# Public Guardian and Trustee of Saskatchewan



DUNNING PLACE



#### **COMMON FUND**

#### What does the Public Guardian and Trustee do with clients' funds?

Pursuant to section 47 of *The Public Guardian and Trustee Act*, all funds received by the Office are placed in the Common Fund. This fund is made up of a bank account and investments in bonds and stocks.

An investment manager, monitored by a consultant and an Investment Advisory Committee, makes the investments in accordance with the approved Investment Policy. The Policy can be found on our website.

#### How much is earned?

Income is distributed and compounded quarterly. A history of the rates of return earned on the Common Fund can be found on our website.

# Where can I get more information?

#### Contact the Office of the Public Guardian and Trustee at:

100 - 1871 Smith St. Regina, Saskatchewan S4P 4W4

Telephone: (306) 787-5424 Toll Free: 1-877-787-5424

Fax: (306) 787-5065

Email: pgt@justice.gov.sk.ca

Website: www.justice.gov.sk.ca/pgt

Office Hours: Monday through Friday, 8:00 a.m. to 5:00 p.m. (Closed for the noon hour and holidays)

# Mandate of the Office of the Public Guardian and Trustee

The Public Guardian and Trustee Act gives the Public Guardian and Trustee the responsibility to protect the property of people who do not have the capacity to manage their own financial affairs. The Public Guardian and Trustee is appointed by the Lieutenant Governor in Council.

# Responsibilities of the Office of the Public Guardian and Trustee

- administer the property of dependent adults, where no one else is appointed.
- administer and protect the property of children under the age of eighteen.
- administer the estates of deceased persons where no one else is willing.
- administer and protect the property of persons whose whereabouts are unknown.

# Vision of the Office of the Public Guardian and Trustee

 A society where the interests of vulnerable people are protected.

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### **ADULTS**

#### How does the Public Guardian and Trustee become involved?

Under *The Mentally Disordered Persons Act*, an individual suffering from a mental disorder may be examined by a doctor to determine whether he or she is competent to handle his or her own financial affairs.

When an individual is found incompetent, a certificate is issued by a chief psychiatrist and sent to the Public Guardian and Trustee. Upon signing an acknowledgment, the Public Guardian and Trustee has the authority to act for the person as property guardian.

The Adult Guardianship and Co-decision-making Act provides for the appointment of guardians for individuals over sixteen years of age who are intellectually challenged or affected by conditions such as chronic mental illness, brain damage or diseases affecting memory and judgment.

Where any of these conditions are present and limit a person's ability to make decisions regarding his or her property, the Court may appoint the Public Guardian and Trustee to act as property guardian.

### Does a dependent adult have access to his or her account?

Generally, the individual's funds may be used for purposes that are for the benefit of the dependent adult. A dependent adult can request certain purchases be made, but cannot write cheques on his or her trust account. The dependent adult is entitled to an accounting of his or her trust account.

# What happens if the dependent adult's funds run out?

The Public Guardian and Trustee may apply for social assistance on behalf of the individual and manage those benefits for him or her.

# What happens to the property of a dependent adult when he or she dies?

The assets managed by the Public Guardian and Trustee are released to the executor or administrator of the person's estate. If there is no one to administer the estate, the assets are administered by the Public Guardian and Trustee and the estate is distributed to the deceased's beneficiaries.

#### **FEES**

### Does the Public Guardian and Trustee charge fees?

Under *The Public Guardian and Trustee Act* and *Regulations* and *The Administration of Estates Act* and *Regulations*, the Public Guardian and Trustee charges fees for services.

#### For children

• 1/12th of one per cent per month, of the amount held for the child.

#### For adults

- Five per cent or seven per cent of income.
- 1/12th of one per cent per month, of the value of the assets managed for adults.

#### For estates

- A percentage of the value of the estate with a minimum fee of \$900:
  - seven per cent on the first \$50,000,
  - five per cent on next \$50,000, or
- four per cent on excess over \$100,000.

### For co-decision-makers or temporary guardians

• \$250 per month.

# For litigation guardians

• Where the Public Guardian and Trustee acts as a litigation guardian for a child or an adult, the fee is \$500 plus disbursements and legal fees.

#### Who may be appointed?

A judge may declare the person to be a missing person on application of:

- the Attorney General;
- next-of-kin of the person alleged to be an absentee;
- a creditor;
- anyone interested in the affairs of the person alleged to be an absentee; or
- the Public Guardian and Trustee.

The Court order may appoint a person to manage the missing person's property. The Court may also authorize the sale, lease or other disposition of the property where the judge believes it to be in the interests of the missing person or his or her family. The powers and duties of the person appointed are the same as those of a property guardian under *The Adult Guardianship and Co-decision-making Act*.

# What if a person is missing for six years?

If the Public Guardian and Trustee holds funds for:

- a dependent adult; or
- a person who, reaching eighteen years of age, is entitled to receive payment of money held on his or her behalf;

but whose whereabouts are unknown to the Public Guardian and Trustee for a period of six years, the Public Guardian and Trustee may take any steps considered reasonable to learn the whereabouts of that person. If, after taking those steps, his or her whereabouts are still unknown and it appears there are no heirs to that person's estate if he or she is deceased, the Public Guardian and Trustee may dispose of any money and property held on behalf of the person.

If the Office believes no lawful claim will be made to the money, the Office may pay the money into the government consolidated fund.

#### **CHILDREN**

### Why is the Public Guardian and Trustee involved?

In Saskatchewan, the parents of a child are the property guardians for their child. However, they do not have the authority to hold money to which their child is entitled unless they have furnished security with the Court, or obtained a court order dispensing with the need for security.

The Public Guardian and Trustee Act gives the Public Guardian and Trustee the authority to receive and administer funds to which a minor is entitled, if a parent has not been given that authority by the court.

#### What are the Income Tax implications?

The Public Guardian and Trustee will issue a T3 Supplementary Slip, in the child's name, each year to report the income earned on the child's trust.

Income earned on certain trusts is not considered to be taxable income. For example, if the money is an injury award or permanent impairment benefit, the income earned would not be considered to be taxable income until the year after the child turns twenty-one years of age.

It is the parent's responsibility to determine whether an income tax return should be filed for the child, and to file that return, if necessary.

# Can payments be made from the child's account?

As a rule, the Public Guardian and Trustee considers it to be the responsibility of the parents to provide for a child. When the funds are from an injury claim, payments are not usually made from a child's account.

If the funds are from life insurance or death benefits paid as a result of the death of a parent, and depending on the individual circumstances, funds may be released from a child's trust for expenses such as maintenance, medical or educational expenses. Funds can also be released to pay income tax that the child has to pay as a result of income earned on the trust.

Requests for funds from a child's trust must be made in writing by the guardian and must be substantiated with receipts. The request must also be signed by the child, if the child is fourteen years of age or older.

#### How and when are the funds paid out?

Our Office will send a package to the child shortly after his or her eighteenth birthday. The package consists of a release document, a print-out of the account activity, and a letter, which contains instructions for completing the release document.

It is important that we are kept advised of the current address of the child so that we are able to contact him or her at that time.

When we have received the properly completed release document, we will calculate the final income and fees and will then send a cheque for the balance. This will take seven to ten days from the time that we receive the completed release.

If the child wishes to personally attend at our office to complete the release document and pick up the cheque, he or she should contact our office at least two weeks before his or her birthday so that appropriate arrangements can be made.

#### **ESTATES**

# Why does the Public Guardian and Trustee get involved?

When the Public Guardian and Trustee is asked to act, the Office's responsibility is to take possession of the real and personal property of a deceased. The Public Guardian and Trustee has the authority of an administrator until Letters Probate or Letters of Administration have been granted by the Court. If the executor or next of kin does not act to administer the estate, the Office's responsibility is to undertake administration of the assets and debts of the deceased. This is done to preserve and protect the estate in order to make proper distribution.

#### What does the Public Guardian and Trustee do?

The Public Guardian and Trustee will investigate to determine the assets. The Office searches for information about the relatives of the deceased to determine the possible beneficiaries. A detailed inventory of all assets is prepared.

Income tax returns are filed and income tax is paid. Funeral expenses and debts are paid. The balance of the estate is distributed to the beneficiaries.

#### Why can't I settle the estate myself?

If you are the executor appointed under a will, you are entitled to administer the estate. If there is no will, the closest relative is entitled to administer the estate. The Public Guardian and Trustee is a place of last resort and becomes involved in administering estates when there is no next of kin, the next of kin does not want to act or the family is in dispute over who should administer the estate.

When the Public Guardian and Trustee is notified that someone else is appointed, the Office will prepare a report and transfer the assets to the person appointed.

#### How do you determine who the beneficiaries are?

In the course of the Office's investigation, the names of the next of kin and the beneficiaries are often found in the deceased's personal documents, will, address book or letters. The Public Guardian and Trustee then contacts these next of kin and requests a full family history.

# MISSING PERSONS

# What is a missing person?

The Absentee Act sets out the procedures to have someone declared a missing person and provides for the appointment of a property guardian to administer his or her estate.

A missing person is a person:

- who has disappeared;
- whose whereabouts remain unknown despite all reasonable efforts to locate him or her; and
- about whom there is no knowledge as to whether he or she is alive or dead.