

Prioritise your dependants and loved ones during National Wills Week

It's National Wills week from 17-21 September 2018 – consider taking advantage of the offer from a participating attorney to get your Last Will and Testament (Will) drafted. It's also an opportune time to learn more about the death claims process for your different investment products so that you can share this information with your dependants and loved ones.

Having a Will is a key part of getting your financial affairs in order, but the death benefits under your retirement, life and discretionary products are not all bound by what you specify in your Will. It is important to familiarise yourself with the laws which dictate the death claims process for your investment products:

Retirement funds

The purpose of retirement funds is to save for your retirement, but if you die prior to retirement the purpose changes to providing for those who were dependent on you at the time of your death. Pension, provident and retirement annuity funds are subject to the Pension Funds Act (the Act), which imposes onerous legal duties on the trustees, who must decide who will receive the death benefit.

Who qualifies to receive your retirement fund benefits?

The trustees can only allocate the death benefit to 'dependants' or 'nominees'. The Act defines dependants as spouses, children, anyone proven to have been financially dependent on you at the time of your death, anyone entitled to maintenance, as well as anyone who may in the future have become financially dependent on you.

A nominee is any party (natural person, trust or legal entity) whose details you have provided to the retirement fund in writing indicating that they should be considered by the trustees for a possible allocation of the death benefit. Your personal circumstances change over time, so it is important to keep your nominations up to date. Retirement fund death benefits will only become payable to your estate if you don't have dependants or nominees.

The fact that a person qualifies as a dependant in terms of the Act, or that a person, trust or legal entity was nominated, does not entitle them to receive some, or all, of the death benefit. It merely entitles them to be considered by the trustees. The reason for this is the intent of the Act, which is to protect the needs of those who were dependent on you at the date of your death. This intent overrides any wishes that you may have had.

The role of the trustees

According to the Act, the trustees have at least 12 months within which to execute three very specific duties:

1. To identify, trace and investigate the personal circumstances of all your dependants and nominees
2. To make a fair allocation of the death benefits amongst them
3. To decide on the mode of payment – i.e. whether the money will be paid directly to the dependant or nominee, or to the legal guardian of a minor, or to a trust or beneficiary fund

The claims process can take a long time

It is important to be aware of the detail and potential length of the process and communicate this to your dependants and nominees. Investigations involve multiple stakeholders and can be prolonged when:

- The contact details of dependants and nominees are unknown or outdated
- Information and documentation is incomplete, vague or conflicting
- There are competing claims of dependency
- The cause of death on the Death Certificate is recorded as 'under investigation/unnatural', which means that the circumstances around the cause of death must be established

Once an investigation is completed, the trustees are required to consider and apply their minds to the information gathered about each person who qualifies for consideration. The following factors, as well as the value of the death benefit, are relevant:

- Age
- Extent of dependency on you at the date of your death
- Current financial position
- Future earning potential and prospects
- Relationship with you
- Your wishes in terms of your nomination

The four scenarios that trustees must adhere to

The Act outlines four scenarios according to which the trustees must allocate the death benefits among dependants and nominees:

- **Scenarios 1 & 2:** Apply where there are only dependants, or where there are dependants and nominees. In these circumstances the benefit is allocated at the discretion of the trustees based on the information they manage to gather.

- **Scenario 3:** Applies when there are only nominees. Here the benefit becomes payable to the nominees in the same proportions in which they were nominated. The death benefit can, however, only be paid if the estate is solvent. If the estate is insolvent (the aggregate debts exceed the aggregate assets), the death benefit must first be used to bring the estate to a solvent position; the balance will become payable to the nominees. These payments can only be made after 12 months have elapsed from date of death. This is a legal waiting period that is applied to give untraced dependants a chance to come forward.
- **Scenario 4:** Applies when no dependants can be found, and where no nominations have been made. In this instance the death benefit becomes payable to the estate. The same legal waiting period as above applies to this scenario.

If your dependants/nominees wish to draw a cash lump sum from the death benefit which has been allocated to them, the fund administrator will first need to obtain a tax directive from SARS, as tax may have to be deducted before the benefit is paid over. While processing death claims for retirement funds can take a long time, you can expedite the process by making sure that all information about your family circle and nomination you give to your funds is [complete and kept up to date](#).

Living annuities, endowments and tax-free investment products

Living annuities, endowments and tax-free investment products (life products) fall under the Long-Term Insurance Act. Subject to the terms and conditions of each product, you can appoint specific beneficiaries to receive the death benefit. Where no beneficiaries are appointed, the death benefit will become payable to the estate. Living annuity lump sums are subject to a tax directive obtained from SARS, and endowments are subject to capital gains tax (CGT) deductions.

The claims process is relatively quick

It is relatively quick and straightforward to process these benefits, so it is worthwhile appointing those who would need immediate financial support as beneficiaries. Doing this will facilitate direct payment to these beneficiaries, and will see them through until the retirement fund death benefits are paid, and the estate has been finalised.

Unit trusts

Unit trusts (discretionary products) fall under the Collective Investment Schemes Control Act. You cannot appoint beneficiaries; the death benefit becomes an asset in your estate and may in certain instances be subject to capital gains tax (CGT) deductions.

Your estate

When you die you may also leave behind other assets, which make up your estate. Estates are subject to the Administration of Estates Act.

All estates must be reported to the Master of the High Court, who grants letters of executorship to the nominated or appointed executor. The executor will attend to the administration and winding up of the estate, which usually takes several months. However, if there are complications, it can take years.

The executor must settle all of your liabilities – such as home loans, vehicle debt, credit cards, accounts etc. – from these assets. Whatever is left of your estate after settling estate administration fees and estate duty, can then be inherited by your heirs.

The role of your Will

When you die and have a valid Will in place, your estate will be dealt with according to the provisions of your Will. Your Will can only deal with assets which fall within your estate, and usually deals with two main aspects:

- Bequests – where you direct that specific persons must receive specific assets.
- The residue – which is what is left of your estate after all liabilities have been settled by the executor, and bequests have been taken care of. This residue is then inherited by the people/institutions who you named in your Will as the residual heirs.

If you die without a Will in place, i.e. 'intestate', your estate must be dealt with according to the Intestate Succession Act. This means that your blood relationships (which includes legally adopted family members) will determine who will inherit from your estate.

In summary, if you want to dictate how the assets in your estate are distributed, you should execute a valid Will, keep it updated, and store it in a safe place where it can be found after your death. It is never too early or too late to execute a Will. There are a number of requirements that must be met for a Will to be valid, so you may wish to get assistance from a professional when putting your Will together.

It is important to give serious thought to what will happen after your death, so that there are benefits that can be paid out immediately and directly to those who are dependent on you – i.e. through life products. Take a long-term, considered view to providing for these dependants through retirement products, as well as by making cash available in your estate to enable the settling of your debt – i.e. through discretionary products.

© 2018 Allan Gray Proprietary Limited

All rights reserved. The content and information may not be reproduced or distributed without the prior written consent of Allan Gray Proprietary Limited (Allan Gray).

The information and content of this publication is provided by Allan Gray as general information about the company and its products and services. Allan Gray does not guarantee the suitability or potential value of any information or particular investment source. The information provided is not intended to nor does it constitute financial, tax, legal, investment, or other advice. Before making any decision or taking any action regarding your finances, you should consult a qualified financial adviser. Nothing contained in this publication/presentation constitutes a solicitation, recommendation, endorsement or offer by Allan Gray, but is merely an invitation to do business.

Allan Gray has taken and will continue to take care that all information provided, in so far as this is under its control, is true and correct. However, Allan Gray shall not be responsible for and therefore disclaims any liability for any loss, liability, damage (whether direct or consequential) or expense of any nature whatsoever, which may be suffered as a result of or which may be attributable, directly or indirectly, to the use of or reliance upon any information provided.