

Death and Terminal Illness Benefits

What are superannuation death benefits?

Most super funds have two types of benefits:

- the account balance consisting of Super Guarantee Contributions (SGC) paid into the fund by your employer along with any personal contributions you have made
- insurance benefits for death or disability which can 'top up' your superannuation if you become disabled or die before retirement age

You may have more than one superannuation fund and multiple death or disability benefit claims. It is important to check for death and disability cover on your annual statements and **get advice before ceasing work**, changing superannuation funds or consolidating multiple superannuation funds because you might **lose valuable insurance cover**.

Who gets superannuation death benefits?

If you die, the trustee of the superannuation fund will decide who gets your death benefit unless you make a binding nomination (see below). The money will usually be paid to your dependants or to your estate. 'Dependant' means:

- your legally married spouse
- de facto spouse (heterosexual or same sex)
- children (although sometimes only those under 18)
- financial dependants (total and partial), and
- interdependent (people with whom you have a close personal relationship, live with and provide each other with financial and domestic support and personal care unless unable to do so because of a disability)

Binding and non-binding nominations

Most super funds allow you to nominate who gets your super when you die. Nominations are usually non-binding which means that the trustee will take them into account but is not bound by them. Some funds offer binding death benefit

nominations which means as long as the nomination is valid, the trustee must pay the money as directed. To be valid, the nominee(s) must be your dependant(s) (as above) at the date of death or your legal personal representative (the executor of your Will) or your estate. If you want the certainty of knowing who will get your super when you die, contact your super fund(s) and ask if you can make a binding nomination. If your fund does not allow binding nominations you could consider transferring your super to a fund that does. It is important to seek financial advice before changing super funds.

Important note: If the trustee pays the superannuation death benefit to your estate, it may be claimed by your creditors or someone challenging your Will. However, if it's paid to your dependants, it doesn't go via your estate, so your creditors can't get the money.

Claims process

Once the trustee is told about a member's death, they will try to identify anyone who may want to claim.

If you want to claim a superannuation death benefit you should:

- contact the super fund and ask for a claim form
- complete the claim form setting out the nature of your relationship with the deceased, and
- attach any relevant documents such as a death certificate, marriage certificate and financial documents showing proof of dependency.

The trustee will identify any dependants of the deceased. They will then decide who gets a share of the benefit, usually based on the extent to which each person would have relied on the deceased for financial support had he/she lived on.

If there is a binding nomination, the trustee will check to see whether it is valid. If so the trustee will have to pay the money to the nominee(s) and in the nominated percentages.

If a valid dependant is not identified the trustee will usually pay the benefit to the deceased's estate.

This brochure was prepared in February 2017. It is a general guide to legal, superannuation and financial issues and is not a substitute for professional advice.

For more information, please contact us:

 1800 196 050

 mauriceblackburn.com.au



Tax on death benefit

Generally, superannuation lump sums paid to dependants are tax free. Super lump sums paid to your legal personal representative (the executor of your Will) or your estate will be taxed at a concessional rate and tax on any insurance component of the death benefit will be at a higher rate.

If it is difficult to determine a valid beneficiary the trustee will sometimes decide to pay the benefit to the deceased's estate rather than continue to seek evidence proving a claimant's dependency. This can sometimes result in adverse financial outcomes for the potential beneficiaries. It is important to seek advice to ensure the trustee has fulfilled their obligations and a fair outcome is reached.

The information above is general and it is important to get advice regarding your individual circumstances from a tax expert.

Terminal illness

If you have less than 24 months to live, you can access your super immediately and tax free. This includes the accumulated contributions and possibly any terminal illness insurance benefits. To claim you will need to complete the relevant claim forms from your fund(s) and also provide certificates from two doctors (one a treating specialist) stating that you have less than 24 months to live.

Most terminal illness claims take one to two months, although this can vary.

Important note: Some superannuation insurance policies require you to have a certified life expectancy of less than 12 months before you can claim. If you take your entire super account balance out of a fund before you meet this requirement you may no longer be eligible to claim on any insurance policy. It's important to seek advice before making a terminal illness claim. See 'help'.

Complaints and appeals

If you do not agree with a superannuation fund trustee's decision about a death benefit it can be appealed, however strict time limits apply.

The first appeal must be made to the trustee within 28 days of being notified of the fund's intention to pay the benefit. An appeal should include further evidence and reasoning to support why you think the trustee's decision was wrong.

After considering the appeal the trustee will make a final decision and notify all the relevant parties in writing.

If you are unhappy with the trustee's final decision, a further appeal can be lodged in Court or to the Superannuation Complaints Tribunal (SCT).

You have 28 days to lodge a complaint to the SCT from when you are told of the decision by the trustee in writing. The letter must tell you of the time limit.

An appeal to Court must generally be made within 6 years of the cause of action however it is important to notify the fund that you intend to challenge the decision immediately as it is very difficult to resolve any issues once the fund has made a benefit payment.

Decisions by life insurance companies can be appealed to the Financial Ombudsman Service (FOS).

Again, time limits apply.

Help

It's really important to get expert advice and help with any superannuation or insurance death and disability claim. Maurice Blackburn has the largest department dealing with super claims in Australia. We have offices in the ACT, NSW, Queensland, SA, Victoria, WA and NT, and will take on your claim on a no win, no fee* basis.

**Call Maurice Blackburn on the Disability Helpline
1800 196 050 for free legal advice.**

*Conditions apply

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