

# GUARDIANSHIP OF INFANTS ACT

## (CHAPTER 122)

An Act relating to the guardianship of infants.

[1st January 1935]

### **Short title.**

1. This Act may be cited as the Guardianship of Infants Act.

### **Interpretation.**

2. In this Act, unless there is anything repugnant in the context —  
"court" means the High Court or a judge when sitting in open court;  
"judge" means a judge sitting in chambers.

### **Welfare of infant to be paramount consideration.**

3. Where in any proceedings before any court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father.

### **Equal right of mother to apply to court.**

4. The mother of an infant shall have the like powers of applying to the court in respect of any matter affecting the infant as are possessed by the father.

### **Power of court to make, discharge or amend orders for custody and maintenance of infants.**

5. The court may, upon the application of either parent or of any guardian appointed under this Act, make orders as it may think fit regarding the custody of such infant, the right of access thereto and the payment of any sum towards the maintenance of the infant and may alter, vary or discharge such order on the application of either parent or of any guardian appointed under this Act.

### **Rights of surviving parent as to guardianship.**

6. --(1) On the death of the father of an infant, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the father. When no guardian has been appointed by the father or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the mother.

(2) On the death of the mother of an infant, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the mother. When no guardian has been appointed by the mother or if the guardian or guardians appointed by the mother is or are dead or refuses or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the father.

(3) Where an infant has no parent, no guardian of the person and no other person having parental rights with respect to him, the court, on the application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the infant.

### **Power of father and mother to appoint testamentary guardians.**

7. --(1) The father of an infant may by deed or will appoint any person to be guardian of the infant after his death.

(2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the infant so long as the mother or father remains alive, unless the mother or father objects to his so acting.

(4) If the mother or father so objects, or if the guardian so appointed as aforesaid considers that the mother or father is unfit to have the custody of the infant, the guardian may apply to the court, and the court may either refuse to make any order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the infant, and in the later case may make such order regarding the custody of the infant and the right of access thereto of the mother or father as, having regard to the welfare of the infant, the court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.

(5) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly.

(6) If a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

**Dispute between joint guardians.**

8. Where two or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, any of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it may think proper including power —

(a) to make such orders regarding the custody of the infant and the right of access thereto of the mother or father as, having regard to the welfare of the infant, the court may think fit;

(b) to order the mother or father to pay towards the maintenance or education of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable; and

(c) to vary or discharge any order previously made under this section.

**Enforcement of orders for payment of money.**

9. --(1) When the court has made any order under this Act for payment of money, the court shall, in addition to any other powers for enforcing compliance with the order, have power, in any case where there is any pension or income payable to the person against whom the order was made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, to order that such part as the court may think fit of any such pension or income be attached and paid to the persons named by the court and such further order shall be an authority to the person by whom such pension or income is payable to make the payment so ordered, and the receipt of the person to whom the payment is

any person and that person is entitled under any trust to receive any sum of money in respect of the maintenance of the infant, the court may order the whole or any part of the sum so payable under the trust to be paid to the person to whose care the infant is committed, to be applied by that person for the benefit of the infant in such manner as, having regard to the terms of the trust, the court may direct.

**Production of infant.**

13. A judge may, for the purpose of any application under this Act, direct that any person appearing to have the custody of an infant shall produce the infant in the judge's chambers or at such other place as he may appoint, and he may make such order for the temporary custody and protection of the infant as he thinks fit.

**Placing infant in custody of guardian.**

14. Where an infant leaves, or is removed from, the custody of his lawful guardian, the court or a judge may order that he be returned to such custody, and for the purposes of enforcing such order, may direct the Sheriff to seize the person of the infant and deliver him into the custody of his lawful guardian.

**Security to be given.**

15. --(1) Where a person appointed by the court is the guardian of an infant's property, he shall unless the judge otherwise orders, give security in such sum as may be appointed for the due performance of his duties as such guardian.

(2) Such security shall be given in the manner prescribed for the time being in the case of receivers appointed by the court; and the guardian so appointed shall pass his accounts at such periods as may be ordered, and shall pay any balance certified to be due from him into court in the manner prescribed in the case of receivers.

**Limitation of guardian's powers.**

16. --(1) A guardian of the property of an infant shall not, without the leave of the court or a judge —

(a) sell, mortgage, exchange, or otherwise part with the possession of any of the movable or immovable property of the infant; or

(b) lease any land belonging to the infant for a term exceeding one year.

(2) Any disposal of an infant's property in contravention of this section may be declared void, and on such declaration the judge may make such order as appears requisite for restoring to the infant's estate the property so disposed of.

(3) The court or a judge shall not make any order under subsection (1) unless it is necessary or advisable in the interests of the infant.

**Guardian may not give discharge for capital property.**

17. A guardian of the property of an infant shall not, unless in any case the court or a judge otherwise orders, be empowered to give a good discharge for any legacy or other capital moneys payable to or receivable by an infant.

**Guardian may support infant out of income.**

18. --(1) A guardian of the property of an infant may make reasonable provision out of the income of such property for his maintenance and education, having regard to his station in life; but no sum exceeding \$100 per month may be so applied without the leave of the court or a judge.

(2) Where the income of the infant's property in the hands of the guardian is insufficient for such purpose, or money is required for the infant's advancement, a judge may order that provision for such purpose be made out of the capital of the infant's property, and for such purpose may authorise the sale or mortgage of any part of the infant's property, and give such directions in regard thereto as may be necessary in the interests of the infant.

**Special order in case of small estate.**

19. --(1) If it appears that, having regard to the station in life of an infant and to the value of his property and to all the circumstances of the case, it would be expedient that the capital property

of the infant should be made available for his maintenance, education or advancement in such manner as to avoid the expense of applications to the court, a judge may, instead of appointing a guardian of the property of the infant order that all the property of the infant of whatsoever description shall be placed in the hands of a person to be appointed by the judge, with full power to deal with and apply the same for the purpose aforesaid in his sole and uncontrolled discretion; and in such case the receipt of the person so appointed shall be a good discharge to any person making any payment or transfer of any property to him on behalf of the infant.

(2) Any person so appointed may be ordered by the court or a judge to render an account of his dealings with the infant's estate.

(3) The court or a judge may for any sufficient reason discharge any order, or revoke any appointment, made under subsection (1), and may appoint another person with the same power or such greater or less power as may appear advisable, or may appoint a guardian of the infant's property.

**Application for opinion, etc.**

**20.** Any guardian may apply to a judge for his opinion, advice or direction on any question respecting the management or administration of the infant's property.

**Exception for money paid into a District Court.**

**21.** Nothing in this Act shall apply to any money paid into a District Court to the credit of an infant in any action or proceeding in a District Court or to any money in a District Court ordered to be transferred to the credit of an infant, but the same shall be dealt with according to the Subordinate Courts Rules, unless in any case the High Court or a judge of the High Court otherwise orders.

Act 16/93 wef 1.7.93.