

BDBNs still contain basic errors

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August 27, 2024

Errors are still being made on SMSF binding death benefit nominations with regard to naming a legitimate recipient of the deceased member's benefits.

An estate planning specialist has revealed there are still numerous instances where an improper recipient of a binding death benefit nomination (BDBN) is being specified despite the clarity the Superannuation Industry (Supervision) (SIS) Act provides in relation to this matter.

According to View Legal director Matthew Burgess, he is still seeing many BDBNs formulated from a generic template attempting to ensure the superannuation assets are distributed using the instructions contained in the deceased member's will, but using the wrong terminology, in effect rendering the document useless.

"What do most people refer to when they want the asset or member benefit to pass into the will, [use as a reference]? What they refer to is the [deceased member's] estate," Burgess told attendees of an Auditors Institute webinar he hosted last week.

"But how can a binding [death benefit] nomination be made in favour of the estate when the SIS Act says very, very clearly that the only eligible recipients are a legal representative or a dependant. That's it. There are no other potential recipients and certainly the estate is not a potential recipient."

He pointed out the *Munro v Munro* case established this fact, but the significance of the court's decision continues to be largely ignored.

"As end users and legal advisers we're shocked [as to] how many binding [death benefit] nominations, templated binding death benefit nominations post *Munro* still refer to the potential recipient being the estate," he said.

"Based on *Munro* they are completely invalid and we should be working together as an SMSF industry basically [to try to] eliminate those [BDBNs] from the computer systems of anyone that might have them."

He acknowledged the SMSF trust deed can provide a potential solution, but recognised this may not be of any benefit in the long term.

"[Nominating] the estate might be valid under a BDBN so long as the trust deed [contains a] bridge between the definitions and terms [for a beneficiary] used under the SIS Act and the definitions and terms used under the deed," he said.

"[But] my sense of things though is that [practice] is frankly leading us all to a whole lot of failure for really not a lot of upside."