

Payments on death under \$15,000

January 2016

Under KiwiSaver, the benefit on death is payable to the estate of the member. This is a legislative requirement. Under SuperLife's superannuation scheme, the death benefit is normally paid direct to the member's nominated beneficiaries outside the distribution of the estate. However, in some cases, the member will have nominated their estate, or the nomination is not valid and the benefit is payable to the estate.

Payments to the beneficiaries

To make a payment to the beneficiaries, the Trustee requires evidence of death (normally the death certificate), identification of the beneficiary and details of the bank account for payment. When the beneficiary is a minor, it will be paid to a trust to support the minor, or held within SuperLife on trust for the minor.

Payments to the estate

Where benefits are payable to the estate, once the executor of the estate gets probate or letters of administration, the Trustee pays the benefit to the executor for distribution. Normally this means, it is paid to the trust account of the solicitor acting for the executor. To make the payment, we need to see probate of the Will or letters of administration, a copy of the death certificate and details of the bank account.

Small estates

In some cases, because of the size of the estate, it is not economic to get probate of the Will, or where there is no Will, or letters of administration. In these cases, under sections 65(2)(b) & (c) of the Administration Act 1969 ("Act"), the Trustee has the ability to pay out low balances and the ability to pay out low balances direct to a beneficiary. The current defined "low" balance is a balance below \$15,000. Therefore if the amount payable is above \$15,000, probate or letters of administration must be obtained. If the amount is under \$15,000, the Trustee can, in some cases, pay it out without the need for probate or letters of administration to be obtained.

Such a balance can be paid to any person specified by the Act where that person applies for the payment, or agrees to receive the payment. If the balance is low but probate or letters of administration are obtained, these provisions do not apply.

The person that can apply or receive the payment is a person beneficially entitled to the estate under the will or under the Act. Details are in (a) to (g) in the table over the page.

Administration Act 1969

For completeness, details of Section 65(2)(b) & (c) of the Act are:

"In the event of the death of any person to whom any sum of money not exceeding the prescribed amount is payable by the trustees of a superannuation fund, whether the death occurred before or after the commencement of this section, it shall be lawful for the

trustees of the superannuation fund, without requiring administration of the estate of that deceased person to be obtained in New Zealand, and on receiving such evidence as it considers satisfactory that the person has died and that administration of his estate has not been obtained in New Zealand, to pay the sum or any part thereof to any of the following persons:

- (b) **The persons beneficially entitled to the estate** of the deceased person under the will or on the intestacy of that person:
- (c) **Any person appearing to be entitled to obtain administration** of the estate of the deceased person in New Zealand:

Provided that no payment shall be made to any person unless he applies for or consents to receive that payment.”

“Persons beneficially entitled” to the estate of the deceased on intestacy

The rules on intestacy for the distribution of the residue of the estate after the payment of the prescribed payments are covered by Section 77 of the Act. Separate rules apply to personal chattels. Note, “spouse” means a husband, wife, civil union partner or surviving de facto partner.

Member dies intestate and leaves	The estate is distributed
a. Spouse but no child and no parents	Spouse absolutely
b. Spouse and child	1/3 for the spouse absolutely; and 2/3 on statutory trusts for the issue of the intestate.
c. Spouse, no child, but 1 or both parents	2/3 for the spouse; and 1/3 for the father and mother in equal shares absolutely or if the intestate leaves only 1 parent for that parent absolutely.
d. Child but no spouse	All estate held on statutory trusts for issue of the intestate.
e. No spouse and no child but 1 or both parents	All estate held in equal shares for parents but if only 1 parent then for that parent.
f. No spouse, no child and no parents but 1 or more brothers or sisters (whether of full or half blood)	All of the estate is held on statutory trusts for 1 or more brothers or sisters.
g. If no one has a vested under the trust referred to in items 1-6 but 1 or both maternal or paternal grandparents or 1 or more maternal or paternal uncles or aunts (whether of full or half blood)	All of the estate is held in trust as follows: As to half: <ul style="list-style-type: none"> • in equal shares for the maternal grandparents but if only 1 such grandparent, for that grandparent; or • if no maternal grandparent on trust for maternal uncles and aunts; or • if no maternal grandparent or maternal uncle or aunt then on trusts on which the other half of the estate must be held.

	<p>As to the other half:</p> <ul style="list-style-type: none"> • in equal shares for the paternal grandparents but if only 1 such grandparent for that grand parent; or • if no paternal grandparent on trust for paternal uncles and aunts; or • if no paternal grandparent or paternal uncle or aunt then on trusts on which the first half of the estate must be held.
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Meaning of “Any persons appearing to be entitled to obtain administration of the estate” of the deceased person

Section 6 of the Act states that it is at the Court’s discretion as to whom administration is granted. Administration means probate of the will and includes letters of administration of the estate of the deceased. Section 6(1) provides that “where the deceased had died wholly intestate as to his estate, administration shall be granted to one or more persons beneficially interested in the estate of the deceased, if they make an application for the purpose”.

The phrase “beneficially interested” is not defined in the Act and therefore is given the ordinary and natural meaning. It therefore refers to a person’s right to the distribution of a deceased’s estate. Based on the succession rules on intestacy (see table above), the people who have a right to have the estate distributed to them absolutely or have it held on trust for them are “persons appearing to be entitled to obtain administration of the estate”.