

**READERS WRITE**

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# ***lifestyle***

Our recent article on estate planning and wills generated interesting questions from readers in terms of divorce and death, highlighting how important estate planning is when it comes to financial planning

# Your financial dependants have a claim on your ...



**ANGIE WRITES**

I got divorced 12 years ago and we agreed to divide our money. The divorce agreement did not include my pension fund, as my partner received other assets from the marriage. At the time, my ex-husband was financially secure. A few years ago, he fell on hard times and I have been supporting him financially. Even though we are not married and my pension did not form part of our divorce agreement, does he have a claim on my pension as a financial dependant should I die?

## Will my ex-wife keep the house?

**MONWABISI WRITES**

I got divorced in 2009 and the family property was divided equally (50-50) between my ex-wife and myself. My ex-wife is preventing the sale of the property. I am concerned as I am now remarried and want to know if I can leave my share of the property to my new wife should I pass away.

**GERALDINE MACPHERSON REPLIES**

As the divorce order stipulates that each party is awarded 50% of the immovable property, you have a legal right to a 50% share of that house. It, therefore, forms part of your estate and can be bequeathed to your current spouse.

**GERALDINE MACPHERSON, LEGAL MARKETING SPECIALIST AT LIBERTY, REPLIES**

Your ex-husband could have a claim on your pension as a financial dependant. In terms of section 37C of the Pension Funds Act, the trustees of the fund have to consider all factual and legal dependants' claims. While he would not be a legal dependant, as you are divorced, the fact that you have been factually supporting him certainly could render him a factual dependant, and he could be considered when it comes to paying the death benefit. He would have to prove that you had made the regular payments to him and the extent to which he relied on those payments for his "maintenance". It is important to note that anyone can be a factual dependant if they are receiving regular payments from you that they depend on financially. This has implications for any estate planning.

## How do I replace a letter of executorship?

**LAZARUS WRITES**

I have lost a letter of executorship. Please advise on how I could obtain another letter. It was first issued in 2007 after the passing of my wife.

**AARON ROUP OF THE FIDUCIARY INSTITUTE OF SA (FISA) REPLIES**

You would need to state in an affidavit that the original letters of executorship have been lost and then apply for a certified copy from the master's office where the estate was registered. The cost for a certified copy is R9 per document and you need to bring proof of payment that it has been paid into the master's bank account. Fisa can provide the account details. Fisa's website is [www.fidsa.org.za](http://www.fidsa.org.za).

# How do I invest my pension?

**LERATO WRITES**

I have accepted a new job offer. However, I do not want my pension to be paid out because there are tax implications. How can I have this money reinvested so that I do not have to pay tax? Is it advisable to have the pension fund transferred to the new employer, and how does one go about it?

**CITY PRESS REPLIES**

The most important decision you must make is not to cash in this money. These funds form the basis of your retirement plan. Even the smallest withdrawal from your funds has a significant impact on your retirement. You have three options when it comes to preserving these funds for your retirement. **Company fund:** Your first option is to transfer it to your new company pension fund. This is often the most cost-effective as the costs of a large company pension fund are usually carried by the employer and generally are lower due to economies of scale. You can speak to your current employer about transferring the funds to your new employer. This can take a couple of months and some former employers don't want the hassle, but you have the right to request it and they have to cooperate. **Preservation fund:** You can transfer it to a preservation fund. Currently, preservation funds allow you to make a one-off withdrawal before retirement (although it would be taxed) and this can act as an emergency safety net should you need it. **Retirement annuity:** You can transfer the fund to a retirement annuity. This would only be beneficial if you were planning to continue contributing to the fund if, for example, your new employer did not provide a retirement fund. You would not have access to the funds before the age of 55. If you select either a preservation fund or retirement annuity, watch the costs carefully. You do not want to suddenly find that your pension savings have been reduced by upfront and high annual fees. If you meet with a financial adviser, there will be advice fees, but find out about the actual product fees. You should not be paying an upfront fee for the product and ongoing product costs should be limited to 1% per annum.

## How much can a lawyer charge for an RAF claim?

**OUPA WRITES**

My wife passed away in a car accident two years ago. The attorney who helped me lodge a claim with the Road Accident Fund (RAF) took a fee of 25% of the payment I received from the RAF. Is this normal?

**CITY PRESS REPLIES**

If an attorney works based on a contingency fee agreement, the attorney only gets paid if he or she is successful. Then they can charge a fee up to a maximum of 25% of the claim.

**ACCORDING TO THE ROAD ACCIDENT FUND**

The RAF Act defines a contingency fee agreement as an agreement between an attorney and his or her client in which the parties agree that: 

- Unless the client is successful to the extent described in the agreement, the attorney will not be entitled to any fees for services rendered; and
- If the client is successful to the extent described in the agreement, the attorney will be entitled to fees for services rendered equal to, or higher than, his or her normal fees, as specified in the agreement.

The higher fee (that above the attorney's normal fee) may not exceed the attorney's normal fees by more than 100% and, in the case of claims for money, the total of the higher fee may not exceed 25% of the total amount of money awarded to the client.