

## **How is a Death Benefit paid from our fund?**

The process to be followed for paying out death benefits from a pension or provident fund can be fairly complicated and can, as a result, also take a while to complete. We understand that as a consequence, family members and dependants of a deceased fund member can sometimes end up struggling financially during this period.

This document aims to explain the process that must be followed by the fund when paying out a benefit and specifically the responsibilities that the law places on the fund trustees to make sure that those people who were dependent on the deceased member, are taken care of.

### **Who is responsible for deciding how benefits are paid?**

The way that benefits are paid out by a fund in the event of the death of a member is governed by the Pension Funds Act (Section 37C of the Act). According to this section, benefits must, in the first instance, be paid to the **DEPENDANTS** of the deceased member and thereafter to the non-dependant beneficiaries that may have been listed on a beneficiary nomination form by the deceased prior to his/her death (ideally all those people whom are dependent should be included on the Beneficiary nomination form).

Most notably, those people who were **DEPENDENT** on the deceased must be looked after first and those people who were not dependent, will only be considered thereafter.

### **What do the trustees have to do (according to the Act)?**

As part of the process of paying out a claim, the trustees are required to:

- 1) Identify and trace all possible “DEPENDANTS”, as well as anyone who has been nominated by the deceased member in writing;
- 2) make benefit allocations on a fair and equitable basis and
- 3) determine the best way to pay the benefit (for example in cash, as an income OR through a trust).

### **Where do the trustees get the information in order to make their decision?**

They will rely on:

- Information provided by the employer, the deceased members’ family and/or friends and the Fund Consultant.
- Information provided by the deceased member on his/her Notification of Dependants and Beneficiaries form;
- Any statements made by the deceased member's family and
- Any other information that can be obtained.

Based on the information gathered, the Trustees will then determine the distribution of the benefits, in accordance with the requirements of the Act.

### **Who will be considered to be dependants?**

All those people who were actually dependent on the deceased will be considered, irrespective of whether or not they were actually nominated. In addition, all those persons who were nominated will also be considered.

In making their decision about the distribution of benefits, the trustees must take into consideration:

- Anyone the deceased had a legal duty to support (this includes spouses, children, parents, grandparents, unborn children etc.)
- Factual dependants (for example common law spouses, same-sex partners, step children, foster children)
- Customary law spouses
- Major children who the deceased had a legal responsibility to support

### **Those who are DEPENDANT come first**

- When distributing the benefits, the trustees will always place **DEPENDANTS** ahead of any non-dependant persons (even if non-dependant persons were nominated by the deceased member)
- Only if, in the opinion of the trustees, the needs of **DEPENDANTS** have been reasonably provided for, will any non-dependant persons (who were nominated) be considered.

### **What happens if there are no dependants?**

In cases where there are no actual dependants, the trustees will generally make payment in accordance with the wishes expressed by the deceased member on the beneficiary nomination form.

However, in this instance, the trustees are first required to make sure that the estate of the deceased is solvent before making payment to “non-dependant” nominees.

### **What happens if there are no dependants or nominees?**

If there are no dependants and the deceased did not make any nominations, the trustees will make payment to the deceased member’s estate.

### **What about Bequests made in your will?**

It must be noted that any wishes expressed in your will, regarding the distribution of benefits, will have no binding effect on the fund trustees as death benefits payable by a fund are specifically excluded from your estate.

Having said that, the trustees will take note of your will if it assists them in their efforts to establish who your dependants are. In particular, the trustees will not distribute benefits to any testamentary trust formulated in terms of the deceased member’s will.

### **Different ways the benefits can be paid out**

The way that the death benefit is paid out to beneficiaries, is also regulated by Section 37C of the Act and currently allows for the following options:

- Payment directly to the dependant or nominee
- Payment to a guardian or caregiver
- Payment to a Beneficiary fund

Payment to a beneficiary fund (which is like a trust) would normally occur if the dependant or nominee is a minor or legally incapacitated adult. The trustees may pay the benefit to a Beneficiary fund or to the parent or other person who has a legal responsibility for that person. The benefit may also be paid to a trust, if nominated by the member, and approved by the board of trustees.

### **Being nominated is not a guarantee to receive benefits**

It is important to note that in certain instances, where a (non-dependant) person has been nominated on a beneficiary nomination form, they might not receive any benefit payment. This will typically happen where the total amount of the benefit available from the fund is only sufficient to meet the needs of the actual dependants of the deceased member.

### **Other useful information**

#### **DEPARTMENT OF HOME AFFAIRS**

A death must be reported to your nearest Home Affairs office.

When reporting the death at Home Affairs they will provide you with the official death certificate, which is required to process a death claim.

To find your nearest home affairs office, or online information about the Department of Home Affairs:

Web: <http://www.home-affairs.gov.za> | Tel: 0800 60 11 90  
E-mail: [csc@dha.gov.za](mailto:csc@dha.gov.za)

#### **MASTER OF THE HIGH COURT**

All estates must be registered at the Master of the High Court.

For more information about the process or to find the nearest office:

Web: [www.justice.gov.za](http://www.justice.gov.za) | Tel: (012) 315 1111