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HOW TO BEQUEATH A PROVIDENT FUND AND PENSION FUND

By: Advocate Shavit Ben-Chorin

WHAT TAKES PRECEDENCE?

A will or the beneficiaries stipulated in a Provident Fund (*Kupat Gemel*) or Senior Employee Insurance (*Bituah Menahalim*)?

PENSION FUND

The rule is clear: A pension fund cannot be bequeathed. A pension is paid by the pension fund according to the regulations of the fund. These regulations constitute a standard contract between the fund member and the pension fund and, following the death of a member, the pension fund will pay out the money accrued according to the terms of the fund's regulations. In most, if not all, cases the regulations instruct that the money accrued be paid to the deceased's survivors, i.e. spouse and children up to the age of 21.

This means that the beneficiaries of a pension fund cannot be specified in a will. In the event that the deceased member has no spouse, and the children are over 21, there are no beneficiaries.

PROCEEDS FROM A PROVIDENT FUND (KUPAT GEMEL) AND SENIOR EMPLOYEE INSURANCE

GENERAL

Article 147 of the Inheritance Law determines the legal status of funds managed in the insurance company:

"Following a death of a member of a pension fund, a provident fund or any similar instance, money to be paid out under the terms of an insurance contract does not constitute part of the estate unless specified otherwise."

In other words, Article 147 of the Inheritance Law excludes from the estate all money paid out from a provident fund, and gives priority to the beneficiary specified by its member over the terms of the will or, in the absence of a will, the beneficiaries defined by law. Therefore, the proceeds of the fund are not part of the estate and are not distributed in accordance with the Inheritance Law, but rather in accordance with the instructions stipulated by the member, during his life, in the documents signed when joining the fund, or at any time later, provided that it is stipulated who the beneficiary of the money accrued in the fund during his lifetime is.

HOW ARE BENEFICIARIES DECIDED?

Article 36 (b) of the Contracts Law stipulates as follows:

"In the case of an obligation that must be fulfilled, following the death of a person, under the terms of an insurance contract, membership in a pension fund or a provident fund, or any other similar instance, the claimant (the member) is entitled, by notice to the debtor (the fund), or in a will, following notice of such to the debtor, to cancel the right of the beneficiary, or to replace him with another, even after the beneficiary has been notified of said right."

In other words, a fund member can replace or change beneficiaries by either notifying the insurance company or in a will. It should be emphasized that any replacement or cancellation of a beneficiary in a will must be made clear and unequivocal in order to prevent legal disputes later.

WHAT TAKES PRECEDENCE? A WILL OR BENEFICIARIES STIPULATED IN THE PROVIDENT FUND?

Often, a fund member has stipulated beneficiaries at some time in the past, and in a will written many years later has "bequeathed" the money from the provident fund to other beneficiaries.

How is the conflict settled between the different beneficiaries, even though the beneficiary was stipulated in the provident fund before the will?

The answer is neither clear nor unequivocal, and remains in contention in some rulings of the High Court. Over the years, three different precedents have been ruled on this matter:

1. Designated beneficiaries take precedence over beneficiaries stipulated in a will and the instructions in the will have no validity.
2. The instructions of the will take precedence provided that a copy of the will was submitted to the fund prior to the death of the member.
3. The instructions of the will take precedence because they were written later and a copy of the will need not have been submitted to the fund.

SUMMARY

RECOMMENDED COURSE OF ACTION

As long as there is no definitive, binding legislation by the High Court, the best way forward is to ensure that all instructions regarding beneficiaries should be updated directly with the provident fund. If, for any reason, it becomes necessary

to do so by way of a will, care must be taken to immediately submit a copy of the will to the provident fund prior to the death of the testator (the person who made the will).

In addition, golden-agers would do well to check which beneficiaries were stipulated in a provident fund many years ago and, if necessary, make the necessary adjustments directly with the fund.

Please note: The information contained herein is general in nature, is provided for informational purposes only, and should not be construed as legal or financial advice. You should consult with a certified lawyer before making any decisions in respect of the subject matters contained herein.

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