

== MEREDITH ==  
**HATTON**  
& ASSOCIATES

Our Ref: JB:94257

19 July 2022

Ms Heather Byrne  
Sunshine Coast Tax  
By email: heatherbyrne@bigpond.com

Dear Heather

**Re: MARIA MONICA BARCLAY & MICHAEL DAVID BARCLAY  
MD & M M BARCLAY SUPERANNUATION FUND**

Please find attached copies of signed Binding Death Nominations for M D & M M Barclay Superannuation Fund. Please advise if you require the original documents.

Yours faithfully *sincerely,*  
**MEREDITH HATTON & ASSOCIATES PTY LIMITED**

*James Barkell*

**James Barkell  
Accredit Specialist – Family Law  
Consultant**

*Thank you for referring Maria and Mike.  
Both delightful people and a pleasure  
to act for.  
James.*

Meredith Hatton *Director/Solicitor*  
BA (HONS) LLB (SYDNEY)  
FDRP & NMAS Accredited  
Collaborative Practitioner (UTS)

Kym Roylance *Senior Associate*  
JD (LAW) (UTS) PLT (UTS)  
FDRP & NMAS Accredited  
Collaborative Practitioner AACP, CP(NSW) Inc

James Barkell *Consultant*  
BALLB (SYD)  
Accredited Family Law Specialist

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MEREDITH HATTON & ASSOCIATES PTY LIMITED ABN 40 642 228 706

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National Accredited  
Mediator  
2021-2023



We have an Accredited  
Specialist in Family Law



# BINDING DEATH BENEFIT NOMINATION (INDIVIDUAL CASCADING FORM)

2021-22

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Document provided by

**TOWNSENDS BUSINESS & CORPORATE LAWYERS**

Tel 02 8296 6222 [www.townsendslaw.com.au](http://www.townsendslaw.com.au)

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## **Death benefit nomination warning & disclaimer**

A member of a superannuation fund should think very carefully before signing a death benefit nomination form.

Death benefit nominations are an integral part of a member's estate planning. Members should consider death benefit nominations in the context of their whole estate and how they wish that estate to pass on at their death.

For example:

1. Should the member nominate all of their superannuation benefit to the one beneficiary or split them?
2. Would the member want their benefits to revert to their children following the subsequent death of their spouse?
3. How are the member's non-super assets being split and how does that split bear on the allocation of their super assets?
4. What are the tax consequences of the allocation of the super assets vs non-super assets?

These are just some of the many issues that need to be considered as part of a member's estate planning - issues that bear on whether or not a death benefit nomination should be made and what that nomination should be.

**Please ensure that the individual making the nomination reads the 'Binding Death Benefit Nominations – Background Information' section at the back before completing the nomination.**

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**The individual making this nomination should initial the foot of each page.**

### **Disclaimer**

Neither **SUPERCentral** nor its lawyers **TOWNSENDS BUSINESS & CORPORATE LAWYERS** will be responsible or liable to any person for any use of this nomination template. No reliance can be placed on the use of this nomination made available by either organisation.

**TOWNSENDS BUSINESS & CORPORATE LAWYERS** is able to provide advice in relation to any particular individual wishing to make a superannuation death benefit nomination.

Name of Fund: M D & M M Barclay Superannuation Fund (ABN 16 774 430 308) ("the Superannuation Fund")

Binding death benefit nomination of: Maria Monica Barclay ("the Member")

1. **Revocation of previous directions**

I hereby revoke all previous Death Benefit Nominations (if any) – whether binding or non-binding and whether made by the Member or by the Enduring Attorney of the Member – made in relation to the Member's superannuation interests in this Superannuation Fund.

2. **Binding direction to the trustee**

This direction is binding on the Trustee and is non-lapsing.

I direct the Trustee to allocate any amount payable from the Superannuation Fund by reason of the death of the Member in the order specified: namely to the First Beneficiary, but if the First Beneficiary is not eligible, then to the Second Beneficiary and so on.

Order of Priority	Name of Beneficiary, relationship to member & residential address (or Legal Personal Representative of the deceased estate of the Member)
First Beneficiary	Michael David Barclay, spouse, of 2 Park Street, Huskisson, NSW, 2540
Second Beneficiary	The legal personal representative of Maria Monica Barclay
Third Beneficiary	Nil
	(insert more rows for next level beneficiaries if required)

A Beneficiary will only be eligible if:

- the Beneficiary has survived the Member by 30 days; and
- the Beneficiary is, at the date of the death of the Member, a dependant of the Member (as that term is defined in the SIS Act);

The benefit may be paid either as a lump sum or as a pension (or combination of both) as agreed to by the Trustee and the recipient and as permitted by Superannuation Law.

Maria Monica Barclay

Print name of Member / Enduring Attorney

James John Barkell  
Solicitor  
1/44-48 Bowral St  
Bowral NSW 2576

Print name of Witness

*M Barclay*

Member's / Enduring Attorney's signature

*J J Barkell*

Witness' signature

Dated: 8 / 6 / 22

Dated: 8 / 6 / 22

(The witness must not be another trustee of the Superannuation Fund nor a director of the corporate trustee of the Superannuation Fund)

**RESOLUTIONS OF TRUSTEE** of the M D & M M Barclay Superannuation Fund ABN 16 774 430 308 ("the Superannuation Fund")

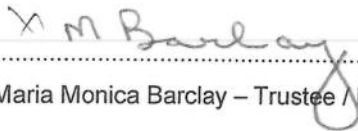
**Noted** that a Binding Death Benefit Nomination:


- (a) has been received for Maria Monica Barclay ("the Member");
- (b) has been dated and signed by Maria Monica Barclay (and has been duly witnessed, if applicable);
- ~~(c) if signed by an attorney, was accompanied by an original power of attorney (or a certified copy thereof) which shows the attorney signatory's capacity to sign;~~
- (d) has been completed to the satisfaction of the Trustee;
- (e) is clear and unambiguous; and
- (f) is dated on or about .....<sup>8</sup>...../6./2022

**Resolved** that the Binding Death Benefit Nomination of the Member take effect.

Corporate Trustee

**Signed** as a Written Resolution of M D & M M Barclay Pty Ltd ACN 088 176 461 the Trustee of M D & M M Superannuation Fund ABN 16 774 430 308

  
.....  
Maria Monica Barclay – Trustee / Director

  
.....  
Michael David Barclay – Trustee / Director

Dated: .....<sup>8</sup>...../6/ 2022

*(All trustee/directors must sign for the resolutions to be effective. This document is only effective as a resolution of a company if the constitution of the company permits the use of such written resolutions either through the adoption of the replaceable rules in sections 248A or 248B of the Corporations Act 2001 (Cth) or through a materially similar rule contained in the constitution.)*

## **Binding Death Benefit Nominations (BDBNs) – Background Information**

### **1. Governing Rules and BDBNs**

The governing rules must be reviewed to ensure the rules permit a member to provide a nomination to the trustee as to the persons to whom the trustee is required to pay any benefit which is payable from the Superannuation Fund on the death of the member.

Generally, the nomination will be binding on the trustee so long as the nomination satisfies certain requirements of the governing rules and the nominated person is not disqualified from receiving the benefit (eg because the nominated person has ceased to be an eligible person of the member).

### **2. Binding death benefit nomination by or on behalf of the Member**

Only eligible persons are entitled to receive all or part of any benefit which is payable from the Superannuation Fund by reason of the death of the Member. The nomination of a person who is either not an eligible person or who has ceased, by the date of death of the Member, to be an eligible person, means that the Nomination of that person is invalid.

### **3. Who are eligible persons?**

The following are eligible persons in relation to a deceased Member:

- (a) the current spouse of the deceased Member (legal, de-facto or same sex partner);
- (b) any child of the deceased Member (whether under or over 18 years of age) – including any adopted child or ex-nuptial child);
- (c) any child (whether under or over 18 years of age) of the current spouse of the deceased Member – including any adopted child or ex-nuptial child of the current spouse of the deceased Member;
- (d) any step-child (irrespective of age) of the deceased Member so long as the step-child relationship had not ceased before the death of the deceased Member;
- (e) any person who was a financial dependant of the deceased Member at the time of the death of the deceased Member; and
- (f) the legal personal representative of the deceased Member – being the executor of the will of the deceased Member or the administrator of the estate of the deceased Member.

### **4. When will a person not be an eligible person at the date of death of the Member?**

Applicable governing rules must be reviewed to determine when a person will not be an eligible person at the date of death of the Member.

If the Fund is governed by the SUPERCentral Governing Rules, a nomination of an eligible person will not be effective or binding on the trustee where the nominated person:

- (a) predeceases the Member;

- (b) is not or ceases to be an eligible person in respect of the Member at the time of death of the Member;
- (c) is an undischarged bankrupt;
- (d) is a person whose financial affairs are subject to a debt agreement under Part IX of the *Bankruptcy Act 1966* being a debt agreement which has not been completely performed;
- (e) is a person whose financial affairs are subject to a deed of assignment, deed of composition or deed of arrangement under Part X of the *Bankruptcy Act 1966* which has not been completely performed;
- (f) is a person whose financial affairs are subject to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* which has not been completely performed; or
- (g) is a person who has subsequently ceased (whether by divorce proceedings or by separation) to be the spouse of the Member (unless they are separated and the Member expressly wishes to include the spouse as an eligible person).

**5. Can BDBNs be revoked?**

Applicable governing rules must be reviewed to determine how a BDBN can be effectively revoked.

Generally, binding death benefit nominations can be revoked at any time. Revoking a binding death benefit nomination does not revive any previous nomination. A binding death benefit nomination can only be revoked by the Member if they are mentally competent.

**6. What happens if a BDBN is revoked?**

The revoked nomination ceases to have any effect. Also, revoking the nomination does not revive any previously revoked nominations.

**7. What happens if there is no BDBN or a BDBN is revoked without a replacement BDBN being made?**

In this case the trustee of the Superannuation Fund will allocate the death benefit of the member to or amongst (in such proportions as the trustee decides) to the eligible persons of the member. The trustee must allocate the entire death benefit.

**8. Can an Enduring Attorney of a member make or revoke a BDBN?**

This depends on the applicable governing rules of the fund, terms of the power of attorney document and applicable laws of the State/Territory under which the power of attorney is made.

Generally, the individual or individuals who are the enduring attorneys of a member may make a BDBN for the member or revoke a BDBN previously made by them or the member.

The member can prevent their enduring attorneys from making or revoking Binding Death Benefit Nominations by expressly providing in the power of attorney instrument that they cannot make or revoke such nominations.

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Binding death benefit nomination of: Michael David Barclay ("the Member")

1. **Revocation of previous directions**

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2. **Binding direction to the trustee**

This direction is binding on the Trustee and is non-lapsing.

I direct the Trustee to allocate any amount payable from the Superannuation Fund by reason of the death of the Member in the order specified: namely to the First Beneficiary, but if the First Beneficiary is not eligible, then to the Second Beneficiary and so on.

Order of Priority	Name of Beneficiary, relationship to member & residential address (or Legal Personal Representative of the deceased estate of the Member)
First Beneficiary	Maria Monica Barclay, spouse, of 2 Park Street, Huskisson, NSW, 2540
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Michael David Barclay

Print name of Member / Enduring Attorney

Member's / Enduring Attorney's signature

James John Barkell  
Solicitor  
1/44-48 Bowral St  
Bowral NSW 2576

Print name of Witness

Witness' signature

Dated: 8.6.22 / 2022

Dated: 8.6.22 / 2022

(The witness must not be another trustee of the Superannuation Fund nor a director of the corporate trustee of the Superannuation Fund)

**RESOLUTIONS OF TRUSTEE** of the M D & M M Barclay Superannuation Fund ABN 16 774 430 308 ("the Superannuation Fund")

**Noted** that a Binding Death Benefit Nomination:

- (a) has been received for Michael David Barclay ("the Member");
- (b) has been dated and signed by Michael David Barclay (and has been duly witnessed, if applicable);
- (c) ~~if signed by an attorney, was accompanied by an original power of attorney (or a certified copy thereof) which shows the attorney signatory's capacity to sign;~~
- (d) has been completed to the satisfaction of the Trustee;
- (e) is clear and unambiguous; and
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**Resolved** that the Binding Death Benefit Nomination of the Member take effect.

Corporate Trustee

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.....  
Michael David Barclay – Trustee / Director

  
.....  
Maria Monica Barclay – Trustee / Director

Dated: .....<sup>8</sup>...../6/ 2022

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