



be informed

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Deductions from pension benefits

Section 37A of the Pension Funds Act – Pension benefits not reducible, transferable or executable

Section 37A of the Pension Funds Act provides general protection regarding members' pension benefits. Pension benefits may not be reduced, transferred, ceded, pledged, hypothecated, attached or executed except as allowed for by the Pension Funds Act, the Income Tax Act and the Maintenance Act. A maximum amount of R3 000 per annum may be taken into account in determining a judgment debtor's financial position in terms of section 65 of the Magistrates' Courts Act. Section 37D specifies the deductions allowed by the Pension Funds Act.

A member or beneficiary may not use their fund benefits as security for other debts. Any attempts to transfer, cede, pledge or hypothecate the benefit will not be enforceable against the fund. The board may, where appropriate, withhold or suspend payment of a member's benefit or pay it to the member's dependants (or their guardians or trustees) if the board discovers that the member is attempting to cede or pledge the benefit to a third party.

Creditors may not attach retirement benefits in the hands of the fund, except for:

- deductions permitted by the Pension Funds Act, such as housing loans, divorce or maintenance orders, damages caused by the employee, etc;
- tax – in respect of lump sum payments in terms of the Second Schedule of the Income Tax Act and in respect of other arrear taxes (IT 88);, and
- judgment debt procedures - where no further assets can be found to be sold in execution, an amount of only R3 000 per annum in respect of further pension payments can be taken into account for the purposes of an order of court.

Section 37D of the Pension Funds Act – Fund may make certain deductions from pension benefits

Section 37D specifies the deductions permitted by the Pension Funds Act. It allows a fund to make the following deductions from the pension benefits of members:

- Any amount due by the member on the benefit in terms of the Income Tax Act.

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- Where the fund rules allow for housing loans or guarantees provided by the fund, any amount due to the fund in respect of:
 - a housing loan granted by the fund to the member, or
 - any amount for which the fund is liable where the fund has given a guarantee in respect of a housing loan granted to the member.

This can be deducted –

- o from the benefit that the member or beneficiary becomes entitled to in terms of the rules of the fund;
 - o in the case of a transfer to another fund, from the transfer amount. The trustees of the transferring fund must be satisfied that it is not reasonably possible to negotiate the repayment or transfer of the loan or guarantee; or
 - o in the case of the member defaulting on the repayment of the loan, the amount of the benefit which the member would have received on termination of membership on the date of default. This deduction must only be made as a last resort, after the trustees are satisfied that no other arrangement for the repayment can be made.
- Where the fund rules allow for housing loans or guarantees provided by the employer, any amount due by a member to his employer when the member retires or ceases being a member of the fund for:
 - housing loans granted by the employer to the member, or
 - any amount for which the employer gave a guarantee for a housing loan granted to the member.

This deduction is limited to the amount that may be taken as a lump sum by the member or beneficiary in terms of the Second Schedule of the Income Tax Act.

- Any amount due by a member to his employer when the member retires or ceases being a member of the fund for compensation (including any legal costs recoverable from the member in respect of a judgment obtained against the member below) for damage caused by the member to the employer in respect of theft, dishonesty, fraud or misconduct, and in respect of which:
 - the member has admitted liability, in writing, to the employer; or
 - judgment has been obtained against the member.

The fund may make the deduction from the benefit payable to the member or beneficiary and pay it to the employer.

- Any amount which the fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of:
 - medical scheme subscriptions;
 - any insurance premium to a long-term insurer; or
 - any purpose approved by the Registrar. An application must be made to the Registrar for this deduction. The Registrar has previously approved deductions in respect of medical aid shortfalls and burial expenses.
- Any amount assigned in terms of a divorce order to a non-member spouse.
- Any amount payable in terms of a maintenance order.
- Employees' tax as a result of a deduction in respect of a divorce order or maintenance order.

In summary, the following deductions are allowed in terms of section 37D of the Pension Funds Act:

- tax on the benefit;
- housing loans granted by the fund, where the fund rules allow for the housing loan;
- a guarantee by the fund in respect of a housing loan, where the fund rules allow for the housing loan guarantee;

- a housing loan granted by the employer, where the fund rules allow for the housing loan;
- a guarantee by the employer in respect of a housing loan, where the fund rules allow for the housing loan guarantee;
- compensation for damages to the employer in respect of theft, dishonesty, fraud or misconduct;
- medical scheme contributions paid by the fund on behalf of the member or beneficiary;
- insurance premiums paid by the fund on behalf of the member or beneficiary;
- amounts paid on behalf of the member or beneficiary for any purpose approved by the Registrar;
- divorce order amounts;
- maintenance order amounts; and
- employees' tax in respect of maintenance or divorce order deductions.

The Pension Funds Act also provides that divorce amounts, maintenance and employees' tax may only be deducted after housing loan or guarantee amounts, provided that the loan or guarantee was granted before the court orders, irrespective of whether the loan or guarantee is due and payable or not. The total of all amounts deducted may not exceed the member's pension interest available at any given time. Where maintenance and divorce orders are issued, maintenance orders should be deducted before divorce orders.

Generally, the order of preference for claims against a retirement fund is:

- tax on lump sums as per the Second Schedule;
- housing loans / housing guarantees;
- maintenance orders;
- divorce orders;
- arrear taxes (IT 88);
- damages claimed by an employer against an employee in terms of Section 37(D); and
- Section 65 of the Magistrates' Courts Act – the amount of R3 000 per annum referred to earlier.

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