BENEFICIARIES AND YOUR SUPER ENTITLEMENT

SUPER SA
contributing to your future

IN THIS FACT SHEET

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The Super SA Flexible Rollover Product was established pursuant to the *Southern State Superannuation Act 2009* (the Act) and the *Southern State Superannuation Regulations 2009*.

The Act contains specific provisions regarding who will be paid an entitlement in the event of your death.

You have the option to nominate a legal personal representative (estate) with Super SA. This means that should you die, your death benefit, including insurance entitlements (if any) will be paid to your estate and distributed according to your Will or the Statutes. Your legal personal representative is the person appointed as the executor or administrator of your estate. It is therefore important that your Will is up-to-date and reflects your wishes.

If you have not nominated a legal personal representative (estate) with Super SA, your death benefit entitlements, including insurance entitlements (if any), will be paid to your legal and/or putative spouse. If you don't have a legal or putative spouse, your entitlement will be paid to your estate and distributed according to your Will or the Statutes.

What is a putative spouse?

A person is the putative spouse of a member if the person and the member had been cohabiting as defacto spouses at the date of the member's death and:

– had been cohabiting continuously for the preceding three years, or for a total of not less than three out of the four preceding years, or

– a child of whom both persons are the parents has been born.

A person is also recognised as a putative spouse of the member if in a Registered Relationship with the member (within the meaning of the *Relationships Register Act 2016*).

The role of the Family Law Act

The ability to have flagging orders, superannuation agreements and court orders under the Family Law Act gives you or the court the ability to split your super interest in the event of a breakdown in your relationship, and accordingly in the event of your subsequent death. Subject to a satisfactory property settlement which must take into account super, you may exclude a former partner from being entitled to any part of your super, even though you may be permanently separated but not divorced.

If your relationship breaks down and you have permanently separated or divorced, Part VIIIB of the *Family Law Act 1975* (Cth) enables you to split and share the accrued interest in your super with your former partner in the same way as other property in a relationship.

It is up to the parties who are permanently separating, or the Family Court, to agree how they will share the property in the relationship, including superannuation assets. You do not have to split a superannuation entitlement. By sharing other assets, you may avoid splitting a superannuation interest.

A property settlement or superannuation agreement that takes into consideration super as described above, effectively terminates any right of your former partner to an entitlement from your super on your death, even though you may still be legally married but permanently separated. Therefore, if you die after you have undergone a property settlement or superannuation agreement, your entitlement will not be paid to your former spouse or putative spouse.

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For advice in relation to Wills, Estates, and Family Law issues, investors should seek the advice of a legal practitioner.

Example: Emma's superannuation

Phil and Emma had been married for ten years when they decided to separate. They did not divorce and did not enter into a property settlement in terms of the *Family Law Act*. Emma, who is an investor in the Super SA Flexible Rollover Product, began a new relationship with Malcolm and they had been living together for 12 years when Emma died. Emma's Super SA Flexible Rollover Product super entitlement is worth $100,000. While Emma has a current Will, she has not nominated a legal personal representative in regards to her superannuation with Super SA.

Who is entitled to Emma's super?

Phil is still Emma's legal spouse and Malcolm is her putative spouse. Even though she had named Malcolm as her beneficiary in her Will, because she had not nominated a legal personal representative in terms of the *Southern State Superannuation Regulations 2009*, Emma's entitlement will be split between the two partners in the ratio of how long each of the partners lived with Emma. Therefore, Malcolm receives $54,500 and Phil receives $45,500.

If Emma had wished to exclude Phil from receiving any of her superannuation entitlement upon her death, she could have either:

- divorced him
- entered into a property settlement through the Family Court
- entered into a superannuation agreement which dealt with her superannuation entitlements
- nominated a legal personal representative with Super SA to ensure that her benefit would be paid to her estate and distributed according to her Will.

If Emma had no legal spouse or putative spouse, then her entitlement would have been paid to her estate, to be distributed in accordance with her Will.

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Further information

Fact sheets on a range of topics relating to your super are available on the Super SA website and from Super SA. Alternatively, if you have any enquiries regarding beneficiaries and your super entitlement or any other matters raised in this fact sheet, please contact Super SA.

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