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BUILDING WEALTH SINCE 2004

## IN THIS ISSUE

*Death benefits from retirement funds are allocated by trustees under Section 37C, prioritising financial dependants over nominated beneficiaries.*

*The process ensures fair distribution based on need, dependency, and circumstances, meaning payouts may differ from a member's wishes to protect vulnerable dependants.*

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# UNDERSTANDING DEATH BENEFIT ALLOCATION IN SA RETIREMENT FUNDS

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The passing of a loved one is never easy. Beyond the emotional toll, families often face complex financial decisions. One of the most significant is the allocation of death benefits from retirement funds, governed by Section 37C of the Pension Funds Act. With recent updates, including the 2025 Constitutional Court ruling and the 2026 pension and tax reforms, it's crucial to understand how trustees make these decisions, what rights dependants have, and how different types of life cover are treated.

## KEY UPDATES IN 2025/2026

- **Trustee responsibility:** Trustees remain the ultimate decisionmakers. They must investigate and identify all dependants – legal, financial and factual – before allocating benefits.
- **Constitutional court ruling (2025):** Dependency is assessed at the date of death, not at the time of distribution. This ensures fairness and prevents later disputes.
- **Equitable distribution:** Trustees must balance the needs of multiple dependants, including spouses, children, and even financially dependent parents or partners.
- **No automatic allocation:** Nomination forms guide trustees, but do not bind them. The law prioritises dependants over nominees.

- **Tax considerations (2026):**

- Lump sum death benefits remain subject to SARS retirement fund tax tables, now adjusted upward in 2026 to reduce bracket creep.
- Retirement fund contribution limits have increased, meaning members may have larger vested balances.
- Tax-free savings account (TFSA) annual caps have risen, and offshore allowances doubled, affecting estate planning and survivor benefits.
- Withdrawals from the new two-pot retirement system (introduced in 2024, fully operational in 2026) are taxed differently depending on whether they come from the savings pot or the retirement pot.

## HOW TRUSTEES DECIDE

Trustees follow a structured process:

- **Investigate:** Collect information on dependants, nominees and financial circumstances.
- **Assess:** Determine levels of dependency (legal, financial, factual).
- **Allocate:** Distribute benefits equitably, not necessarily equally.
- **Communicate:** Notify beneficiaries and explain decisions.

## WHO QUALIFIES AS A DEPENDANT?

- **Legal dependants:** Spouses and minor children.
- **Financial dependants:** Anyone receiving financial support from the deceased.
- **Factual dependants:** Individuals who can prove reliance on the deceased's support.

## APPROVED VS UNAPPROVED LIFE COVER IN RETIREMENT FUNDS (2026)

Understanding the distinction between approved and unapproved life cover is essential, as each type is treated differently under the Pension Funds Act.

### APPROVED LIFE COVER

- Provided within a retirement fund (pension or provident fund).
- Governed by Section 37C, meaning trustees decide how to allocate the death benefit among dependants and nominees.
- Premiums are paid from the retirement fund; lump sum benefits are taxed according to updated SARS retirement fund tax tables (2026).
- Trustees have discretion over distribution, ensuring dependants are prioritised over nominees.

### UNAPPROVED LIFE COVER

- Provided outside the retirement fund, usually through an employer's group risk policy.
- Employer is the policyholder, not the retirement fund.
- Benefits are paid directly to nominated beneficiaries specified in the policy – trustees have no discretion.
- Premiums are taxed as a fringe benefit to the employee, but payouts remain tax-free to beneficiaries.
- Member's nomination form is binding, giving certainty, but potentially excluding dependants not listed.

| Aspect              | Approved cover (inside fund)                   | Unapproved cover (outside fund)     |
|---------------------|------------------------------------------------|-------------------------------------|
| Policyholder        | Retirement Fund                                | Employer                            |
| Trustee Discretion  | Yes – allocation under Sec. 37C                | No – insurer pays as nominated      |
| Tax on Premiums     | Paid from fund, not taxed                      | Taxed as fringe benefit to employee |
| Tax on Benefits     | Taxed per SARS retirement tables (2026 update) | Tax-free to beneficiaries           |
| Beneficiary Control | Trustees decide - dependants prioritised       | Member's nomination is binding      |

## PRACTICAL TAKEAWAYS FOR MEMBERS AND FAMILIES

- Keep nomination forms updated. They guide trustees, but don't override the law.
- Inform family members about your retirement fund and life cover to avoid confusion.
- Understand that trustees must act in the best interests of all dependants for approved cover, while unapproved cover strictly follows your nomination.
- Factor in the 2026 tax changes: higher contribution limits, adjusted tax brackets, and increased TFSA caps may affect estate planning.
- Consider the two-pot system when planning withdrawals and survivor benefits.

## FINAL NOTE

The 2025 Pension Funds Act updates and Constitutional Court ruling reinforced fairness and protection for dependants. The 2026 pension and tax reforms further reshape the landscape, with higher retirement ages, new withdrawal rules and updated tax treatment. While trustees hold significant discretion over approved benefits, unapproved cover provides certainty by following nominations. Together, these mechanisms ensure that South Africa's retirement and risk benefit system continues to balance equity, clarity and evolving financial realities.

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