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ASISA FOUNDATION

SHORT ARTICLE SERIES

Our purpose at Atleha-edu is to help ordinary South Africans save and invest for a better tomorrow.

We do this through Financial Sector Code (FSC)-compliant awareness and interactive education programmes focused on retirement fund trustee, management committee member; and fund member awareness and education initiatives, such as this short article.

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AN OVERVIEW OF SECTION 37C OF THE PENSION FUNDS ACT

Section 37C of the Pension Funds Act came into effect in August 1976. This section regulates the benefits payable upon the death of a member of a retirement fund. Ultimately, Section 37C places the onus on a fund's board of trustees in identifying and allocating these 'death benefits'.
This article serves as an introduction to our series on the duties and responsibilities of trustees under Section 37C.

"Section 37C places onerous duties on trustees in determining and ensuring the fair and equitable distribution of death benefits."

Prior to the introduction of Section 37C into the Pension Funds Act, 1956 (herein referred to as 'the Act'), the benefit payable as a result of the death of a pension fund member would take place as set out in their last will and testament or according to the provisions of the laws of intestate succession.

The advent of Section 37C brought a statutory distribution regime which expressly excludes freedom of testation and rather looks to the board of a fund to distribute the death benefit.

Section 37C is applicable to all retirement funds, including pension, provident, preservation and retirement annuity funds. When a member of a retirement fund dies before reaching retirement age, the death benefit – which is the lump sum benefit that becomes payable – must be paid to the member's dependants and/or nominees. Distribution of the member's death benefits remains the responsibility of the fund trustees and they need to ensure that this is done fairly and equitably – meaning that the decision as to how the death benefit will ultimately be allocated and paid will be determined impartially and based on the relevant information that the trustees collected in order to effect a fair and equitable distribution of the death benefit.

One of the objectives of Section 37C is to limit a member's freedom of testation in relation to benefits payable from their retirement fund in consequence of their death in order to protect financial dependency of dependants over the wishes of the deceased member as may be expressed in a valid nomination form or a last will and testament. Another objective of the section is to offer protection to dependants who do not reside in the same vicinity of the late member or the operations of the fund, which may make searching and finding dependants more difficult.

This latter objective is achieved by the placing of the death benefit under the control of the board of trustees to be dealt with in accordance with a prescribed statutory scheme of distribution. The statutory scheme of distribution also overrides a fund member's expression of wish as may be contained in a last will and testament or a beneficiary nomination form.

Trustees as the ultimate decision-makers

Section 37C places onerous duties on trustees in determining and ensuring the fair and equitable distribution of death benefits. The process – which is largely manual – can often be lengthy and cumbersome, leading to frustration on the part of the member's family, who may often be in dire financial need.

In making a fair and equitable distribution of the death benefit, Section 37C imposes three principal duties on the board:

1. Identify and trace dependants (as defined in Section 1 of the Act) and those persons, if any, who have been nominated by the deceased member.
2. Make benefit allocations on a fair and equitable basis.
3. Determine an appropriate mode of payment of the death benefit.

KEY TERMS AND DEFINITIONS

Dependant: Spouses, children, parents, grandparents and grandchildren or anyone proven to have been financially dependent on the member at the time of their death and at the time of making payment; anyone entitled to maintenance; as well as anyone who may in the future have become financially dependent on the member.

Freedom of testation: Testators are given freedom to direct how their estate should devolve and free rein to dispose of their assets as they deem fit.

Intestate succession: If you die without leaving a valid will, your estate (all your assets left behind) will devolve according to the Intestate Succession Act, 1987 (Act 81 of 1987). This means that your estate will be divided amongst your surviving spouse, children, parents or siblings according to a set formula.

Nominee: A nominee is any party (natural person, trust or legal entity) whose details the member provided to the retirement fund in writing indicating that they should be considered by the trustees for a possible allocation of the death benefit. Examples would be one or more dependants, or a person who is not a dependant, such as a friend of the member.

Prescribed statutory scheme: A statutory scheme means an elaborate and systematic plan of action on a particular topic provided in the statute itself. It can be a specific Act or legislation dealing with a particular subject.

The rest of this article series will explore the duties and responsibilities of retirement fund trustees under Section 37C of the Pension Funds Act in more detail. To access the full-length publication, Retirement fund death benefits: Trustees' duties and responsibilities, *visit our website:* www.atleha-edu.org.

Do you have a question that you would like us to address in a subsequent article?
If so, please send your questions or suggestions for article topics by email to:
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