

BDBNs go past initial member death

by Darin Tyson-Chan and Matthew Burgess

In order for an SMSF estate plan to be robust the implementation of a BDBN must deal with situations beyond the death of the original member.

An estate planning specialist has reminded auditors the formulation of a proper SMSF estate plan does not end simply with the implementation of a binding death benefit nomination (BDBN).

View Legal director Matthew Burgess noted this is the case because of two requirements a BDBN recipient must satisfy before a death benefit payment under one of these arrangements can be paid out.

“In order for a nominated beneficiary under a BDBN to validly receive the entitlement, they must be alive not only at the date of death of the original member, but they also have to be alive at the date of payment of that amount, so they can’t have died in that intervening period,” Burgess told attendees of an Auditors Institute webinar held today.

He pointed out the time elapsing between the passing of the original member and the payment of the death benefit could amount to a month or could stretch out to several years. The situation can also be compounded if the death benefit is paid in two tranches.

“So my point to you is that even if there are arguments supporting the need for a binding nomination, then by definition we would recommend that there has to be a consideration for what the second-order consequences are,” Burgess said.

“In other words, if the nominated beneficiary is not alive at the date of the final payment or the intervening payment, [instruction has to be put in place to determine] what is to then happen.”

He emphasised BDBNs are different from wills in this sense because these documents specify if that first person nominated is not alive, then the benefit has to subsequently be paid to an alternative nominated party.

According to Burgess, less than 10 per cent of BDBNs currently deal with second-order consequences.

“For you as the auditor they are things that are just nuances that are going to trip you up if they are not on your checklists,” he warned.