and what does your relationship qualify? It is not as simple as you may think.

If you are uncertain as to how to deal with a super problem, or if you believe you may have an entitlement to superannuation, we can help.

Review

Superannuation laws are also subject to seemingly constant change. Regular review is needed. Whether your superannuation is in an industry fund, a retail fund or a self-managed fund it is your money and it is important to deal with this asset as with any other – with care and clarity. Have you got it right?