GRAYISSUE

Last will and testament – not necessarily done and dusted

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Different investment vehicles have varying rules and processes for allocating benefits when an investor dies. For example, when you buy unit trusts you are not asked to nominate beneficiaries. Your investment will form part of your estate and it will be subject to estate duty. On the other hand, living annuities, which are governed by the Long Term Insurance Act, require that you name specific beneficiaries. These nominations are honoured and the amounts due to the beneficiaries are excluded from estate duty.

The allocation of benefits for retirement funds (e.g. retirement annuities, pension and provident preservation funds) is more onerous, with much information needed and long waiting periods before any payments are made. This can lead to frustration at an already emotional time for surviving family members.

Clarifying some of the key considerations in the death claims process for retirement funds

The board of trustees which oversees the retirement fund in question is responsible for the allocation of the benefit in terms of Section 37C of the Pension Funds Act, 1956 (the Act). Importantly, the Act favours dependants above all else, and will override the provisions of the deceased member's will. The Act defines 'dependants' as spouse, children (biological and adopted), anyone (including step-children) proven to have been financially dependent on the deceased or entitled to maintenance, as well as anyone who may have become financially dependent on the deceased.

What is the death benefit?

For members of Allan Gray retirement funds, the death benefit is the market value of the deceased member's investment account.

Who receives the death benefit?

The trustees determine who the benefit is allocated to and in what proportion. The trustees are legally obliged to:

1. Identify the deceased's dependants, if any. The trustees need to gather detailed information about the deceased member. In certain circumstances this process may reveal information sensitive and unknown to the family. All information gathered is treated as confidential.
2. Establish the financial circumstances of the identified dependants.
3. Allocate the benefit to those dependants (taking into account whether the deceased nominated any of them to receive the benefit). The trustees have sole discretion to decide the proportions in which the benefit is allocated.

Will people nominated by the deceased receive a benefit?

The trustees may only consider people nominated by the deceased (nominees) after they have considered the deceased's dependants.

Roles in the death claims process for the Allan Gray retirement funds

Role	Responsibilities
Administrator of the fund	• Assists the trustees in gathering information regarding the deceased's circumstances and possible dependants • Provides a comprehensive case report to the trustees based on the information available
Trustee	• Determines who the dependants are (as defined in the Pension Funds Act), using the administrator's report • Allocates the benefits to the dependants and/or nominees

How long will the process take?

The trustees will make their decision as soon as complete information is available. This can take up to a year from the date of the member's death.

What if there are no dependants?

If the trustees do not become aware of any dependants within a year from the date of the member's death, they must pay the benefit to the nominees, but only if the deceased's estate is solvent. If the deceased's estate is insolvent (i.e. the debts exceed the assets) then the shortfall in the estate must be paid to the estate first, before paying any benefit to the nominees.

If the trustees do not become aware of any dependants within a year from the member's death, and no beneficiaries have been nominated, a lump sum payment will be made to the deceased's estate.

How will the benefit be paid?

Beneficiaries may choose to transfer their benefit to a living or life annuity (which is exempt from estate duty) and/or take a cash lump sum (from which tax may be deducted). Where the beneficiary 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 beneficiary. The benefit may also be paid to a trust if nominated by the deceased. If no such nomination was made, payment may still be made to a trust if the beneficiary or his/her legal representative (in the case of minor or incapacitated adult) nominated the trust, and the nomination is approved by the board of trustees.

Commentary by Jonathan Turner, life and retirement fund operations, Allan Gray