

BDBNs may hinder estate plans

by Todd Wills and Matthew Burgess

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A BDBN may not always be the best option for handling superannuation death benefits as it can lack the flexibility a trust structure provides.

SMSF trustees and practitioners may be restricting the estate planning options available to them by relying on binding death benefit nominations (BDBN), according to a superannuation lawyer.

View Legal director Matthew Burgess acknowledged while BDBNs continue to be one of the most commonly used structures to deal with superannuation death benefits, they may not always be the most ideal.

“We reckon that less than one-in-five, maybe even less than one-in-ten situations ever need a binding death benefit nomination. The fact that they might prohibit certain forms of superannuation proceeds trusts should, in itself, be enough reason to really take pause,” Burgess noted during an Institute of Financial Professionals Australia briefing today.

“What I would say is in situations where the nomination is just blindly churned out without any understanding of the wider, holistic estate planning arrangements and done [just because advisers do BDBNs for all their clients], it’s a really high risk strategy, at least in relation to SMSFs.

“I accept for those of you that are more working in relation to clients that have industry or non-SMSF super entitlements, maybe BDBNs have more utility in that environment.”

He said he took this view based on the fixed and rigid nature of a BDBN and added the choice to use one depended on the individual circumstances involved.

“If there’s a binding nomination that is pointing in the wrong direction, for example, to a surviving spouse, forget everything in terms of the planning opportunities [we have discussed today], you’re not going to get there. This reinforces my point that maybe churning out binding nominations is not necessarily a winning strategy,” he noted.

However, he warned using a superannuation proceeds trust may also come with its own set of risks.

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“We actually have to have the recipient, including via a superannuation proceeds trust, to be alive at the date of physical payment,” he said.

“In longer-term relationships that can be an enormous problem because it’s certainly not unheard of that the second spouse will die, if only from a broken heart, not long thereafter.

“If the super money hasn’t all come out, not only do we not get to use the superannuation proceeds trust tax effectively, we might actually turn what would have been a tax-free death benefit into one that’s taxable.”