

# Explanatory Notes

SMSF Non-Lapsing Binding Nominations  
SMSF Binding Death Nominations

Drawn by:

**Redchip Lawyers**

[redchip.com.au](http://redchip.com.au)

[redchip@redchip.com.au](mailto:redchip@redchip.com.au)

P 07 3223 6100

Solicitors for:

**Acis**

[acis.net.au](http://acis.net.au)

[acis@acis.net.au](mailto:acis@acis.net.au)

P 1800 773 477

# Explanatory Notes

## SMSF Non-Lapsing Binding Nominations

## SMSF Binding Death Nominations

### General Requirements

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It is essential that these procedures be followed in order for a proper Non-Lapsing Binding Nomination or Binding Death Nomination to be made.

- Ensure that advice is taken that the trust deed under which the fund operates contains provisions allowing members to make Non-lapsing Binding Nominations and/or Binding Death Nominations.
- Ensure that the nominations, as drafted, properly and fully reflect your wishes. In this regard, you should seek professional advice prior to making a Non-lapsing Binding Nomination or Binding Death Nomination.
- A Non-lapsing Binding Nomination or Binding Death Nomination is similar in legal effect to your will and must be considered carefully in the same way. As with a binding will, you must ensure that a Non-lapsing Binding Nomination and/or Binding Death Nomination is made in the presence of two independent witnesses. Both witnesses must be watching you as you sign and must also watch each other sign, however you are not required to show them the rest of the Nomination (although you may do so, if you wish). Witnesses:
  - (i) must be over the age of 18 years and not be under any legal disability (ie. they must be of sound mind); and
  - (ii) must not be potential beneficiaries under the Nomination.
- A Non-lapsing Binding Nomination:
  - (i) will not lapse unless it is modified or revoked before your death; and
  - (ii) The trustee of the fund must confirm receipt and acceptance of your Non-Lapsing Binding Nomination.
- A Binding Death Nomination:
  - (i) will last for three (3) years, unless it is confirmed, modified or revoked within that time; and
  - (ii) the trustee of the fund must inform you of the existence and terms of each Nomination each year and, ideally, you should confirm it each year.

### Other Matters

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Under our standard Superannuation Fund's Governing Rules, you have the following choices in relation to the payment of death benefits:

#### Trustee's Discretion

The trustee decides who will receive your benefits when you die. You may have signed a nonbinding nomination as part of your initial application for membership. Alternatively, you are entitled to make a non-binding nomination at any time. A non-binding nomination gives the trustee

an indication of your wishes in relation to your benefits, however the trustee is not obliged to distribute in accordance with these wishes. Usually, the trustee will take all issues under consideration and will distribute in a very similar manner to that expressed in your non binding nomination. However this may not be the case, especially if the trustee's decision is challenged by one or more potential beneficiaries.

### **Non-lapsing Binding Nominations and Binding Death Nominations**

You may elect to determine in advance to whom and how your death benefits will be paid in the event of your death. The requirements for making a Non-lapsing Binding Nomination or Binding Death Nomination are outlined above. In this case, the trustee of the Fund has no discretion as to the persons or manner in which your benefits will be paid, even if:

- you have not fully considered the consequences (including the taxation consequences) of your nomination; or
- if your circumstances have changed and you have not changed your nomination.

### **Who can be the object of a Non-lapsing Binding Nomination or Binding Death Nomination:**

You may only make a Non-lapsing Binding Nomination in favour of one or more of the following:

- a dependent (which includes your spouse, defacto spouse, dependent child, or some other person who is financially dependent on you);
- a non-dependent child, who is legally your child; or
- your legal personal representative, being the person who is responsible for administering your estate according to the terms of your will.

You **MUST** obtain detailed professional advice before completing any allocation of benefits. Your Non-Lapsing Binding Nomination or Binding Death Nomination must be fully completed after a full consideration of the relevant circumstances.

When considering the allocation of benefits, care must be exercised to properly consider the effects of the allocation and to make provision for all eventualities. For example you should consider how the allocations may differ if a beneficiary predeceases you and the benefit has not been reallocated to another person. You should also be aware that allocations may be made in relation to different components of your account balances and in favour of different persons or in the case of a change of circumstance to alternative beneficiaries.

Each superannuation trust deed is different and must be closely examined to determine if the options mentioned are available to you. Some deeds may or may not contain such provisions depending on their origin and relative age since their last upgrade.

**Note: This Nomination should only be completed after obtaining professional advice in relation to the content and effect of a binding nomination.**

**Sample Superannuation Fund  
Binding Nomination (Non-Lapsing)**

To: The Trustees

**Member Details**

Surname: \_\_\_\_\_ Given Names: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State: \_\_\_\_\_ P/code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex (M/F) \_\_\_\_\_

**New Nomination**

Please pay my entire benefit in accordance with the following table.

**Beneficiary Details**

In the event of my death, please pay all benefits in accordance with the following directions:

<b>To My:</b>	<b>As A:</b> (Options include: Pension, Lump Sum, or Beneficiary Choice, except for Non-Dependant Children and LPR, where option is Lump Sum only)	<b>Order Of Priority Or Percentage*</b>
Spouse		
Dependant Children		
Non-Dependant Children		
Legal Personal Representative		

\* Where indicating an Order of Priority, place a number in this column. For example, placing a number "1" beside an option means that the Trustee will try to distribute in accordance with this option first. If it is not possible to meet the criteria of option "1" (eg. Because a beneficiary in that category has predeceased the Member), the Trustee will attempt to distribute in accordance with option "2", and so on. It is not necessary to complete more than one option.

Where indicating a percentage, ensure that the sum of all percentages add to 100% and that the "%" symbol is used. In the event that the sums add to less than 100%, the nomination is still valid in respect of the percentages and beneficiaries indicated.

**Cancel a Current Nomination**

Please cancel my current nomination and pay benefits in accordance with the above (where Beneficiary details are completed) or at the Trustee's discretion (where Beneficiary details are not completed).

**Declaration**

I am a member, or I have applied to become a member, of Sample Superannuation Fund. This Binding Nomination applies only to my interests in this superannuation fund.

I confirm that I understand that:

- if this nomination is valid at the time of my death, the trustee must pay the benefits to the persons and in the manner in which I have directed and if this nomination is not valid or is not received by the Trustee, my death benefit may be paid at the Trustee's discretion;
- this nomination will not lapse and will continue unless amended or revoked;
- if I cease to be a member of Sample Superannuation Fund, I understand that this nomination ceases to have effect;
- each of the beneficiaries listed above must be my spouse, child, financial dependant, interdependent or the executor of my estate;
- I may cancel this nomination at any time.

**DO NOT SIGN UNLESS THERE ARE TWO INDEPENDENT ADULT WITNESSES PRESENT**

Your Signature

Date:     /     /

I witnessed the signing of this nomination by the person whose signature appears above and declare that I am over 18 years of age.

**Witness 1.**

Signature     Date:     /     /

Print Name

Print Address

**Witness 2.**

Signature     Date:     /     /

Print Name

Print Address

**NOTE:**     **This table is only part of the nomination process. Simply completing this table will not result in a legally binding nomination - see the relevant provisions of the trust deed.**

**Note: This Nomination should only be completed after obtaining professional advice in relation to the content and effect of a binding death nomination.**

**Sample Superannuation Fund  
Binding Death Nomination (Lapsing)**

This nomination is in respect of my entire superannuation benefit in the fund.

**Member Details**

Surname: \_\_\_\_\_ Given Names: \_\_\_\_\_

Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State: \_\_\_\_\_ P/code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex (M/F) \_\_\_\_\_

**New Nomination**

Please pay my entire benefit in accordance with the following table.

**Beneficiary Details**

Full Name	Relationship	Address	Benefit %
	<input type="checkbox"/> Spouse <input type="checkbox"/> Financial <input type="checkbox"/> Child          dependant <input type="checkbox"/> Interdependant <input type="checkbox"/> LPR/Executor		
	<input type="checkbox"/> Spouse <input type="checkbox"/> Financial <input type="checkbox"/> Child          dependant <input type="checkbox"/> Interdependant <input type="checkbox"/> LPR/Executor		
	<input type="checkbox"/> Spouse <input type="checkbox"/> Financial <input type="checkbox"/> Child          dependant <input type="checkbox"/> Interdependant <input type="checkbox"/> LPR/Executor		
	<input type="checkbox"/> Spouse <input type="checkbox"/> Financial <input type="checkbox"/> Child          dependant <input type="checkbox"/> Interdependant <input type="checkbox"/> LPR/Executor		
	<input type="checkbox"/> Spouse <input type="checkbox"/> Financial <input type="checkbox"/> Child          dependant <input type="checkbox"/> Interdependant <input type="checkbox"/> LPR/Executor		

Please complete for all of the beneficiaries listed in your nomination. Note that "spouse" includes a defacto spouse, but does not include a former spouse. Note also that "child" includes an adopted child, step-child or ex-nuptial child.

**Cancel a Current Nomination**

Please cancel my current nomination and pay benefits in accordance with the above (where Beneficiary details are completed) or at the Trustee's discretion (where Beneficiary details are not completed).

**Declaration**

I am a member, or I have applied to become a member, of Sample Superannuation Fund. This Binding Death Nomination applies only to my interests in this superannuation fund.

I confirm that I understand that:

- if this nomination is valid at the time of my death, the trustee must pay the benefits to the persons and in the manner in which I have directed and if this nomination is not valid or is not received by the Trustee, my death benefit may be paid at the Trustee's discretion;
- this nomination will last for three years only unless amended or revoked during that time. It lapses 3 years after the date of signing;
- if I cease to be a member of Sample Superannuation Fund, I understand that this nomination ceases to have effect;
- each of the beneficiaries listed above must be my spouse, child, financial dependant, interdependent or the executor of my estate;
- I may cancel this nomination at any time.

**DO NOT SIGN UNLESS THERE ARE TWO INDEPENDENT ADULT WITNESSES PRESENT**

Your Signature

Date:     /     /

I witnessed the signing of this nomination by the person whose signature appears above and declare that I am over 18 years of age.

**Witness 1.**

Signature     Date:     /     /

Print Name     

Print Address     

**Witness 2.**

Signature     Date:     /     /

Print Name     

Print Address

## Important Note

This publication is intended to convey general information only in relation to its subject matter. It is not intended nor should it be treated as legal advice by the reader. Any specific questions or issues should be directed to your accountant or qualified legal practitioner.

We do not provide legal, accounting, taxation, superannuation or investment advice or advice regarding stamp duty or other state or territory taxes nor in respect of any other matter.

Please note that superannuation laws and practice, taxation laws and practice, trust laws and stamp duty laws are continually changing and that significant fees, taxes, duties and penalties can be imposed when entering into arrangements of this type.

You must satisfy yourself that all documents comply with the relevant legislation and the law regarding arrangements of this type.

Advice should be obtained from qualified and licensed professionals before signing any documents.

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