

## UNCLAIMED TRUST FUNDS (Page 1 of 2)

### Introduction

The South African Board for Sheriffs expects change in legislation that would direct unclaimed funds in sheriffs' trust accounts to be paid to the Fidelity Fund after a certain period of time. Although current legislation prescribes payment of unclaimed funds to the Guardian Fund, this generally doesn't happen because there is no definition of unclaimed funds and no time period is prescribed; furthermore no processes exist for these payments.

As a result unclaimed funds in sheriffs trust accounts are often unaccounted for with office handovers, and funds are even lost. In an effort to close such loopholes, the Board has investigated various options and we are at a stage where steps to address the practicalities of these situations is required.

Consultation with the profession in the form of workshops and collation of data, information and your wisdom has been underway. This is an important project for the Board and we are excited that it will benefit the profession and will contribute to the sustainability of the profession in difficult times.

<b>DEFINITION OF UNCLAIMED TRUST FUNDS</b>	Any money held in the trust account of a sheriff in respect of which the identity of the owner is unknown or which is unclaimed after one year, must, after the second annual closing of the accounting records of the sheriff following the date upon which those funds were deposited in the trust account of the sheriff, be paid in the prescribed manner to the Fund by the sheriff concerned.
<b>PURPOSE OF THIS FORM</b>	<p>In order to plan adequately and to provide input with drafting of Regulations, the Board requires some critical information and therefore calls upon sheriffs to complete the information below. The information required on this form is in addition to the information that is submitted annually with Legal Obligations Phase 1.</p> <p>Some sheriffs are not sure what funds are considered to be unclaimed practically, and we have therefore provided some guidelines below, which we hope will be of assistance.</p>

It is important to note that funds can remain in the trust account of a sheriff for a period exceeding 12 months, where a matter has not been finalized. An example would be a registration of transfer, or ongoing interpleader proceedings. Under these circumstances the funds are not considered to be unclaimed trust funds.

### EXAMPLES OF DIFFERENT SCENARIOS:

Disclaimer: The examples are meant to give guidance and are not exhausted.

Example	Code
1. Deposit for auction. Contact particulars are wrong. Depositor cannot be traced.	1
2. Surplus after Sales in Execution payable to debtor. The debtor has left his last known address.	1
3. The instructing Attorney is struck from the roll. Neither the Attorney nor his client claimed the money.	4
4. Cash Deposit from a bank without any identifiable reference.	2
5. Funds deposited in error and not claimed by anybody.	2
6. Funds that qualify as unclaimed trust funds, as handed over to a newly appointed sheriff or acting sheriff by a previous sheriff/curator.	3
7. Any funds held for a period longer than 12 months where the beneficiary is unknown or unidentifiable or untraceable. (I.e. funds that are not considered to be claimed.)	5

