

THE ROLE OF THE GUARDIAN'S FUND IN ZIMBABWE

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What is the Guardian's Fund?

The Guardian's Fund (hereinafter referred to as the 'Fund') was established for the purpose of administering the funds of various persons who cannot do so themselves. The Fund does so under the direction and authority of the Master of the High Court and extends to the funds of persons including:

- Minors
- Individuals who are unable to manage their own affairs
- Missing persons or individuals whose whereabouts are unknown
- Unborn persons who have inherited funds in terms of a last will or by operation of intestate succession;
- Individuals having an interest in the moneys of a usufructuary, fiduciary or fideicommissary nature.
- Where the Master of the High Court directs that such person's funds be paid into the Fund.
- Funds which are held by persons for any other reason where the person entitled thereto is not found or is not identified.

After the Master of the Court receives the money, he will open an account on behalf of the person to whom the money belongs or the estate of which the money forms part of. The account holder is not liable to pay any of the administration costs.

When is the money withdrawn?

The guardian of a minor child who is to inherit funds from a deceased estate, will be able to submit a claim relating to the maintenance of the said child. This includes school fees, tertiary fees, medical expenses as well as all other reasonable expenses that can be evidenced. The balance of the invested funds will then become claimable by the beneficiary upon them reaching the age of majority or otherwise as directed by the last will of the deceased estate. Once an individual is declared incapable of handling own affairs, they will only be able to claim any funds when they are declared capable of doing so again which happens through the direction of a court order.

In support of a claim for monies from the Fund, the beneficiary must submit an application form duly accompanied by proof of the guardian/beneficiary's banking details where the funds are to be paid to and a certified copy of the guardian/beneficiary's identity document. Should it be a claim for any maintenance payments, evidence of the expense is to be submitted to support the claim. If a guardian claims a maintenance payment, proof of income and expenditure should also be submitted.

Section 99 of the Administration of Estates Act [Chapter 06:01]

According to this provision, the Master has power to control moneys in hands of agents for person whose whereabouts are unknown. This is not only limited to deceased estates. It extends to other legal bodies that hold moneys on behalf of other individuals. Section 99(1) reads as follows;

(1) Every person, other than a deposit-receiving institution referred to in section one hundred, carrying on business within Zimbabwe shall in January in each year prepare as hereinafter provided a detailed statement of all moneys amounting to one hundred dollars and upwards which were in his hands or in the hands of an agent on his behalf within Zimbabwe on the 31st December last past, which were not his property or subject to any valid lien and which have remained unclaimed for a period of five years or more by the rightful owner.

This provision highlights that the Guardian's fund can also be used by other legal bodies such as (but are not limited to) the Estate Agents Council, Estate Agents, Law Society of Zimbabwe, Legal Practitioners to name a few. As such, any money that has not been claimed must be surrendered to the Master of the High Court, as it is an administrative body that is created to ensure that the interests of beneficiaries are protected. Doing so also protects whoever may be holding any such money as it may prevent any challenges from arising should an individual come forward to claim the unused funds at some point in future.

The act is not clear on whether this provision applies to private persons. There is therefore an inclination to adopt the literal meaning on the term 'every person' in section 99(1), thus applying to all natural persons, juristic persons or

entities considered as having many of the rights and responsibilities of a natural person and especially the capacity to sue and be sued. In any event, it becomes a criminal offence for one to continuously hold unclaimed moneys without reporting and forwarding such funds to the Guardian's Fund. A statement and affidavit must be submitted to the Master together with the funds. The statement, accompanied by an affidavit, must contain information of the last known whereabouts of owner of the money. It must be signed by the person responsible for submitting the unclaimed funds to the Master. It is then the duty of the Master to hold the funds until the rightful owner avails himself/herself.

In terms of section 99(5), failure to supplement a statement to accompany the unclaimed funds will result in a fine, imprisonment for a period not exceeding one year, or both. The Master's authority stems from the fact that The Master's Office is a creature of statute, which is established in terms of section 3 of the Administration of Estates Act. It is an administrative body mandated to protect the financial interests of persons whose estate are, for various reasons, being managed by others, for example deceased persons, minor children, insolvent persons etc.

What happens to unclaimed funds in the Guardian's Fund?

Unclaimed funds are to remain under the care of the Fund. The account is advertised in the government gazette in line with section 104 of the Administration of Estates Act. Once a period of 30 years expires without the funds being claimed, the monies will be forfeited to the Consolidated Revenue Fund which is described as the main bank account of the government. In other words, the money is forfeited to the State. Should the beneficiary be an unknown person, the claimable period will begin operating from when such person becomes identified.

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