

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)**AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE
MAGISTRATES' COURTS OF SOUTH AFRICA**

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

Expressions in square brackets in bold [] indicate omissions from the existing rules

Expressions with solid underline indicate insertions into the existing rules.

Definition

1. In this Schedule "the Rules" means the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R. 1085 of 30 December 2011, R. 685 of 31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013, R. 760 of 11 October 2013, R. 183 of 18 March 2014, R. 215 of 28 March 2014 and R. 507 of 27 June 2014, R. 5 of 9 January 2015, R. 32 of 23 January 2015, R. 33 of 23 January 2015, R. 318 of 17 April 2015, R. 545 of 30 June 2015, R. 2 of 19 February 2016 and R. 1055 of 29 September 2017.

Amendment of TABLE OF CONTENTS AND COMPARATIVE TABLE OF NUMBERS OF NEW RULES AND CORRESPONDING NUMBERS OF PREVIOUS RULES

2. The TABLE OF CONTENTS AND COMPARATIVE TABLE OF NUMBERS OF NEW RULES AND CORRESPONDING NUMBERS OF PREVIOUS RULES is hereby amended by the substitution thereof for the following TABLE OF CONTENTS AND COMPARATIVE TABLE OF NUMBERS OF NEW RULES AND CORRESPONDING NUMBERS OF PREVIOUS RULES:

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Substitution of rule 43 of the Rules

3. The following rule is hereby substituted for rule 43 of the Rules:

“43 Execution against immovable property

(1)(a) Subject to the provisions of rule 43A, no warrant of execution against the immovable property of any judgment debtor shall be issued unless—

(i) a return has been made of any process issued against the movable property of the judgment debtor from which it appears that the said person has insufficient movable property to satisfy the warrant; or

(ii) such immovable property has been declared to be specially executable by the court.

(b) A warrant of execution against immovable property shall contain—

(i) a full description of the nature, magisterial district and physical address of the immovable property to enable it to be traced and identified by the sheriff; and

(ii) sufficient information to enable the sheriff to give effect to subrule (3) hereof.

(2) The attachment of the immovable property shall be made by any sheriff of the district in which the property is situated, upon a warrant of execution corresponding substantially with Form 32 of Annexure 1.

(3)(a) Notice of the attachment, corresponding substantially with Form 33 of Annexure 1, shall be served by the sheriff upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is occupied by some person other than the owner, also upon such occupier.

(b) Any notice referred to in paragraph (a) shall—

(i) draw attention to the provisions of subrule (8)(a)(iii); and

(ii) be served according to the provisions of rule 9, except that service upon the registrar of deeds or other officer charged with the registration of immovable property may also be effected by the sheriff by means of a registered letter, duly prepaid and posted, addressed to the officer intended to be served.

(4)(a) When effecting the attachment, the sheriff may enter buildings or structures on the immovable property in order to ascertain the improvements made to the immovable property, as well as the condition of such improvements: Provided that where the sheriff after reasonable attempts is unable to gain access onto the immovable property or into any building or structure on account of the property, building or structure being locked, the sheriff may use a locksmith to gain entry.

(b) After attachment, any sale in execution shall take place in the district in which the attached immovable property is situated and shall be conducted by the sheriff of such district who first attached the property: Provided that the sheriff in the first instance and subject to the provisions of paragraph (d) of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

(c) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record the bonds or other encumbrances which are registered against the attached immovable property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

- (5) Subject to rule 43A and any order made by the court, no immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless—
- (a) the execution creditor has caused notice of the intended sale, corresponding substantially with Form 34 of Annexure 1, to be served upon—
- (i) preferent creditors personally;
- (ii) the local authority, if the property is rated; and
- (iii) the body corporate, if the property is a sectional title unit;
- calling upon the aforesaid entities to stipulate within 10 days of a date to be stated, a reasonable reserve price or to agree in writing to a sale without reserve, and has provided proof to the sheriff that such entities have so stipulated or agreed, or
- (b) subject to the provisions of section 66(2)(b) of the Act, the sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) within the time stated in such notice.
- (6) The sheriff may by notice served upon any person require such person to deliver up to the sheriff forthwith, all documents in such person's possession or control relating to the debtor's title to the said property.
- (7)(a) The sheriff conducting the sale shall appoint a day and place for the sale of the attached immovable property, such day being, except by special leave of a magistrate, not less than 45 days after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.
- (b) (i) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the attached immovable property, its improvements, magisterial district and physical address, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the sheriff conducting the sale.
- (ii) The execution creditor must furnish the sheriff with as many copies of the notice of sale as the sheriff may require.
- (c) The execution creditor shall—
- (i) publish the notice once in a newspaper circulating daily or weekly in the district in which the attached immovable property is situated and in the Gazette not less than five days and not more than 15 days before the date of the sale; and

- (ii) provide the sheriff conducting the sale, by hand, or by facsimile or electronic mail, with one satisfactory photocopy of each of the notices published in the newspaper and the Gazette, respectively.
- (d) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall forward a copy of the notice of sale referred to in paragraph (b) to every execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and shall simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.
- (e) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall affix—
- (i) one copy of the notice on the notice-board of the magistrate's court of the district in which the attached immovable property is situated, or if the said property is situated in the district where the court out of which the warrant was issued is situated, then on the notice-board of such court; and
- (ii) one copy at or as near as may be to the place where the said sale is actually to take place.
- (8)(a) (i) Not less than 35 days prior to the date of the sale, the execution creditor shall prepare the conditions of sale, corresponding substantially with Form 33A of Annexure 1, upon which the attached property is to be sold and shall submit such conditions to the sheriff conducting the sale, for the purposes of settling them.
- (ii) In addition to any other terms, the conditions of sale shall include any conditions ordered by the court.
- (iii) Not less than 25 days prior to the date of the sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.
- (iv) Not less than 20 days prior to the date of the sale, the sheriff shall settle the conditions of sale.
- (v) The sale in execution and the conditions of sale shall comply with the provisions of any law relating to auctions, in particular the Consumer Protection Act, 2008 and the Regulations promulgated thereunder.
- (b) (i) The execution creditor shall thereafter supply the said sheriff with three copies of the conditions of sale, one of which shall lie for inspection by interested parties at the office of the sheriff for 15 days prior to the date of the sale.
- (ii) The sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.
- (c) Not less than 15 days prior to the date of the sale, the sheriff shall serve one copy of the conditions of sale on the judgment debtor.

- (d) Not less than 10 days prior to the date of the sale, any interested party may, subject to rule 43A and any order made by the court under the provisions thereof, and upon 24 hours' notice to all known affected parties apply to the magistrate of the district in which the attached immovable property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an appropriate order as to costs.
- (9) The execution creditor shall appoint a conveyancer to attend to the transfer of the attached immovable property sold in execution: Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.
- (10)(a) Immovable property attached in execution shall be sold by public auction by the sheriff or a private auctioneer appointed in terms of paragraph (b).
- (b) The execution creditor or any person having an interest in the due and proper realisation of the attached immovable property may, by notice given to the sheriff within 15 days after attachment, but subject to the provisions hereinafter contained, require that such property be sold by an auctioneer in the ordinary course of business and may in such notice nominate the auctioneer to be employed.
- (c)(i) Where a notice in terms of paragraph (b) is given by any person other than the execution creditor, such notice must be accompanied by the deposit of a sum sufficient to cover the additional expense of sale by an auctioneer in the ordinary course of business, and in default of such a deposit such notice shall be void.
- (ii) A notice in terms of paragraph (b) shall lapse if the services of an auctioneer are not obtainable.
- (iii) If after satisfying the claim of the execution creditor and all warrants of execution lodged with the sheriff on or before the day immediately preceding the date of the sale and all costs there are surplus proceeds of the sale of the immovable property, the deposit must be refunded to the depositor: Provided that if there is no surplus, such deposit must, as far as may be necessary, be applied in payment of the auctioneer's fees and expenses.
- (d) If two or more notices in terms of paragraph (b) are given, the first shall have preference.
- (11)(a)(i) If the purchaser fails to carry out any obligations due by the purchaser under the conditions of sale, the sale may be cancelled by a magistrate summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the attached immovable property may be put up for sale again.
- (ii) The report shall be accompanied by a notice corresponding substantially with Form 33B of Annexure 1.

(iii) If the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.

(b) Any loss sustained by reason of the purchaser's default may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from the purchaser under judgment of a magistrate given on a written report by the sheriff, after notice in writing has been given to the purchaser that the report will be laid before a magistrate for the aforesaid purpose.

(c) If the purchaser is already in possession of the immovable property, the said sheriff may, on notice to affected persons apply to a magistrate for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.

(12) Subject to the provisions of rule 43A and subrule (5) hereof–

(a) the sale shall be conducted upon the conditions stipulated under subrule (8); and

(b) the immovable property shall be sold to the highest bidder.

(13)(a) All moneys in respect of the purchase price of the immovable property sold in execution shall be paid to the sheriff and the sheriff shall retain such moneys in his or her trust account until transfer has been given to the purchaser.

(b) The sheriff conducting the sale shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.

(c) No amount of the purchase money shall be paid out until the provisions of subrule (14) have been complied with.

(14)(a) After conclusion of the sale, but before preparation by the sheriff of a plan of distribution, the execution creditor or his or her attorney shall provide the sheriff with a certificate of all money paid by the judgment debtor to the execution creditor or his or her attorney after the issue of the warrant of execution.

(b) (i) Within 10 days after the date of registration of the transfer, the sheriff shall have prepared a plan of distribution of the proceeds in order of preference, and must forward a copy of such plan to the registrar or clerk of the court and to all other sheriffs appointed in that district.

(ii) Immediately thereafter the said sheriff shall give notice to all parties who have lodged warrants and to the execution debtor that the plan of distribution will lie for inspection at his or her office and the office of the registrar or clerk of the court for 15 days from a date mentioned, and unless such parties signify in writing their agreement to the plan, such plan will so lie for inspection.

(c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference:

(i) Claims of preferent creditors ranking in priority in their legal order of preference; and thereafter

(ii) Claims of other creditors whose warrants have been lodged with the sheriff in the order of preference appearing from sections 96 and 98A to 103 (inclusive) of the Insolvency Act, 1936 (Act No. 24 of 1936).

(d) Any interested person objecting to the plan must—

(i) before the expiry of the period referred to in paragraph (b)(ii), give notice in writing to the sheriff and all other interested persons of the particulars of the objection; and

(ii) within 10 days after the expiry of the period referred to in paragraph (b)(ii), bring such objection before a magistrate for review upon 10 days notice to the sheriff and the said persons.

(e) The magistrate on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as he or she deems appropriate.

(f) If—

(i) no objection is lodged to such plan; or

(ii) the interested parties signify their concurrence therein; or

(iii) the plan is confirmed or amended on review,

the sheriff shall, on production of a certificate from the conveyancer that transfer has been given to the purchaser, pay out in accordance with the plan of distribution.

(15) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any immovable property offered for sale either for himself or herself or for any other person."

Substitution of rule 43A of the Rules

4. The following rule is hereby substituted for rule 43A of the Rules:

"43A Execution against residential immovable property

(1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.

(2)(a) A court considering an application under this rule must—

(i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor; and

(ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.

(b) A court shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the court, having considered all relevant factors, considers that execution against such property is warranted.

(c) The registrar or clerk of the court shall not issue a warrant of execution against the residential immovable property of any judgment debtor unless a court has ordered execution against such property.

(3) Every notice of application to declare residential immovable property executable shall be—

(a) substantially in accordance with Form 1B of Annexure 1;

(b) on notice to the judgment debtor and to any other party who may be affected by the sale in execution, including the entities referred to in rule 43(5)(a): Provided that the court may order service on any other party it considers necessary;

(c) supported by affidavit which shall set out the reasons for the application and the grounds on which it is based; and

(d) served by the sheriff on the judgment debtor personally: Provided that the court may order service in any other manner.

(4)(a) The applicant shall in the notice of application—

(i) state the date on which the application is to be heard;

(ii) inform every respondent cited therein that if the respondent intends to oppose the application or make submissions to the court, the respondent must do so on affidavit within 10 days of service of the application and appear in court on the date on which the application is to be heard;

(iii) appoint a physical address which shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the courthouse at which the applicant will accept service of all documents in these proceedings; and

(iv) state the applicant's postal, facsimile or electronic mail address where available.

(b) The application shall not be set down for hearing on a date less than five days after expiry of the period referred to in paragraph (a)(ii).

(5) Every application shall be supported by the following documents, where applicable, evidencing:

(a) the market value of the immovable property;

(b) the local authority valuation of the immovable property;

(c) the amounts owing on mortgage bonds registered over the immovable property;

(d) the amount owing to the local authority as rates and other dues;

(e) the amounts owing to a body corporate as levies; and

(f) any other factor which may be necessary to enable the court to give effect to subrule (8):

Provided that the court may call for any other document which it considers necessary.

(6)(a) A respondent, upon service of an application referred to in subrule (3), may—

(i) oppose the application; or

(ii) oppose the application and make submissions which are relevant to the making of an appropriate order by the court; or

(iii) without opposing the application, make submissions which are relevant to the making of an appropriate order by the court.

(b) A respondent referred to in paragraph (a)(i) and (ii) shall—

(i) admit or deny the allegations made by the applicant in the applicant's founding affidavit; and

(ii) set out the reasons for opposing the application and the grounds on which the application is opposed.

(c) Every opposition or submission referred to in paragraphs (a) and (b) shall be set out in an affidavit.

(d) A respondent opposing an application or making submissions shall, within 10 days of service of the application—

(i) deliver the affidavit referred to in paragraph (c);

(ii) appoint a physical address which shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the courthouse at which documents may be served upon such respondent; and

(iii) state the respondent's postal, facsimile or electronic mail address where available.

(7) The registrar or clerk of the court shall place the matter on the roll for hearing by the court on the date stated in the Notice of Application.

(8) A court considering an application under this rule may—

(a) of its own accord or on the application of any affected party, order the inclusion in the conditions of sale, of any condition which it may consider appropriate;

(b) order the furnishing by—

(i) a municipality of rates due to it by the judgment debtor; or

(ii) a body corporate of levies due to it by the judgment debtor;

(c) on good cause shown, condone—

(i) failure to provide any document referred to in subrule (5); or

(ii) delivery of an affidavit outside the period prescribed in subrule (6)(d);

(d) order execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt;

(e) set a reserve price;

(f) postpone the application on such terms as it may consider appropriate;

(g) refuse the application if it has no merit;

(h) make an appropriate order as to costs, including a punitive order against a party who delays the finalisation of an application under this rule; or

(i) make any other appropriate order.

(9)(a) In an application under this rule, or upon submissions made by a respondent, the court must consider whether a reserve price is to be set.

(b) In deciding whether to set a reserve price and the amount at which the reserve is to be set, the court shall take into account—

(i) the market value of the immovable property;

- (ii) the amount owing as rates or levies;
 - (iii) the amounts owing on registered mortgage bonds;
 - (iv) any equity which may be realised between the reserve price and the market value of the property;
 - (v) reduction of the judgment debtor's indebtedness on the judgment debt and as contemplated in subrule (5)(a) to (e), whether or not equity may be found in the immovable property, as referred to in subparagraph (iv);
 - (vi) whether the immovable property is occupied, the persons occupying the property and the circumstances of such occupation;
 - (vii) the likelihood of the reserve price not being realised and the likelihood of the immovable property not being sold;
 - (viii) any prejudice which any party may suffer if the reserve price is not achieved; and
 - (ix) any other factor which in the opinion of the court is necessary for the protection of the interests of the execution creditor and the judgment debtor.
- (c) If the reserve price is not achieved at a sale in execution, the court must, on a reconsideration of the factors in paragraph (b) of this subrule and its powers under this rule, order how execution is to proceed.
- (d) Where the reserve price is not achieved at a sale in execution, the sheriff must submit a report to the court, within 5 days of the date of the auction, which report shall contain—
- (i) the date, time and place at which the auction sale was conducted;
 - (ii) the names, identity numbers and contact details of the persons who participated in the auction;
 - (iii) the highest bid or offer made; and
 - (iv) any other relevant factor which may assist the court in performing its function in paragraph (c).
- (e) The court may, after considering the factors in paragraph (d) and any other relevant factor, order that the property be sold to the person who made the highest offer or bid.”

Insertion of rule 43B in the Rules

5. The following rule is hereby inserted in the Rules after rule 43A:

“43B Enforcement of foreign civil judgment

- (1) Whenever a certified copy of a judgment referred to in section 3(1) of the Enforcement of Foreign Civil Judgments Act, 1988 (Act No. 32 of 1988), is filed with the registrar or clerk of the court in the Republic, such registrar or clerk of the court shall register that judgment by numbering it with a consecutive number for the year during which it is filed and by noting the particulars in respect of the judgment referred to in paragraphs (a), (b) and (c) of the said section on the case cover.
- (2) A judgment creditor shall, together with the certified copy of a judgment referred to in subrule (1) —
- (a) file an affidavit made by himself or herself or by somebody else who can confirm the following facts stating—
- (i) the amount of interest due, the appropriate rate of interest and how the amount of interest has been calculated; and
- (ii) whether any amount has been paid by the judgment debtor since judgment, and, if so, whether such amount has been deducted from the capital amount of the judgment debt or from the interest or costs, as the case may be; and
- (b) if any amount payable under the judgment is expressed in a currency other than the currency of the Republic, file a certificate issued by a banking institution registered in terms of section 4 of the Banks Act, 1965 (Act No. 23 of 1965), stating the rate of exchange prevailing at the date of the judgment.
- (3) A notice issued in terms of section 3(2) of the Enforcement of Foreign Civil Judgments Act, 1988 (Act No. 32 of 1988), shall contain—
- (a) the consecutive number referred to in subrule (1);
- (b) the date on which the judgment was registered;
- (c) the balance of the amount payable under the judgment;
- (d) the taxed costs awarded by the court of the designated country;
- (e) the interest, if any, which by the law or by order of the court of the designated country concerned is due on the amount payable under the judgment up to the time of registration of the judgment;

(f) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining a certified copy of the judgment;

(g) the names of the parties concerned; and

(h) the name of the court where the judgment was given.”

Amendment of the Numerical List to Annexure 1 of the Rules

6. The Numerical List to Annexure 1 of the Rules is hereby amended by the substitution therefor of the Numerical List to the Annexure contained in Annexure A to this Schedule.

Amendment of Annexure 1 to the Rules

7. Annexure 1 to the Rules is hereby amended by—

(a) the substitution for Forms Nos.33 and 34 of Forms Nos. 33 and 34, respectively, contained in Annexure B to this Schedule; and

(b) the addition of Forms Nos. 1B, 33A and 33B contained in Annexure B to this Schedule.

Commencement

8. These rules come into operation on **22 December 2017**.

ANNEXURE A**“ANNEXURE 1****FORMS****NUMERICAL LIST****Form No.**

1. Notice of Motion (Short Form)
- 1A. Notice of Motion (Long Form)
- 1B. Notice of application to declare immovable property executable in terms of rule 43A
2. Simple Summons
- 2A. Summons: Provisional Sentence
- 2B. Combined Summons
- 2C. Combined Summons: (Divorce Actions)
3. Summons (in which is included an automatic rent interdict)
4. Edictal citation/substituted service: short form of process
5. Request for default judgment
- 5A. Request for default judgment where the defendant has admitted liability and undertaken to pay the debt in instalments or otherwise – Section 57 of the Act
- 5B. Request for default judgment where the defendant has consented to judgment – Section 58 of the Act
6. Notice of withdrawal of action/application
7. Notice of application for summary judgment
8. Affidavit in support of application for summary judgment
9. Affidavit under section 32 of the Act
10. Security under section 32 of the Act
11. Order under section 32 of the Act
12. Consent to sale of goods attached under section 32 of the Act
13. Discovery – form of affidavit
14. Notice in terms of rule 23(5)
15. Discovery – notice to produce
- 15A. Discovery – notice to inspect documents
- 15B. Discovery – notice to produce documents in pleadings, etc
16. Order for interdict obtained *ex parte*
17.
18. Order for attachment of property to found or confirm jurisdiction
19. Direction to attend pre-trial conference
20. Order – pre-trial conference
21. Application for trial with assessors
22. Summons to assessor
23. Commissions *de bene esse*
24. Subpoena
25. Warrant for payment of fine or arrest of witness in default
26. Warrant for the arrest of a witness in default
27. Security on attachment or interdict *ex parte*

28. Security when execution is stayed pending appeal
29. Security when execution is allowed pending appeal
30. Warrant of ejectment
31. Warrant for delivery of goods
32. Warrant for execution against property
33. Notice of attachment in execution
- 33A. Conditions of sale in execution of immovable property
- 33B. Notice to cancel sale of immovable property in terms of rule 43(11)(a)
34. Notice **[to preferent creditor]** in terms of rule 43(5)(a) [section 66(2)(a) of the Act]
35. Interpleader summons [section 69(1) of the Act]
36. Interpleader summons [section 69(2) of the Act]
37. Security under rule 38
38. Emoluments attachment order
39. Garnishee order
40. Notice to appear in court in terms of section 65A(1) of the Act
- 40A. Warrant of arrest in terms of section 65A(6) of the Act
- 40B. Notice to appear in court in terms of section 65A(8)(b) of the Act
41. Notice of set-down of postponed proceedings under section 65E(3) of the Act
42. Notice in terms of rule 58(2)(a)
43. Notice to Third Party
44. Application for an administration order under section 74(1) of the Act
45. Statement of affairs of debtor in an application for an administration order in terms of section 65I(2) or 74A of the Act
46. Certificate of service of foreign process
47. Notice to debtor that an additional creditor has lodged a claim against him or her for a debt owing before the making of the administration order
48. Notice to debtor that a creditor has lodged a claim for a debt accruing after granting of the administration order
49. Notice to add an additional creditor to the list of creditors of a person under administration
50. Notice to creditor that his or her name has been added to the list of creditors of a person under administration
51. Administration order
52. Distribution account in terms of section 74J(5) of the Act
- 52A. Rescission of administration order
53. Notice of abandonment of specified claim, exception or defence
54. Agreement not to appeal
55. Request to inspect record
56. Criminal record book
57. Notice in terms of section 309B(2)(d) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)".

ANNEXURE B**“No. 1B – Notice of application to declare immovable property executable in terms of rule 43A*****For use in the District Court**

In the Magistrate’s Court for the District _____ of _____ held
at _____ Case No. _____ of 20 _____

In the matter between:

_____ Applicant

and

_____ Respondent

To the above-mentioned respondent:

TAKE NOTICE that _____ (hereinafter called the applicant) intends to make application to this Court on _____ at _____ or as soon thereafter as the application may be heard for an order (1) _____ (2) _____ (3) _____ (set forth the form of order prayed) and that the annexed affidavit of _____, together with annexures thereto, will be used in support thereof.

PLEASE TAKE NOTICE that the applicant has appointed the address below at which the applicant will accept service of all documents in this application.

TAKE NOTICE FURTHER that if you intend to oppose this application you must, within 10 court days of service of this application—

- (a) _____ in an affidavit admit or deny the allegations made in the applicant’s founding affidavit;
- (b) _____ set out in such affidavit the reasons for your opposition and the grounds on which your opposition is based;
- (c) _____ serve a copy of the affidavit on the applicant or his or her attorney; and
- (d) _____ file the original of the affidavit with the Clerk of the Court.

TAKE NOTICE FURTHER that if you wish to make submissions which are relevant to the making of an appropriate order such as the determination of a reserve price; you must, within 10 court days of service of this application—

- (a) set out in an affidavit the submissions and grounds therefor;
- (b) serve a copy of the affidavit on the applicant or his or her attorney; and
- (c) file the original of the affidavit with the Clerk of the Court.

TAKE NOTICE FURTHER that—

- (a) together with service and filing of the affidavit, you must give your physical address, postal address and where available, facsimile and electronic mail address;
- (b) in your affidavit you must indicate the preferred address for service upon you of all documents in the application, and service thereof at the address so given shall be valid and effectual, except where personal service is required by an order or practice of the court; and
- (c) a physical address given by you must, in places where there are three or more attorneys or firms of attorneys practicing independently of one another, be within 15 kilometres of the courthouse.

AND TAKE NOTICE FURTHER that you must appear before the above Honourable Court on

AND TAKE FURTHER NOTICE that your failure to do any of the things mentioned in this notice of application may result in the court granting the orders as prayed for above.

DATED atthis.....day of.....20.....

.....

Applicant/Applicant’s attorney

Physical address (within 15 kilometres of the courthouse):

.....
.....

Postal address:

Electronic mail address:

Facsimile:

To: The Clerk of the above Court

And to:

.....

Respondent

Address:

.....

Postal address:

Electronic mail address:

Facsimile:

No. 1B – Notice of application to declare immovable property executable in terms of rule 43A

***For use in the Regional Court**

In the Regional Court for the Regional Division of.....

held at.....Case No. of 20.....

In the matter between:

..... Applicant

and

..... Respondent

To the above-mentioned respondent:

TAKE NOTICE that (hereinafter called the applicant) intends to make application to this Court on at or as soon thereafter as the application may be heard for an order (1) (2) (3) (here set forth the form of order prayed) and that the annexed affidavit of, together with annexures thereto, will be used in support thereof.

PLEASE TAKE NOTICE that the applicant has appointed the address below at which the applicant will accept service of all documents in this application.

TAKE NOTICE FURTHER that if you intend to oppose this application you must, within 10 court days of service of this application—

- (a) in an affidavit admit or deny the allegations made in the applicant's founding affidavit;
- (b) set out in such affidavit the reasons for your opposition and the grounds on which your opposition is based;
- (c) serve a copy of the affidavit on the applicant or his or her attorney; and
- (d) file the original of the affidavit with the registrar.

TAKE NOTICE FURTHER that if you wish to make submissions which are relevant to the making of an appropriate order such as the determination of a reserve price; you must, within 10 court days of service of this application—

- (a) set out in an affidavit the submissions and grounds therefor;
- (b) serve a copy of the affidavit on the applicant or his or her attorney; and
- (c) file the original of the affidavit with the registrar.

TAKE NOTICE FURTHER that—

- (a) together with service and filing of the affidavit, you must give your physical address, postal address and where available, facsimile and electronic mail address;
- (b) in your affidavit you must indicate the preferred address for service upon you of all documents in the application, and service thereof at the address so given shall be valid and effectual, except where personal service is required by an order or practice of the court; and
- (c) a physical address given by you must, in places where there are three or more attorneys or firms of attorneys practicing independently of one another, be within 15 kilometres of the courthouse.

AND TAKE NOTICE FURTHER that you must appear before the above Honourable Court on

AND TAKE FURTHER NOTICE that your failure to do any of the things mentioned in this notice of application may result in the court granting the orders as prayed for above.

DATED atthis.....day of.....20.....

.....

Applicant/Applicant’s attorney

Physical address (within 15 kilometres of the courthouse):

.....

.....

Postal address:

Electronic mail address:

Facsimile:

To: The Registrar of the above Court

And to:

.....

Respondent

Address:

.....

Postal address:

Electronic mail address:

Facsimile:

No. 33 — Notice of attachment in execution

***For use in the District Court**

In the Magistrate’s Court for the District of

held at Case No. of 20.....

In the matter between

..... Execution Creditor

and

..... **[Execution]** Judgment Debtor

To:

[Execution] Judgment Debtor

Take notice that I have this day laid under judicial attachment the property **[comprised in the above]** in the attached inventory in pursuance of a warrant directed to me **[under the hand of]** by the clerk of the court for the district of, whereby I am required to cause to be raised of your property in this district or region the sum of R..... and R costs recovered against you by the judgment of the said court in this action **[and]** together with my charges in respect of the said warrant.

Your attention is drawn to the provisions of rule 43(8)(a)(iii) of the rules of the above Honourable Court which reads:

“(iii) Not less than 25 days prior to the date of sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.”

The conditions of sale upon which the attached property is to be sold by public auction will be prepared by the execution creditor.

Dated at this day of, 20.....

.....

Sheriff.

No. 33 — Notice of attachment in execution

***For use in the Regional Court**

In the Regional Court for the Regional Division of

held at Case No. of 20.....

In the matter between

..... Execution Creditor

and

..... **[Execution]** Judgment Debtor

To:

[Execution] Judgment Debtor

Take notice that I have this day laid under judicial attachment the property **[comprised in the above]** in the attached inventory in pursuance of a warrant directed to me **[under the hand of]** by the registrar for the regional division of, whereby I am required to cause to be raised of your property in this district or region the sum of R..... and R costs recovered against you by the judgment of the said court in this action **[and]** together with my charges in respect of the said warrant.

Your attention is drawn to the provisions of rule 43(8)(a)(iii) of the rules of the above Honourable Court which reads:

“(iii) Not less than 25 days prior to the date of sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.”

The conditions of sale upon which the attached property is to be sold by public auction will be prepared by the execution creditor.

Dated at this day of, 20.....

.....

Sheriff.

No. 33A – Conditions of sale in execution of immovable property

***For use in the District Court**

In re:

..... Execution Creditor

and

..... Judgment Debtor

The immovable property (hereinafter referred to as the "property") which will be put up for auction on the day of 20....., consists of:

.....

The sale shall be conducted on the following conditions:

1. The sale shall be conducted in accordance with the provisions of rule 43 of the Magistrates' Courts Rules and all other applicable law.

2. The property shall be sold by the sheriff of orXYZ Auctioneers of at to the highest bidder without reserve/subject to a reserve price of.....

3. The sale shall be for rands, and no bid for less than one thousand rands shall be accepted.

4. If any dispute arises about any bid, the property may again be put up for auction.

5(a) If the sheriff/auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified.

(b) If the sheriff/auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 7 or the balance of the purchase price, the sheriff/auctioneer may refuse to accept the bid of such bidder, or accept it provisionally until the bidder satisfies the sheriff/auctioneer that such bidder is able to pay the deposit and the balance of the purchase price.

(c) On the refusal of a bid under circumstances referred to in paragraph (b), the property may immediately be put up for auction again.

6(a) The purchaser shall, as soon as possible after the sale and immediately on being requested by the sheriff/auctioneer, sign these conditions.

(b) If the purchaser purchases in a representative capacity, the purchaser shall disclose the name of the principal or person on whose behalf the property is being purchased.

7(a) The purchaser shall pay to the sheriff a deposit of 10 per cent of the purchase price in cash or by bank guaranteed cheque on the day of the sale.

(b) The balance shall be paid against transfer and shall be secured by a guarantee issued by a financial institution approved by the execution creditor or his or her attorney, and shall be furnished to the sheriff within days after the date of sale.

8(a) If the purchaser fails to carry out any obligation due by the purchaser under the conditions of sale, the sale may be cancelled by a magistrate summarily on the report of the sheriff after due notice to the purchaser, and the property may again be put up for sale.

(b) In the event of the circumstances in paragraph (a) occurring, the purchaser shall be responsible for any loss sustained by reason of such default, which loss may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from the purchaser under judgment of a magistrate pronounced on a written report by the sheriff, after such purchaser has been given notice in writing that such report will be laid before the magistrate for such purpose.

(c) If the purchaser is already in possession of the property, the sheriff may, on notice to affected parties, apply to a magistrate for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.

9(a) The purchaser shall immediately on demand pay the sheriff's commission/auctioneer's fees and expenses calculated as follows:

.....:

(b) The purchaser shall be liable for and pay, within 10 days of being requested to do so by the appointed conveyancer, the following:

(i) All amounts due to the municipality servicing the property, in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that may be due to a municipality; and where applicable

(ii) All levies due to a body corporate in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986) or amounts due to a home owners or other association which renders services to the property.

(iii) The costs of transfer, including conveyance fees, transfer duty and any other amount necessary for the passing of transfer to the purchaser.

10(a) The property may be taken possession of after signature of the conditions of sale, payment of the deposit and upon the balance of the purchase price being secured in terms of condition 7(b).

(b) Should the purchaser receive possession of the property, the purchaser shall be liable for occupational rental at the rate of R.....per month from.....to date of transfer.

(c) Upon the purchaser taking possession, the property shall be at the risk and profit of the purchaser.

(d) The execution creditor and the sheriff/auctioneer give no warranty that the purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is not occupied.

11(a) The purchaser shall be entitled to obtain transfer forthwith upon payment of the whole purchase price and compliance with condition 9, alternatively, transfer shall be passed only after the purchaser has complied with the provisions of conditions 7 and 9 hereof.

(b) If the transfer is delayed by the purchaser, the purchaser shall be liable for interest at the rate ofper cent per annum on the purchase price.

12(a) The sheriff may demand that any improvements to the property sold shall be immediately insured by the purchaser for their full value, proof of insurance given to the sheriff and such insurance policy kept in force until transfer is registered.

(b) Should the purchaser fail to comply with the obligations in paragraph (a), the sheriff may effect the necessary insurance, the cost of which insurance shall be for the purchaser's account.

13(a) The property is sold as represented by the title deeds and diagram or sectional plan, subject to all servitudes and conditions of establishment, whichever applies to the property;

(b) The sheriff/auctioneer shall not be liable for any deficiency that may be found to exist in the property.

14. The execution creditor shall appoint the conveyancer to effect transfer of the property to the purchaser: Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.

Signed at this day of
20.....

I certify hereby that today the in my presence the hereinbefore-
mentioned property was sold for to
.....
.....

.....
Sheriff/Auctioneer

I, the undersigned, residing at in the district of
..... do hereby bind myself as the purchaser of the hereinbefore-mentioned property to
pay the purchase price and to perform all and singular the conditions mentioned above.

.....
Purchaser

No. 33A – Conditions of sale in execution of immovable property

***For use in the Regional Court**

In re:

..... Execution Creditor

and

..... Judgment Debtor

The immovable property (hereinafter referred to as the “property”) which will be put up for
auction on the day of 20....., consists of:
.....

The sale shall be conducted on the following conditions:

1. The sale shall be conducted in accordance with the provisions of rule 43 of the Magistrates’
Courts Rules and all other applicable law.

2. The property shall be sold by the sheriff of orXYZ Auctioneers of at to the highest bidder without reserve/subject to a reserve price of.....

3. The sale shall be for rands, and no bid for less than one thousand rands shall be accepted.

4. If any dispute arises about any bid, the property may again be put up for auction.

5(a) If the sheriff/auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified.

(b) If the sheriff/auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 7 or the balance of the purchase price, the sheriff/auctioneer may refuse to accept the bid of such bidder, or accept it provisionally until the bidder satisfies the sheriff/auctioneer that such bidder is able to pay the deposit and the balance of the purchase price.

(c) On the refusal of a bid under circumstances referred to in paragraph (b), the property may immediately be put up for auction again.

6(a) The purchaser shall, as soon as possible after the sale and immediately on being requested by the sheriff/auctioneer, sign these conditions.

(b) If the purchaser purchases in a representative capacity, the purchaser shall disclose the name of the principal or person on whose behalf the property is being purchased.

7(a) The purchaser shall pay to the sheriff a deposit of 10 per cent of the purchase price in cash or by bank guaranteed cheque on the day of the sale.

(b) The balance shall be paid against transfer and shall be secured by a guarantee issued by a financial institution approved by the execution creditor or his or her attorney, and shall be furnished to the sheriff within days after the date of sale.

8(a) If the purchaser fails to carry out any obligation due by the purchaser under the conditions of sale, the sale may be cancelled by a magistrate summarily on the report of the sheriff after due notice to the purchaser, and the property may again be put up for sale.

(b) In the event of the circumstances in paragraph (a) occurring, the purchaser shall be responsible for any loss sustained by reason of such default, which loss may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be

recovered from the purchaser under judgment of a magistrate pronounced on a written report by the sheriff, after such purchaser has been given notice in writing that such report will be laid before the magistrate for such purpose.

(c) If the purchaser is already in possession of the property, the sheriff may, on notice to affected parties, apply to a magistrate for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.

9(a) The purchaser shall immediately on demand pay the sheriff's commission/auctioneer's fees and expenses calculated as follows:

.....:

(b) The purchaser shall be liable for and pay, within 10 days of being requested to do so by the appointed conveyancer, the following:

(i) All amounts due to the municipality servicing the property, in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that may be due to a municipality; and where applicable

(ii) All levies due to a body corporate in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986) or amounts due to a home owners or other association which renders services to the property.

(iii) The costs of transfer, including conveyance fees, transfer duty and any other amount necessary for the passing of transfer to the purchaser.

10(a) The property may be taken possession of after signature of the conditions of sale, payment of the deposit and upon the balance of the purchase price being secured in terms of condition 7(b).

(b) Should the purchaser receive possession of the property, the purchaser shall be liable for occupational rental at the rate of R.....per month from.....to date of transfer.

(c) Upon the purchaser taking possession, the property shall be at the risk and profit of the purchaser.

(d) The execution creditor and the sheriff/auctioneer give no warranty that the purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is not occupied.

11(a) The purchaser shall be entitled to obtain transfer forthwith upon payment of the whole purchase price and compliance with condition 9, alternatively, transfer shall be passed only after the purchaser has complied with the provisions of conditions 7 and 9 hereof.

(b) If the transfer is delayed by the purchaser, the purchaser shall be liable for interest at the rate ofper cent per annum on the purchase price.

12(a) The sheriff may demand that any improvements to the property sold shall be immediately insured by the purchaser for their full value, proof of insurance given to the sheriff and such insurance policy kept in force until transfer is registered; and

(b) Should the purchaser fail to comply with the obligations in paragraph (a) the sheriff may effect the necessary insurance, the cost of which insurance shall be for the purchaser's account.

13(a) The property is sold as represented by the title deeds and diagram or sectional plan, subject to all servitudes and conditions of establishment, whichever applies to the property;

(b) The sheriff/auctioneer shall not be liable for any deficiency that may be found to exist in the property.

14. The execution creditor shall appoint the conveyancer to effect transfer of the property to the purchaser: Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.

Signed at this day of
20.....

I certify hereby that today the in my presence the hereinbefore-
 mentioned property was sold for to

.....
Sheriff/Auctioneer

I, the undersigned residing at in the district of do hereby bind myself as the purchaser of the hereinbefore-mentioned property to pay the purchase price and to perform all and singular the conditions mentioned above.

.....
Purchaser

No. 33B – Notice to cancel sale of immovable property in terms of rule 43(11)(a)

***For use in the District Court**

In the Magistrate’s Court for the District of held at Case No. of 20

In the matter between:

The Sheriff of Applicant
and

..... Purchaser

In re:

..... Execution Creditor

and

..... Judgment Debtor

KINDLY TAKE NOTICE that the sheriff of intends to request a magistrate in chambers, on a date to be allocated by the clerk of the court, to cancel the sale of the immovable property described as, sold by public auction on 20..... and to authorise the said property being put up for sale again.

TAKE NOTICE FURTHER that the report of the said sheriff, upon which the request to the magistrate will be made to cancel the sale, is attached hereto.

DATED at..... this day of 20.....

.....
Sheriff of the Court
 (Area)
 (Address)

To: The Clerk of the Court

.....
And to:

.....
Purchaser
 (Address)

No. 33B – Notice to cancel sale of immovable property in terms of rule 43(11)(a)

***For use in the Regional Court**

In the Regional Court for the Regional Division of
 held at Case No. of 20

In the matter between:

The Sheriff of Applicant

and

..... Purchaser

In re:

..... Execution Creditor

and

..... Judgment Debtor

KINDLY TAKE NOTICE that the sheriff of intends to request a magistrate in chambers, on a date to be allocated by the registrar, to cancel the sale of the immovable property described as, sold by public auction on 20..... and to authorise the said property being put up for sale again.

TAKE NOTICE FURTHER that the report of the said sheriff, upon which the request to the magistrate will be made to cancel the sale, is attached hereto.

DATED at..... this day of20.....

.....
Sheriff of the Court
 (Area)
 (Address)

To: The Registrar of the Court

.....
And to:

.....
Purchaser
 (Address)

No. 34 — Notice [to preferent creditor] in terms of rule 43(5)(a)

***For use in the District Court**

[Section 66(2)(a) of Act 32 of 1944]

In the Magistrate's Court for the District of held at
 Case No. of 20.....

In the matter between

..... **[Judgment] Execution** Creditor

and

..... Judgment Debtor

To:.....

(Preferent Creditor/Local authority/Body Corporate)

Whereas the undermentioned immovable property was laid under judicial attachment by the Sheriff on the day of, 20 you are hereby notified that it will be sold in execution at (place) on the day of....., 20..... at(time)

Short description of property and its situation:

.....

You are hereby called upon to stipulate within 10 days of(insert date) a reasonable reserve price or to agree in writing to a sale without reserve.

Dated at this day of, 20.....

.....

Execution creditor/Attorney for execution creditor

Address:

No. 34 — Notice [to preferent creditor] in terms of rule 43(5)(a)

***For use in the Regional Court**

[Section 66(2)(a) of Act 32 of 1944]

In the Regional Court for the Regional Division of

held at Case No. of 20.....

In the matter between

..... **[Judgment]** Execution Creditor

and

..... Judgment Debtor

To:.....

(Preferent Creditor/Local authority/Body Corporate)

Whereas the undermentioned immovable property was laid under judicial attachment by the Sheriff on the day of, 20 you are hereby notified that it will be sold in execution at (place) on the day of....., 20..... at(time)

Short description of property and its situation:

.....
.....

You are hereby called upon to stipulate within 10 days of(insert date) a reasonable reserve price or to agree in writing to a sale without reserve.

Dated at this day of, 20.....

.....

Execution creditor/Attorney for execution creditor

Address: ”.