UCTRF

The Death Benefit Process:
An explanatory guide for members (and their dependants and nominees)

The Legal Context

1. The Pension Funds Act (Act) regulates the payment of death benefits should you die while a member of the UCTRF.
2. The Act states that when you die, any benefit that is payable on your death must be paid to your dependants and/or nominees.
3. The Act makes it clear that the benefit does not fall into your estate if you are survived by a dependant. The consequence of this is that your benefit is protected from the claims that creditors may have against your other assets. However, it also means that the law of succession does not apply – i.e. that your benefits will not be distributed in accordance with your will or the law of intestate succession if you have no will.
4. Instead, the Act places an obligation on the UCTRF Management Board (the Trustees) to decide how the benefit should be shared between your dependants and nominees (assuming that you are survived by at least two dependants or by at least one dependant and one nominee). It is the Trustees who must decide on a distribution that *they* think is fair and equitable.
5. The law is slightly more complicated if you are not survived by a dependant, but only by one or more 'nominees'. A nominee is someone you have nominated in your nomination of beneficiary form, but who does not fall within the Act's definition of dependant. If you are survived by only nominees, the Trustees are bound by your wishes. The Trustees must pay the nominees whatever proportion you have said each nominee must receive. If the nominees' allocated share is less than 100%, the balance must be paid to your estate. However, an important proviso is that the nominees can only be paid the benefit if the assets in your estate are sufficient to meet the claims of your creditors. If your assets aren't sufficient, your death benefit will be reduced by however much is required to first pay the creditors.
6. If you are not survived by a person who falls within the Act's definition of dependant, and if you have not nominated anyone to receive the benefit, the Trustees pay the benefit to your estate.
7. You are strongly encouraged to complete a nomination of beneficiary form. Your wishes, even though they are not binding on Trustees if you are survived by dependants, are an important guide to Trustees, and the Trustees will always take your wishes into consideration. It is also very useful to Trustees if you are able to provide them with additional information and with your reasons for wanting the benefit shared in a particular way.

The 'three' stages of the death benefit process

Stage one: Investigate

In stage one, the Trustees must undertake a very extensive fact-finding exercise. During this phase, they must identify and locate all your dependants, and they must thoroughly investigate the financial and personal circumstances of all your dependants and any other nominees.

The Trustees' first duty is simply to *identify everyone* who *may* be your dependant. The Act defines the term 'dependant'. The definition is very broad. Your spouse and children are always dependants. Anyone you were supporting financially, directly or indirectly, and partially or fully, is also a dependant.

Your parents, siblings, grandparents, grandchildren, ex-spouses, and possibly others *may* also qualify as your dependants. Cohabiting partners may also be dependants.

Identifying all your dependants takes time. This is because the Trustees must *first* identify all your relatives who *possibly* qualify as dependants, and they must then decide whether those relatives *are*, in law, your dependants. For example, you may have a parent or sibling who is struggling financially. If you were assisting them in some way, for example by providing them with regular sums of money, or accommodation, or food, they are automatically your financial dependants. However, *even if you were not* assisting them financially, you may have been under a legal duty to do so if you had the means to do so. It is the Trustees' duty to decide whether you owed these relatives a duty of support or not.

The Trustees must therefore conduct a thorough investigation into the financial and personal circumstances of each person who is either a dependant or nominee, or who may possibly be a dependant. This investigation is crucial to ensuring that all your dependants have been properly identified, *and* to ensuring that the Trustees have all the information they need to distribute the benefit fairly.

The investigation can be difficult for your dependants and nominees. They have been recently bereaved, and are now asked to provide personal information that they may feel is intrusive. The more information you provide to the Trustees in your nomination of beneficiary form, the easier it is for the Trustees to identify your dependants correctly and complete the investigation as quickly as possible.

The investigation phase can also be time-consuming, because of the amount of information the Trustees must obtain. For this reason, the Act gives the Trustees up to 12 months to identify and trace your dependants. The Trustees may not rush the investigation or pay the benefit without having completed their investigation. Unfortunately, this can create financial hardship for some dependants. We urge you to take this into consideration as part of your financial and estate-planning, and to ensure that your dependants have sufficient funds to tide them over until the death benefit is paid.

Stage two: Allocate

Once the investigation phase has been completed, the Trustees must decide how the benefit should be shared between your dependants and nominees. The Trustees must allocate the benefit in the proportion *they* consider to be fair and equitable.

In deciding how the benefit should be allocated, the Trustees must consider the following factors:

- your wishes as stated in your nomination of beneficiary form;
- the nature of the relationship between you and the dependant/nominee;
- the financial circumstances of your dependant/nominee, having regard to their age, their current financial means and future financial prospects, their assets and liabilities, the extent of their dependency on you (if any) and so forth;
- the size of the death benefit;
- any other factor that may be relevant in the particular circumstances.

The Act gives the Trustees a broad discretion when deciding how to allocate your death benefit. They may, if they consider it fair, allocate the full benefit to only one dependant, or they may share it between some dependants, or they may share it between all your dependants. The Trustees are not obliged to include every dependant in the distribution. The Trustees are also not obliged to give each dependant they select an equal share.

Similarly, if you are survived by dependants and nominees, the Trustees must decide on the allocation they think is fair. It is only if you are survived by nominees only, that the Trustees must follow your wishes – provided your estate has enough funds to pay all your creditors.

Stage 3: Pay

Once the Trustees have decided who should share in your benefit, they must decide how the benefit should be paid.

The permitted payment options under the Act are:

a) to use all or part of the benefit to purchase an annuity in the name of the beneficiary;
b) to pay the benefit directly to the beneficiary (i.e. into their bank account);
c) to pay the benefit to the beneficiary's guardian or caregiver;
d) to pay the benefit to a beneficiary fund;
e) to pay the benefit to a trust.

The different payment options have different advantages and disadvantages. It is important that your dependants and nominees obtain independent financial advice regarding the payment option they feel would be most appropriate for them. A financial adviser will consider various factors, including the size of the benefit and the investment options, the costs of the different options, the tax implications, and other factors the adviser considers relevant. Only an accredited financial advisor may give financial advice The Trustees and staff of the UCTRF are not accredited financial advisors and are therefore not entitled to give financial advice. The Trustees may ask your beneficiaries to submit evidence that they have taken sound financial advice.

When dealing with payments to minor beneficiaries (and incapacitated majors), the Trustees must scrutinise the preferred payment option more carefully. The Trustees' main responsibility is to try to ensure that the benefit is protected and invested wisely for the duration of the beneficiary's dependence

a) When considering whether a minor's benefit should be paid to the guardian/caregiver, the Trustees must investigate the guardian/caregiver's own financial affairs and personal circumstances closely. The Trustees is expected to conduct a so-called 'financial literacy' investigation, to determine whether the guardian has the skills and capacity to administer the benefit in the best interests of the beneficiary. In those circumstances in which the Trustees authorise payment to a guardian/caregiver, the Trustees will usually not pay the minor's benefit into the guardian/caregiver's bank account, but into a bank account that has been opened in the name of the minor.
b) When the guardian/caregiver requests that payment be made to a family trust, the Trustees will need to scrutinise the trust deed before authorising payment. The Trustees may need to request an expert opinion on the trust deed – for example, by asking a legal professional to confirm that the trust adequately protects the interests of the minor children. The trust must, for example, be one that gives the beneficiary a vested right to the capital and proceeds of the benefit.

Final message:

The death benefit process is often a very difficult and emotionally-taxing one for your dependants and nominees. The Trustees understand that fact, and hope to finalise the process as speedily, and sensitively, as possible. In order to do so, they rely on the information that you, and your beneficiaries, provide to them.

https://uctrf.co.za/uctrf/forms

Relevant Extracts from the Pension Funds Act 24 of 1956:

Dependant

Spouse

Section 37C

Relevant Extract from the UCTRF Rules