

BDBN not just about time of death

29 June 2023 By Darin Tyson-Chan

A lawyer specialising in superannuation has emphasised the need for advisers to ensure their SMSF clients look beyond the survival of one member over another in order to formulate an effective estate planning strategy.

To this end, View Legal director Matthew Burgess said practitioners need to be conscious of and implement the theory he calls gift over provision when putting a binding death benefit nomination (BDBN) in place.

“In other words, if mum is nominating dad as her death benefit dependant under a BDBN, that’s great, but what if dad doesn’t survive [for much longer]? Most rules say as long as the other party survives, and maybe by 30 days, but as long as they survive they will get the gift under the rule,” Burgess told delegates at the recent SMSF Professionals Day 2023 co-hosted by *selfmanagedsuper* and Accurium.

He pointed out the death benefit nomination is only one stage in an entire process upon a member’s passing that takes time to play out and the remaining steps involved must also be considered and covered in an effective estate planning strategy.

“You have to ask yourself what the position is in relation to the death benefit payment. Is it merely enough for dad to have survived in order to receive the death benefit payment? And the answer is no,” he noted.

“Dad would need to be alive both at the date of death, but then also at the date of the physical payment of the death benefit.

“In this instance what I’m saying to you is you need to determine what the BDBN says if he doesn’t satisfy this criteria because if it’s silent on this score, you might as well not have a BDBN in the first place.”

According to Burgess, advisers need to build additional instructions into the BDBN that involve the next generation to address this situation properly.