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Pensions and wills: know your dependants' and family's rights

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MANY company employees mistakenly believe that the proceeds of their retirement funds devolve after death in terms of their will.

This is according to David Knott, a fiduciary expert at Private Client Trust and a Fiduciary Institute of SA member, who advises that as it stands the Pension Funds Act legislates that the proceeds of these funds do not form part of the estate of the employee and therefore do not follow the terms of a will.

Many companies insist that their employees become members of a pension or provident fund associated with that company. Normally the employee would contribute to the fund on a monthly basis and the employer would also make contributions according to the rules of the fund.

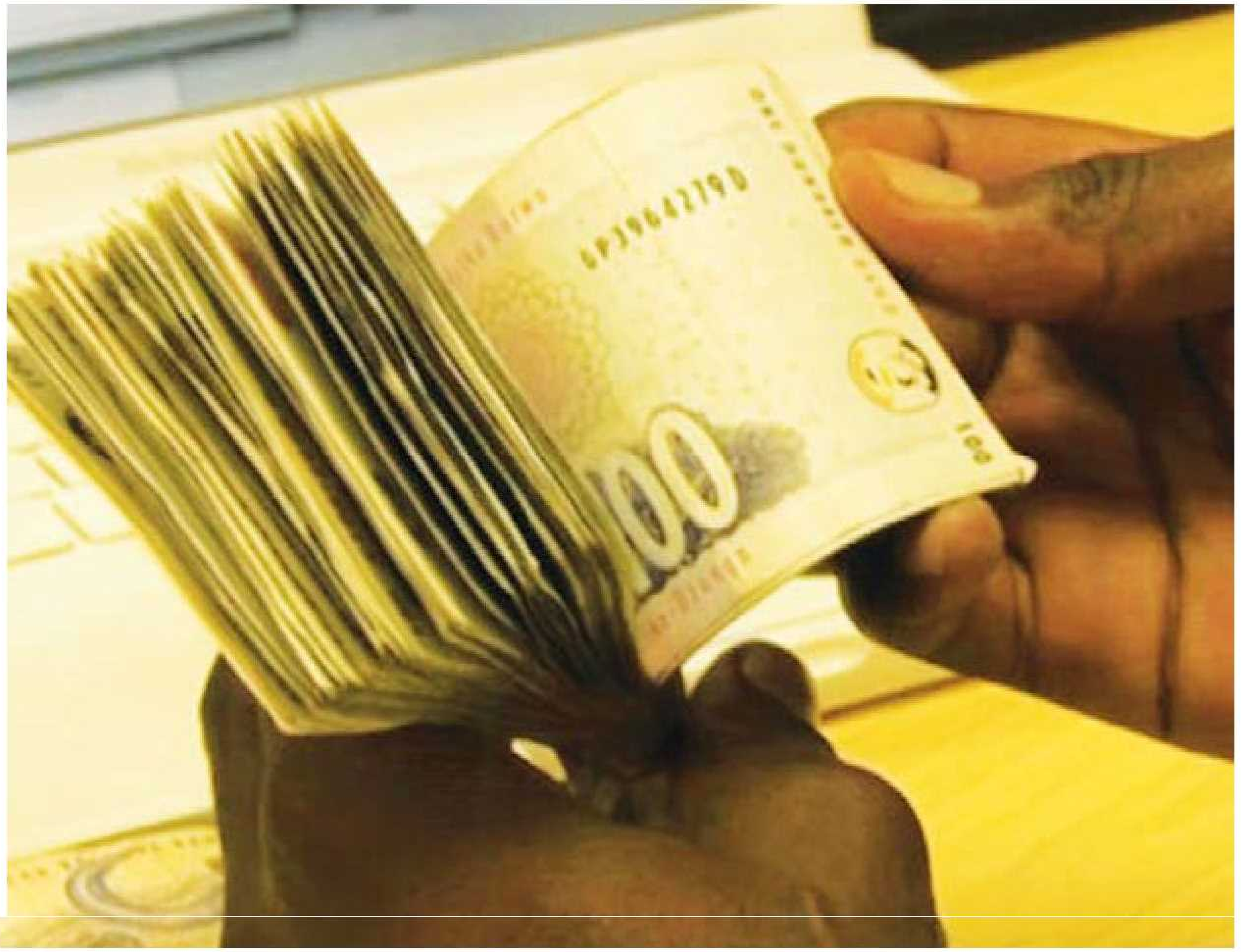
Knott says: "These proceeds must by law be applied towards the dependants of the deceased employee. The employee is encouraged to nominate a beneficiary or beneficiaries of the proceeds but his nomination may be ignored by the fund trustees if these beneficiaries are not dependants of the employee.

"A dependant could normally include the spouse or children, even adopted or stepchildren plus any other person who can show that he was dependent upon the deceased employee. It is clear that this other dependant could include illegitimate children, remote family or even a friend of the deceased who relied on his financial support."

According to Knott, after the death of an employee, the trustees of the fund need to identify the dependants, notwithstanding that beneficiaries might have been nominated.

"Dependants have one year to come forward and make a claim, although in most instances the dependants are fairly easy to identify. The trustees also need to ascertain the financial circumstances of each dependant as this may have changed following the death of the employee.

"For example, a life policy may have paid out to them. Once the trustees are satisfied that there are no other dependants and the needs of dependants have been investigated, they must rule who is to receive what proportion of the proceeds. Should a beneficiary be a minor or incapacitated, the trustees may either elect to pay the benefit over to the guardian or caregiver of the dependant or if the benefit is substantial the trustees may pay the proceeds to a beneficiary trust. A major dependant may also request that any benefit accruing to him be paid to a beneficiary trust."



'INHERITANCE': Employees should nominate beneficiaries to the pension proceeds but nominations may be ignored by fund trustees. PICTURE: MG.CO.ZA

"If no dependants are ascertained, after the anniversary of death the Fund Trustees will pay the proceeds over to the estate of the deceased employee," Knott says.

"Once paid over, the proceeds would devolve in terms of a will, if any, or in terms of intestate succession."

Employees should therefore ensure that they complete a beneficiary nomination form which must be lodged with the human resources department of their employer. This form must also be updated as circumstances change.

Knott advises that it is important that the nominations cover all those who are dependent upon the employee as this will save time when the trustees are called upon following a death, even if family skeletons need to be disclosed.

"This power to ignore a beneficiary nomination does not apply to a normal retirement annuity policy purchased in the course of retirement planning."

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