



## MONEY DUE REWARDS:



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### Super Temptations

Ervin and Evelin were comfortably wealthy, with over \$1 million in their self managed superannuation fund. When Evelin passed away, Ervin decided that the remaining super money after his death should be shared equally between his son, Daniel and his daughter, Linda, and he made a written nomination to that effect.

Evelin's death also meant that Ervin had to find a second trustee for the fund, and he chose Linda, perhaps for reasons of convenience. This arrangement continued for over four years, until Ervin died, still with over \$1 million in his superannuation.

This is where temptation entered in. Rather than following her late father's wishes, and dividing the superannuation on a half-each basis with her brother, Linda appointed her husband Peter as the replacement trustee of the fund, and distributed the million dollar plus death benefit to herself only.

Needless to say, the matter then went to court. Although binding death benefit nominations are now possible under the superannuation law, the written nomination which Ervin had made did not meet the relevant legal requirements, and was therefore non-binding at law. Daniel used various legal arguments to challenge the validity of what Linda had done, but all to no avail.

Can you imagine how Daniel would feel about this? Due to a lack of understanding of the legal issues involved, combined with his sister's selfishness, he has just been diddled out of half a million dollars at least! Quite possibly, he will never speak with his sister again. I certainly hope he hadn't borrowed heavily in expectation of the money. Sadly, it is a true story.

So what can we learn from this? Certainly, few parents would like this sort of episode to occur between their own offspring after they go. Let me offer a few retrospective suggestions as to how Ervin could have prevented this from happening, the situation being slightly different for self-managed super funds than it is for other superannuation funds.

Being in a self-managed fund, the first step which Ervin should have taken is that he should have engaged a competent advisor to review the deed of his fund, and provide advice on exactly how the death benefit provisions work, and whether they would give the result that was envisaged. Had he done so, the story would almost certainly have had a very different ending. In many cases, such a review will reveal the need for the deed to be updated – and if so, it is important to attend to this promptly. The cost is generally modest.

Having understood the death benefit provisions of the deed, Ervin would then have been in a position to ensure the desired result. Usually, this will be in the form of a "Binding Death Benefit Nomination" which should be prepared, or at least reviewed by a competent solicitor. This is because there are some very specific legal rules which need to be followed in order to ensure that the nomination is binding. Once completed, giving a copy to each beneficiary is also a good idea.

Another helpful step which Ervin could have taken, would have been to make both his children members and trustees of the fund, even if each child only had a small balance of, say \$50. This would have ensured that neither sibling was in a legally stronger position than the other in dealing with the death benefit.

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