



the doj & cd

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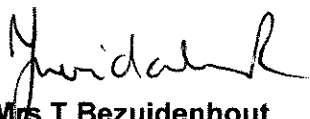
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**CIRCULAR 22 OF 2018
(HEAD OFFICE FILE 5/9/3/2 & 12/4/1)**

CHIEF MASTERS DIRECTIVE 1 OF 2019 – NO CHEQUE DEPOSITS WILL BE ACCEPTED IN THE GUARDIAN'S FUND

1. Your attention is drawn to the contents of the attached Directive with regards to NO CHEQUE DEPOSITS WILL BE ACCEPTED IN THE GUARDIAN'S FUND
2. This Directive is effective from **1 APRIL 2019** and should be implemented as such.
3. Any enquiries should be addressed in writing to the Office of the Chief Master.

 29/3/2019
Mrs T Bezuidenhout
Chief Director

TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT



CHIEF MASTER'S DIRECTIVE 1 OF 2019

1. PURPOSE

1.1 The purpose of this directive is to ensure uniformity in respect of the way in which funds are deposited into the Guardian's Fund

1.2 This Directive is issued in terms of:

- i) Section 3 of the Judicial Matters Amendment Act, 2005 which requires the Chief Master to "exercise control, direction and supervision over all the Masters".
- ii) Section 2(1) of the Administration of Estates Act 66 of 1965.
- iii) This directive recalls all prior Directives, Circulars or instructions regarding this subject, with effect from 1 April 2019 and should be read together with Chief Master Directive 5 of 2012 in respect of Electronic Fund Transfers (EFT).

2. MOTIVATION

In preparation of the Guardian's Fund going into a total electronic environment with new systems being implemented and developed, as well as the fact that the Banking Industry is busy phasing out the use of cheques the following has been decided:

3. NO CHEQUE DEPOSITS WILL BE ACCEPTED IN THE GUARDIAN'S FUND:

With regards to any type of funds being deposited into the Guardian's Fund, irrelevant the source thereof, the following is applicable:

3.1 As from the 1st April 2019 no cheque deposits will be accepted at Master's Offices.

3.2 Deposits into Guardians Funds will only be received by means of

3.2.1 EBT Electronic Bank Transfers(EBT) or

3.2.2 Direct Bank Deposits using the Guardian's Fund Banking account details. *(In such instance the beneficiary must produce a copy of the deposit slip as proof of payment.)*

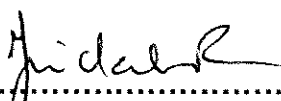
In all instances the relevant depositor must obtain the banking details as well as the reference number to be used, from the relevant Master's Office, prior to the funds being deposited.

The requirements to make such payments into the Guardian's Fund are set out in the GF1, attached as Annexure A.

Only on receipt of all these requirements, the reference number and bank details will be provided.

2 EFFECTIVE DATE

This Directive will come into effect as from 1 April 2019.


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Mrs. T Bezuidenhout
CHIEF DIRECTOR

DATE..... 29/3/19



REQUIREMENTS FOR EFT DEPOSITS INTO THE GUARDIAN'S FUND

Requirements 1 – 3 will be applicable in all instances. Requirements 4 – 18 are additional and will depend on the deposit to be made. Other requirements may follow, if necessary.

NB: Only on receipt of all the requirements the pre- approval reference number and bank details will be provided.

- 1 Bank details of the Institution that makes EFT deposit into the Guardian's Fund, which are confirmed and stamped by the applicable Bank.
- 2 A letter on a letterhead of the Institution who wants to make EFT Payment into the Guardian's Fund, together with the supporting documents must be forwarded to the Master's Office, day before the intended EFT will be done.

The covering letter must contain the following information:

- 2.1 Full names of the beneficiary.
- 2.2 Whether the beneficiary is a minor, major, mentally challenged person, creditor, absent person etc. In cases where the beneficiary cannot be traced; indicate the steps taken to locate the beneficiary.
- 2.3 The source of the moneys and the amount due to each beneficiary, if more than one beneficiary.
- 2.4 Reason why the moneys should be deposited in the Guardian's Fund.
- 2.5 Indicate who the Guardian/caregiver of the Minor/beneficiary is, if known.

- 3 **Submit certified copy of the Birth Certificate or Identity Document/Smart Identity Card (both sides) of the beneficiary.**

- 4 **If moneys to be deposited are from an Estate Late, the following documents should also be submitted:**

- 4.1 Certified copy of the Death Certificate.
- 4.2 Copy of the Will as accepted by the Master (if applicable).
- 4.3 Next-of- Kin Affidavit, if there is no Will.
- 4.4 Letters of Executorship/Authority.
- 4.5 Copy of the Liquidation and Distribution Account, as accepted by the Master/ Statement of Assets, Liabilities and Distribution. **Clear indication should be given if the distribution is according to the provisions of a Will or in terms of the Intestate Law.**
- 4.6 In terms of Section 35(12) of the Administration of Estates Act, 1965, (Act no 66 of 1965) the amount should be according to the Liquidation and Distribution Account/Statement of Assets, Liabilities and Distribution. Provide a Cash Reconciliation Statement if there is a difference on the Liquidation and Distribution Account/Statement of Assets, Liabilities and Distribution and the amount to be deposited.
- 4.7 Advertisement in terms of Section 35(5) of the Administration of Estates Act, if applicable. Local newspaper cutting and copy of the Government Gazette must be submitted.
- 4.8 In cases where the creditors/beneficiaries were not reflected on the L&D Account and the distribution account is affected, a duly amended, approved and advertised L&D Account must be submitted.
- 4.9 In the event funds were deposited after the beneficiary attained the age of majority; no interest is earned and the beneficiary will only be entitled to the capital at the age as stipulated in the will.

Kindly consider Master's Directive 30 to release the inheritance of a minor to the Guardian if the amount to be deposited is below R5 000.00.

5 If moneys are deposited in respect of a maintenance claim from a Deceased Estate, the following documents should also be submitted:

- 5.1 Cover letter advising of any conditions in the maintenance agreement, for example if any balance is available on majority or whether it must be refunded to the estate or not.
- 5.2 The claim must be reflected in the Liquidation account.
- 5.3 Maintenance Agreement.

6 If moneys are deposited in respect of an estate where the particulars of an executor is unknown, the following documents should be submitted:

- 6.1 Notice to Master in terms of Section 7 of the Administration of Estates Act.
- 6.2 Death certificate of the person who's funds must be deposited in the Guardian's Fund.

7 If the moneys to be deposited are from an Insolvent Estate/Company in liquidation, the following documents should also be submitted:

- 7.1 Copy of the Liquidation and Distribution Account, as confirmed by the Master.
- 7.2 Proof of confirmation. (Confirmation letter issued by the Master).
- 7.3 The amount and the beneficiary in whose favour the amount to be deposited should be in accordance with the confirmed Liquidation and Distribution Account.
- 7.4 Kindly note Section 95 of the Insolvency Act, 1936, (Act no 24 of 1936) is only applicable when a secured creditor in respect of a registered bond did not proof his claim.

8 If the moneys to be deposited in terms of Section 93 of the Administration of Estates Act are from a Medical Aid or Institution, or any other Institution, the following are also applicable:

- 8.1 Guardian's Funds are within the following offices: Cape Town, Grahamstown, Pietermaritzburg, Kimberley, Bloemfontein and Pretoria. The unclaimed funds should be paid over to the offices where the member/creditor/beneficiary last resided.
- 8.2 Payments may be made electronically and a maximum of 20 members/creditors per payment.
- 8.3 Any amount can be deposited in the Guardian's Fund, irrespective how small the amount is.
- 8.4 The unclaimed funds should be in your possession for 5 years before you may advertise in the Government Gazette. A period of three (3) months after advertising must elapse before a deposit may be made.
- 8.5 It is an obligation to advertise the details of the unclaimed funds in the Government Gazette. Note that it should be published if the amount exceeds R100,00.
- 8.6 Submit a copy of the advertisement in terms of Section 93 of the Administration of Estates Act, with the documents.
- 8.7 It will assist if the format of the breakdown of the members'/creditors'/beneficiary's details can be submitted in Excel spreadsheet format.

9 If the moneys to be deposited in terms of Section 63 (5) of the Mental Health Care Act (Act no 17 of 2002), the following documents should also be submitted:

- 9.1 Copy of Appointment letter of administrator.
- 9.2 Copy of written direction/instruction by Master in Curatorship section.
- 9.3 Written confirmation from the Assistant Master of the Curatorship section containing the following:
 - Application for allowance will be submitted to the Curatorship section for approval prior to submission to the Guardian's Fund,
 - This approval must be attached to the J341 application,
 - The turnaround time of 40 working days in respect of processing a payment.

10 If the moneys deposited in terms of an instruction by the Master in respect of Banking Accounts to the manager of any financial institution in terms of; Section 28 (6) of the Administration of Estates Act, Section 70 (6) of the Insolvency Act, Section 394 (6) of the Companies Act, Section 85 of the Administration of Estates Act read with Section 28 of the Administration of Estates Act, Section 65 of the Mental Health Care Act read with Section 85 of the Administration of Estates Act read with Section 28 of the Administration of Estates Act.

10.1 Directions by the Assistant Master in relevant section.

11 If the moneys to be deposited are from claims against the Road Accident Fund, the following documents should also be submitted:

11.1 Court Order ordering that funds be deposited into the Guardian's Fund in respect of the claim against the Road Accident Fund.

11.2 Party and Party cost account as taxed or agreed upon with the Road Accident Fund.

11.3 Attorney and client statement of account/taxed bill of costs.

11.4 Contingency Fee Agreement (if applicable). Confirmation that the Contingency Fees Agreement complies with all the requirements in the Contingency Fees Act, 1997, (Act No. 66 of 1997).

11.5 Cash reconciliation statement from Road Accident Fund (RAF) reflecting the original amounts received less costs.

Note that if there is no Court Order and the minor beneficiary still has a Natural Guardian, the funds should be paid to the Natural Guardian and not to the Guardian's fund - *Ex Parte Oppel and Another* 2002(5) SA 125 (C).

12 If moneys to be deposited are from an Executor / Curator *Bonis*, who resigned, the following documents should also be submitted:

12.1 Copy of the Liquidation and Distribution Account, as accepted by the Master, if applicable.

12.2 Certified copy of the Death Certificate (deceased estates).

12.3 Copy of the Letter of Appointment.

12.4 Copy of the Letter of Resignation.

12.5 Copy of the acknowledgement letter from the Master re the resignation.

Kindly note that should funds be deposited for a curatorship estate where the Curator *Bonis* has resigned; the moneys will be accepted for safekeeping only. The moneys must be claimed by the newly appointed Curator *Bonis*.

13 If moneys deposited in respect of a ward of court/persons declared incapable of managing their own affairs, the following should also be submitted:

13.1 A court order declaring:

- the beneficiary incapable of handling his/her own affairs; and
- the moneys must be deposited into the Guardian's Fund.

14 If a trust had been created in a will and a trustee has not yet been appointed or has renounced prior to a distribution being made; the moneys may be deposited in terms of Section 35 (13) of the Administration of Estates Act and the following documents should also be submitted:

14.1 Proof that the Trustee had applied to the Master of the High Court to be appointed as Trustee. Your attention is directed to Section 7 of the Trust Property Control Act, 1988, (Act no 57 of 1988).

14.2 Letter of renunciation by the nominated trustee.

14.3 Confirmation from the executor that the beneficiaries have been informed that should the moneys be deposited into Guardian's Fund it **will not earn interest and a new trustee must be appointed to claim and administer the funds according** to the will.

14.4 All the requirements under Item 4 above.

15 In cases where the trust (*inter vivos* or *mortis causa*) is terminated and the beneficiaries are untraceable; Section 93 of the Administration of Estates Act must be complied with and the following documents should also be submitted:

- 15.1 Comply with Items 8.4, 8.5 and 8.6 above.
- 15.2 Copy of the trust deed/will.
- 15.3 Proof that the trust has been terminated in terms of the trust deed (resolution of the trustees).

Kindly note that there is no authority in terms of any Act to accept funds in cases where trustees have resigned of an already existing trust. Refer to section 7 of the Trust Property Control Act for the appointment of a new trustee.

16 If moneys are deposited in terms of Section 80 of the Administration of Estates Act; the following documents should also be submitted:

- 16.1 If the sale price of the immovable property of the minor is less than R 250 000, a written consent from the Master.
- 16.2 If the sale price of the immovable property of the minor is more than R 250 000, a court order ordering the funds to be paid into the Guardian's Fund.
- 16.3 Certified copy of the Identity Document/Smart Card of the natural guardian.
- 16.4 Certified copy of the birth certificate/ Identity Document/Smart Card of the minor.
- 16.5 Copy of the Deed of Sale.
- 16.6 Pro forma account of conveyancer.
- 16.7 Affidavit of the natural guardian furnishing reasons for the sale of property.
- 16.8 Original bank guarantee unless a prior deposit of the full amount has been made into the Guardian's Fund.
- 16.9 Proof of transfer/Conveyancer's certificate within 5 days from date of registration in the deeds office.

17 If moneys are deposited in respect of the Expropriation Act, 1975,(Act no 63 of 1975) the following documents should also be submitted:

- 17.1 Cover letter in terms of Section 21 of the Expropriation Act, providing reasons for deposit into Guardian's fund and percentages of land and amount due to each beneficiary must also be indicated. Full names and Identification documents of beneficiaries/shareholders.
- 17.2 Proof of registered notice by Minister in terms of Section 7(3) the Expropriation Act.
- 17.3 Proof of advertisement in terms of section 7(5) read with Section 7(3) the Expropriation Act.
- 17.4 Proof of a once off advertisement in Government Gazette.
- 17.5 Proof of advertisement placed once a week in Afrikaans and English newspapers for two consecutive weeks.
- 17.6 Court Order/Title Deed – printout from Deeds Office - (Name and ID)/Will/ Agreement of compensation to be signed by all parties including executor.

18 If moneys deposited in terms of a Bond of Security for Maladministration for example;

- Section 23(5) of the Administration of Estates Act (Executor)
- Section 43 (4) read with Section 90(2) the Administration of Estates Act (Natural Guardian)
- Section 77(5) of the Administration of Estates Act (Tutor and Curator)
- Section 56 of the Insolvency Act (Trustee)
- Section 386 of the Companies Act (Liquidator)
- Section 6 of the Trust Property Control Act (Trustee)

the following documents should also be submitted:

- 18.1 An Affidavit from the Executor/Trustee/Liquidator/Curator/Tutor/Trustee of a Trust together with Claim letter from the Master setting out the amount that should be paid.
- 18.2 Copy of the Bond of Security.
- 18.3 Certified copy of Letters of appointment.

KINDLY NOTE THE FOLLOWING:

- In terms of Section 88(1) of the Administration of Estates Act compound interest is payable on money for account of any minor, lunatic, unborn heir or any person having an interest therein of a usufructuary, fiduciary or fideicommissary nature.
- In terms of section 92 of the Administration of Estate Act, any money in the guardian's fund (whether such money has been paid into the said fund before or after the commencement of this Act) which has remained unclaimed by the person entitled thereto for a period of thirty years as from the date upon which such person became entitled to claim the said money, shall be forfeited to the State.
- In terms of Annexure CM 103, paragraph 4 of the Companies Act, 1973, (Act No. 61 of 1973) 5% commission is deductible on any amount paid by a liquidator or judicial manager for account of members, creditors, contributories or debenture – holders of a company.
- In terms of Schedule 2, paragraph 3, of the Administration of Estate Act, all unclaimed moneys paid in the Guardian's Fund in pursuance of section 93 of the Administration Estate Act for account of absent or unknown creditors or contributories of any estate or company, a 5% commission is deductible from the unclaimed moneys.
- Third Schedule paragraph 3 to the Insolvency Act, 1936 (Act No. 24 of 1936), on any amount paid by the trustee into the Guardian's Fund for account of creditors a commission of 5% shall be payable, to be deducted by the Master from the moneys so paid into the Guardian's Fund.