

NO. 192 OF 1993: GUARDIANSHIP ACT, 1993.

STATE PRESIDENT'S OFFICE

No. 5

5 January 1994

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ACT

To make further provision for the guardianship of minor children; and for matters connected therewith.

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

(Afrikaans text signed by the State President.)

(Assented to 22 December 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Guardianship

1. (1) Notwithstanding anything to the contrary contained in any law or the common law, but subject to any order of a competent court with regard to sole guardianship of a minor child or any right, power or duty which any person has or does not have in respect of such minor, a woman shall be the guardian of her minor children born out of a marriage and such guardianship shall be equal to that which a father has under the common law in respect of his minor children.

(2) Whenever both a father and mother have guardianship of a minor child of their marriage, each one of them is competent, subject to any order of a competent court to the contrary, to exercise independently and without the consent of the other any right or power or to carry out any duty arising from such guardianship: Provided that, unless a competent court orders otherwise, the consent of both parents shall be necessary in respect of

- (a) the contracting of a marriage by the minor child;
- (b) the adoption of the child;
- (c) the removal of the child from the Republic by one of the parents or by a person other than a parent of the child;
- (d) the application for a passport by one of the parents in which the minor child is to be specified as a child of the prospective passport holder;
- (e) the alienation or encumbrance of immovable property or any right to immovable property belonging to the minor child.

Amendment of section 5 of Act 37 of 1953, as amended by section 2 of Act 13 of 1966 and section 16 of Act 70 of 1979

2. Section 5 of the Matrimonial Affairs Act, 1953 is hereby amended

- (a) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

"(b) the father parent of a minor to whom the sole guardianship of the minor has not been granted under subsection (1) or the Divorce Act, 1979, or upon whom a children's court has not conferred the exclusive right to exercise any parental powers in regard to the minor, shall not be entitled by testamentary disposition to appoint any person as the guardian of the minor in any other manner than to act jointly with the mother unless such parent was the sole natural guardian immediately before his death.";

- (b) by the deletion of subsection (4);

- (c) by the substitution for subsection (5) of the following subsection:

"(5) The court or a judge may,-

(a) where a parent has appointed a guardian or custodian as provided in paragraph (a) of subsection (3), or

(b) where a guardian has been appointed to a minor by the father, to act jointly with the mother, upon the application of the other parent, or of the guardian or mother, as the case may be, made after the death of the testator, make such order in regard to the guardianship or custody of the minor as the court or judge may deem in the interests of the minor."; and

- (d) by the deletion of subsection (7).

Amendment of section 72 of Act 66 of 1965, as amended by section 7 of Act 54 of 1970 and section 17 of Act 70 of 1979

3. Section 72 of the Administration of Estates Act, 1965, is hereby amended-

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The Master shall, subject to the provisions of subsection (3) and to any applicable provision of section 5 of the Matrimonial Affairs Act, 1953 (Act No. 37 of 1953), and section 4 of the Matrimonial Affairs Ordinance, 1955 (Ordinance No. 25 of 1955), of the territory, or any order of court made under any such provision or any provision of the Divorce Act, 1979, on the written application of any person;

- (b) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the following subparagraph:

"(i) by the father parent of a legitimate minor who has not been deprived, as a result of an order under subsection (1) of the said section 5 or subsection (1) of the said section 4 or the Divorce Act, 1979, of the guardianship of such minor or under section 60 of the Children's Act, 1960 (Act No. 33 of 1960), or section 58 of the Children's Ordinance, 1961 (Ordinance No. 31 of 1961), of the territory, of his parental powers over him and who immediately before his death was the sole natural guardian of such minor; or";

- (c) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph:

"(ii) by the mother of an illegitimate minor or of a legitimate minor

whose father is dead, who has not been so deprived of the guardianship of such minor or of her parental powers over him; or"; and

(d) by the substitution in subsection (1) for subparagraph (iii) of paragraph (a) of the following subparagraph:

been
has
"(iii) by the parent to whom the sole guardianship of a minor has been granted under subsection (1) of the said section 5 or under subsection (1) of the said section 4 or under the Divorce Act, 1979, or on whom the exclusive right to exercise parental powers in regard to a minor has been conferred under the said section 60 or the said section 58,".

Repeal of section 13 of Act 88 of 1984

4. Section 13 of the Matrimonial Property Act, 1984, is hereby repealed.

Short title and commencement

5. This Act shall be called the Guardianship Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette. §