

## Your Time Is Up – Now What?

There are many misconceptions about who deals with what when a person passes away. I have heard statements ranging from sublime to ridiculous about what must happen in certain circumstances and who is responsible for the practicalities surrounding the death of a loved one.

The table below is from a recent Momentum presentation and offers a good summary of the situation :

	Personal Estate Assets	Deemed Estate	Compulsory Assets	Trust Assets
<b>Asset Description</b>	Property	Insurance Policies to nominated beneficiaries	Pension Funds	All Assets
	Business Interests (incl. Loan Accounts)	Unapproved Group Life	Provident Funds	NB Loan Accounts
	Moveable Assets		Retirement Annuities	Estate duty implications
	Bank Accounts		Preservation Funds	
	Investments (Local and Offshore)		Approved Group Life	
<b>Responsible Person</b>	Executor	Executor may need to provide Letter of Executorship / Proceeds are usually claimed by the Financial Advisor	Family / Financial Planner Pension Fund may need information from the Executor to finalise the claim	The Trustees control the Trust
<b>Disposed Via</b>	Disposed in terms of the Will	Contractual Agreement between policy holder, insurer and nominated beneficiary	Section 37C of Pension Funds Act	The Trust Deed
	Restricted by Marital and maintenance claims	Restricted by Estate Duty implications and beneficiary may be liable for estate duty	Trustees of Retirement Fund make the decision and may take up to 12 months to do so	Loan Accounts can be in the Will

### Personal Assets

Personal assets are dealt with in terms of your will. In South Africa, we have the right to testamentary disposition (i.e. you can give your money to whomever you please). This is, however, restricted by marital claims (for example, the accrual system) and maintenance claims (especially spouses and minor children). Should you pass away without a will in place, the government does not take all of your money! South Africa has a law of intestate succession (intestate refers to who gets what should you die without leaving a valid will). Your Executor (either nominated in your will or appointed by the Master of the Supreme Court) needs to execute your will by paying all your liabilities and distributing all your assets. This is important because wills are often impossible to execute, either due to lack of funds or impractical or illegal stipulations.

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### Deemed Estate

Your deemed estate is the assets which are paid directly to beneficiaries of policies, but which are still included in your estate duty calculation. When setting up these policies, it is important to agree on who will be responsible for any estate duty payable. It is also important to remember that your estate may need liquidity to cover liabilities, so it is not always wise to have beneficiaries on all of your policies.

### Compulsory Assets

This is probably the area that causes the most confusion with regards to death benefits. In most circumstances, your will has no say over how these benefits are distributed. These benefits are distributed in terms of Section 37C of the Pension Funds Act. Section 37C is probably the cause of most of my grey hairs, as it looks at degree of dependence (whether they were nominated beneficiaries or not). The trustees of the retirement fund have the final say in where your compulsory assets are paid. This is an onerous and lengthy process and whilst the decisions may comply with the law, they are often bereft of any common sense and are sometimes paid in direct contrast to beneficiary nominations.

### Trust Assets

By placing your assets into a trust, you are giving up control of these assets. Loan accounts are sometimes an exception to this rule. If you are owed money by a trust, this asset can be dealt with in your will. If you owe money to a trust, your estate will need to repay these loan accounts. Remember that a trust is *"a creature of contract"* (i.e. it is created in terms of a trust deed, which is a contract), and the trustees need to deal with all income and assets in accordance with the trust deed.

You can see from the above that dying can be a complex business and that it is important to understand the different processes of who deals with what when you pass away.

Kind regards,



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Wealth Manager – Hampshire Independent Advisors

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