

# Nominating beneficiaries

When a super fund member dies, the fund's trustee must pay a death benefit in accordance with its rules and super legislation. This includes the balance of a super or pension account. If you have a super account it may also include the payment of any insured death benefit if you held insurance cover.

## The Trustee's (TWUSUPER's) role in deciding who gets your benefit

When deciding how to distribute a death benefit, we must pay the most eligible dependants in accordance with superannuation law and the Fund Trust Deed at the time of death. With a valid binding or reversionary nomination, the dependants you name will be deemed the most eligible.

If you have a non-binding nomination, we'll use it to inform our decision, but we'll take into account information presented by (or on behalf of) potential beneficiaries, within the rules of our Trust Deed and the law. Your nomination could be set aside if another dependant is found to be more eligible.

## Who can you nominate?

Legislation restricts who a fund can pay all or part of a death benefit to.

Your LPR is the executor or administrator of your estate. If you nominate your estate to receive your super benefit in the event of your death, your LPR will distribute your benefit according to your will. This means that the beneficiary does not have to be a dependant to receive your death benefit (for example if you're leaving your estate to a more distant relative than a child or a spouse).

You can nominate anyone you like to receive this, but there are rules around who a trustee can pay.

### Binding nomination beneficiaries

If you make a valid binding nomination, the trustee must make payments as you have nominated. To be valid a binding nomination must name a dependant (see below) or their legal personal representative (LPR) as a beneficiary. The validity of nominations is not checked at the time a binding nomination is completed, but at the claim stage.

### Non-binding nomination beneficiaries

Although you can nominate anyone as a non-binding beneficiary, only certain people can be paid – these are 'valid dependants'. Please see below for a list of valid dependants.

## Valid dependants

The following are classed as dependants:

- › **Spouse:** The law defines a spouse as another person (whether of the same or different sex) who is legally married to you, or a person who, although not legally married to you, lives with you on a genuine domestic basis in a relationship as a couple.
- › **Your children (minor and adult):** This includes your biological children, the children of your spouse and adopted, step or ex-nuptial children. Note that a step-child relationship no longer exists where the step parent and biological parent have finalised a divorce.
- › Any person with whom you had an interdependency relationship at the time of death. An **'interdependency relationship'** only exists if two people (whether they are related by family or not) fulfil all the below criteria at the time of death:

  - Have a close personal relationship and live together, and
  - One or each of them provides the other with financial support, and
  - One or each of them provides the other with domestic support and personal care and support of a type and quality normally provided in a close personal relationship (rather than by a mere friend or flatmate).\*

\* An **interdependency relationship** can also exist where two people have a close personal relationship, but the other requirements are not satisfied because either or both of them suffer from a physical, intellectual, psychiatric or other disability.
- › **Financial dependants:** Where, at the time of your death, you contributed at least partially toward another person's subsistence (whether related by family or not). This could include provision of food, accommodation, transport or education.

## Choosing your nomination type

All TWUSUPER members can have either binding or non-binding nominations in place, and some pension members could have a reversionary nomination.

Non-binding and binding nominations will become invalid if the person you nominate is a dependant at the time of your nomination but ceases to be so at the time of your death, or if you outlive one of the dependants you list in the binding nomination. So, whether you choose a binding or non-binding nomination, you should always review it when family circumstances change. Common reasons for changing preferences are birth, death, marriage and divorce.

### Non-binding nomination

This is where the Fund will use your nomination to inform our decision, but we'll take into account information presented by (or on behalf of) potential beneficiaries, within the rules of our Trust Deed and the law.

#### Pros

- › You can update at any time either online or over the phone.

#### Cons

- › The Trustee does not have to pay out according to a non-binding nomination if another beneficiary has a stronger legal claim than those named (for example this could mean a minor over an adult).
- › The Trustee must identify potential beneficiaries – which means the process could take longer than if a binding nomination is in place (particularly if there are multiple potential beneficiaries). As a rule, the more potential beneficiaries and objections, the longer the process.
- › You will have no certainty of the outcome, as a non-binding nomination is not legally binding.

### Binding nomination

This is where the Trustee must pay the death benefit according to your instructions – it legally 'binds' the Trustee to your wishes. However, a binding nomination must still be valid (that is a dependant or LPR is nominated) and it must be updated every three years. If it lapses, the nominations you made stay in place, but they become non-binding.

A binding nomination must be made in writing and signed by two witnesses over age 18 who are not listed as beneficiaries. You can find this form at [twusuper.com.au/forms](http://twusuper.com.au/forms).

#### Pros

- › A valid binding nomination provides a kind of certainty that your wishes will be followed after death.
- › As a valid binding nomination can't normally be contested, it avoids unnecessary arguments between potential beneficiaries.
- › As the Trustee doesn't have to find other beneficiaries or listen to objections, delays in payment are reduced.

#### Cons

- › Binding nominations lapse after three years. TWUSUPER will contact you before those three years are up, so make sure your contact details are up-to-date.
- › You can't update your nomination online or over the phone.
- › You need to ensure the binding nomination is updated if your family circumstances change.

### Reversionary nomination

This is only available to members with pension accounts.

You can nominate only one reversionary beneficiary. Payments 'revert' to your beneficiary should you die, provided they are your dependant at the time of death.

#### Pros

- › The beneficiary can then manage the account in the same way as you did and will continue to receive payments (until the account runs out).
- › The beneficiary can also choose to receive the whole balance as a lump sum.

#### Cons

- › Under a reversionary nomination, only one beneficiary can be named. Usually, it is your spouse or a financial dependant child.

Note: In some cases, making and/or changing a reversionary beneficiary nomination may impact your entitlement to certain Centrelink entitlements. Please contact the Department of Social Services (at [dss.gov.au](http://dss.gov.au)) for further information.

