

**Ex parte Erasmus**

(55075/2014) [2014] GP (October 2014)

**A valuator in an application for voluntary surrender must confirm under oath that he or she personally inspected the assets referred to in the valuation, the date upon which, and the time and locality at which the assets were inspected and the applicant or his or her proxy must confirm in his or her affidavit that he or she was present when the assets were viewed and that he or she pointed out the assets to the valuator (laid down as a formal rule of practice in the Gauteng Division of the High Court, Pretoria).**

The courts, including the Gauteng Division, Pretoria, have repeatedly expressed their disapproval of unacceptable practices in applications for voluntary surrender. It is disconcerting that repeated admonishments by the courts decrying unacceptable features of voluntary surrender applications are falling on deaf ears. The time has come that more drastic steps are taken against practitioners who do not heed the courts' repeated criticism and warnings. (Par [2])

The probability that second hand furniture of uncertain age and quality will set an auction on fire is obviously slim. This has negative implications for any intended surrender of a small estate, because the proceeds of meager possessions must cover the administration costs before the claims of preferred and secured creditors can be considered. The trustee often sells the furniture to the applicant by way of an instalment sale for a price equal to the value put on it in the application for voluntary surrender. Only if the realistic value of the assets, calculated upon the basis of a forced sale, is sufficient to render a return of 20 cents in the Rand of all concurrent claims, after deduction of the administration costs and the claims of secured and preferent creditors, will the application for surrender be accepted. (Par [4] and [5])

Applications of voluntary surrender are usually launched ex parte - only one party approaches the court for relief. The indisputable duty therefore rests upon the shoulders of every applicant, and upon the shoulders of his or her legal representative, to act openly and honestly toward the court in every respect. (Par [6]) There is ample authority that ex parte applications require the utmost good faith - all material facts must be disclosed which might influence a Court in coming to a decision and the non-disclosure or suppression of facts need not be willful or mala

fide to incur the penalty of rescission of an order. (**Ex parte Arntzen** 2013 (1) SA 49 (KZP) par 5 quoted with approval in par [7])

There is an even greater risk of abuse and a risk that the interests of creditors will be undermined in voluntary surrender applications than in 'friendly' sequestration applications. Therefore the need for full and frank disclosure and well founded evidence concerning the debtor's estate is even more pronounced. No collusion between friendly creditor and debtor is necessary since it is the debtor who is the applicant and has a more direct interest in the application succeeding and understanding of the genuine position than the friendliest of creditors. (**Ex parte Arntzen** 2013 (1) SA 49 (KZP) par 12 quoted with approval in par [7])

In **Ex Parte Anthony en 'n Ander en 6 soortetyke aansoeke** 2000 (4) SA 116 (C) Blignaut J dealt with seven separate applications for voluntary surrender. In all seven cases each estate consisted of one mortgaged immovable property and a few movables. The court's main concern was the advantage to creditors and Blignaut J, writing for the full bench, found that notwithstanding valuations obtained by the applicants in each case, they failed to prove that the valuations would be achieved in the event of forced sales. The court relied on the judgment of Leveson J in **Nel v Lubbe** 1999 (3) SA 109 (W) 111G where the learned Judge was also confronted with a valuation which was nothing more but "a bold assertion of value". Leveson J made it clear that a court will look to the guidance of an expert when it is satisfied that it is incapable of forming an opinion without it, but that the court is not a rubber stamp for the acceptance of the expert's opinion; It is important that evidence must be placed before the court of the facts relied upon by the expert for his opinion as well as the reasons upon which it is based. (**Ex parte Arntzen** 2013 (1) SA 49 (KZP) par [18] and [19] quoted with approval in par [7])

In **Ex parte Ogunlala and others** [2011] JOL 27029 (GNP) par [35]-[39], Bertelsmann J endorsed the approach by Levenson J in **Nel v Lubbe** and went further to explain the applicable requirements regarding expert testimony: In the absence of a reliable method of calculation of the value of the immovable properties, the court is left with the uncomfortable impression that the valuator and the applicants, or the applicants' legal representatives, are too close to one another to allow the preparation of an independent experts report; The thought is difficult to

dismiss in many applications the court has seen over the past two to three years, that the valuator is fully aware of the value that needs to be certified for assets in every individual insolvent estate to ensure that the papers reflect the conclusion that an advantage to creditors is assured if the surrender is accepted; To prevent such an uncomfortable situation from arising, valutors should certify under oath that they prepared every valuation without any knowledge of the facts of the relevant application; In addition, proof of physical inspections of immovable properties ought to be provided by way of photographs and a detailed description of the physical condition in which each property was found, as well as the effect that the physical appearance of the property has upon the valuation thereof; The applicants themselves and the attorney acting for them should likewise confirm that the valuator was not made privy to the value that the assets in the estate must realise in order to constitute an advantage to creditors. (**Ex parte Arntzen** 2013 (1) SA 49 (KZP) par [20] quoted with approval in par [7])

Southwood, J in **Ex Parte Mattysen et uxor** 2003 (2) SA 308 (T) adjudicated upon an application for voluntary surrender regarding the valuation the court found at p 316A that the affidavit of the valuator did not contain relevant facts or reasons, did not assist the court in any way and was nothing but "an exercise in futility". With reference to the failure to make full disclosure the court stated the following at 316E:

*"Here it appears that there has been a deliberate misrepresentation of the facts. The probability is overwhelming that this was done with the assistance of the applicants' attorney. By the time the applicants' affidavit was made on 3 July the applicants would have been served with the summons, the warrant of execution/notice of attachment would have been served on them and the notice of sale in execution would have been published. Without an explanation it is highly improbable that they would not have known about this and informed their attorney accordingly."* (**Ex parte Arntzen** 2013 (1) SA 49 (KZP) par [21] quoted with approval in par [7])

**Ex parte Arntzen** 2013 (1) SA 49 (KZP) (quoted with approval in par [7]) states the following:

*[22] For several years it has been accepted as a rule of practice in the Free State High Court that sequestration and administration costs as a general rule be accepted*

in the amount of R20 000,00 in order to calculate the concurrent dividend payable to concurrent creditors. ...The administration costs of a small estate with unencumbered movable assets of R200 000,00 can be as high as R35 000,00 to R40 000,00 if the trustee's fees of 10% on R200 000,00 plus VAT and the other costs referred to above are added. If taxed sequestration costs of R22 000,00 only is added, the total costs to be paid from the free residue may be as high as R62 000,00 in this example which is much higher than the amount accepted as a general rule in this division. Obviously, this will have a huge effect on the dividend payable.

[23] There has been a further long standing practice in this division pertaining to advantage to creditors. Once it is established that a dividend of 10 cents in the Rand will be payable to concurrent creditors in so-called "friendly sequestrations" or applications for voluntary surrender, an advantage to creditors has been proven. ... I am of the view that this division should follow the guidelines in North Gauteng where the court has laid down that advantage to creditors requires a dividend of at least 20 cents in the Rand. See Smit v Absa Bank Ltd loc cit para [3] and Ex Parte Ogunlaja and others loc cit at para [9].

In Ex parte Ogunlaja [2011] JOL 27029 (GNP) Bertelsmann, J, in relying on Ex parte Kelly 2008 (4) SA 615 (T) severely criticised the approach of legal representatives in voluntary surrender and sequestration applications of relying on an estimate of costs to be taxed in future and suggested that it was unacceptable and should no longer be allowed. The learned judge continued as follows at paragraph 42 and 43: "[42] By making provision for a later taxation, the attorney introduces an element of uncertainty into the process of calculating the advantage to creditors. Empirical studies have shown that bills of costs are presented for taxation that reflect a multiple of the amount that was provided for in the application under oath, and that was factored into the calculation of the existence of an advantage to creditors. This represents another abuse of the process of voluntary surrenders and unopposed sequestration applications. Attorneys who prepare applications of this nature are bound by the estimate presented in the papers as a realistic expectation of the costs involved in the process, subject of course to the court's power to limit the legal representative's costs to a lower figure in order to ensure a true advantage to creditors. (43) If the procedure laid down in Kelly. supra, is ignored in future, the court may be compelled to issue punitive costs orders." (emphasis added.) (Ex parte Arntzen 2013 (1) SA 49 (KZP) par [24] (quoted with approval in par [7])

It has always been an obvious principle -albeit unwritten -that the valuator must personally inspect assets that must be valued. With the approval of the Hon Deputy Judge President of this Division it has now been laid down as a formal rule of practice that a valuator in applications for voluntary surrender must confirm under oath that he or she personally inspected the assets that are referred to in the valuation. In such affidavit the date upon which, and the time and locality at which the assets were inspected must be set out and the applicant or his or her proxy must confirm in his or her affidavit that he or she was present when the assets were viewed and that he or she pointed out the assets to the valuator. (Par [13])

It is exceptionally worrisome that the conduct of both the attorney and the valuator was described as unprofessional, and in case of the valuator even as perjurious in a recent decision of the Western Cape High Court: **Ex Parte Crafford & 'n Ander; Ex parte Napier**, Case Nrs 19421/2013 and 19422/2013 (WCC) (unreported) [also discussed in this update]. The valuations that were prepared in those two matters followed the same modus operandi that was followed in this application. (Par [14])

In similar applications on the same roll exhibiting the same malpractice on the valuator's part, the applications were refused and the attorney of record was ordered to repay all fees he or his correspondent received from his client. This case must be dealt with in the same fashion. (Par [17])

The following is order was issued:

1. The application for voluntary surrender was dismissed.
2. The attorney was ordered to repay all fees and other moneys received by him or his correspondent, if any, from or on behalf of his clients, immediately to his clients; proof of such repayment to be presented to the Registrar of the Court within five days of date of the order;
3. That the application was referred to the Law Society of the Northern Provinces with the request to investigate the attorney's conduct;
4. The valuator was ordered to repay all fees and moneys received in the application from the applicant or the attorney or any other source to the applicant and to provide proof of such repayment within 5 days of the order to the Registrar of the court.



# SANAPS

SOUTH AFRICAN NATIONAL ASSOCIATION OF PROGRESSIVE SHERIFFS

www.sanaps.org.za

CHAIRPERSON: A M MAKWETU

SECRETARY: I D MAHOMED P.O. BOX 9118 AZAADVILLE 1720 TEL: 0117602505 FAX: 0117606525 CELL: 07222333935 E-MAIL: iqubakidawood@gmail.com

Date: 25 November 2014

Our Ref: Amplification Meeting SANAPS & Standard Bank

Per: E-mail

Standard Bank

Attention: Mr Michael Phasha

Dear Sir,

**Amplification of the Meeting between SANAPS (Represented By Mr. I.D. Mahomed) and Mr. Michael Phasha on behalf of Standard Bank on the 13 November 2014 at Number 3 Simonds Street, Marshalltown, Johannesburg**

As per our discussions we make the following recommendations regarding the streamlining and efficiency of immovable sales in execution on behalf of Standard Bank:

**1. Section 129 Notices:**

There have been a number of cases involving the improper service of this notice resulting in delays. Sheriffs have been barred from serving these notices. However, in the light of the recent postal strike, we are willing to do the service and the problem regarding our disbarment from serving these notices may be that the sheriff's costs should not be passed on to the debtor. No summons may be issued prior to the serving of this notice. The service of this notice by the sheriff should not take longer than 5 days.

**2. Service of the Summons:**

Service can be expected if there is a clear address. This address is usually a domicilium address. However there are at times confusion as to the unit number (as per the deeds office) and the physical address. One would expect that unit number 5 would be the same as door number 5 but this is not always the case. Unit 5 could in fact be door number 3. Serving on the incorrect address results in the costly cancellation of sales and unnecessary time delay. Please ensure the correct physical address. The service of this summons should take no longer than 5 days. Rural sheriffs would require a bit more time.

### **3. The warrant of Execution:**

Sheriffs have no control over the period from the service of the summons to the granting of judgement. This lies entirely in the hands of the attorneys.

However once the sheriff receives the warrant it should take no longer than 5 days in attaching the immovable and furnishing the attorney with a sales date which should be approximately one month after date of attachment. This time span is required by law. Please also confirm the correct address to avoid costly delays. Rural sheriffs would require a bit more time.

### **4. Auctions:**

#### **4.1 Voluntary Surrenders, Sequestrations and Arrangements with the Banks:**

Sales are usually cancelled because of voluntary surrenders, sequestrations and arrangements with the banks. With reference to voluntary surrenders and sequestrations, we are in talks with the Chief Master in addressing the manner in which these processes are being abused. The Master has assured us that he will be very circumspect in cancelling sheriffs' sales before allowing the auctioning of the immovable by trustees. As to settlements with the banks, this is out of our hands and we simply follow instructions from the bank's attorneys to cancel sales. However we find that a few months down the line we are again instructed by the bank to proceed with the sale as the debtor has defaulted. We advise the bank, in order to avoid the additional expense of re- instating the sale, and the increase of the outstanding interest that the bank should scrutinize its cancellation policy in the light of the above.

#### **4.2 Rings:**

This is a bane within the profession as these individuals are the sole cause of suppressed prices. Despite all that we have done the rings continuously re – surface with different people with the same motives. We have been informed that as our auctions are public, we cannot bar anyone from the public in the absence of a court order to attend these auctions. The problem is that the evidence to acquire the court order is extremely difficult. We suggest that the bank work hand in hand with the profession and the SAP in bringing an end to this scourge.

### **5. Transfer of the property:**

Once the property has been sold, the transfer is taken over by the conveyancer where sheriffs have no control of a speedy transfer. The possible delays for the transfers are:

- The purchase does not pay the transfer costs.
- There are difficulties in obtaining a rates clearance certificate.
- There are difficulties in securing a loan for the balance of the purchase price
- The sheriff will not sign the transfer documents until all of the above has been dealt with.

In addition please refer to **Annexure A** hereto regarding guarantees and other problems. These problems can be easily overcome if the banks were to be more conscientious and this will certainly improve the service delivery.

**After Transfer:**

Once the transfer has taken place, there is usually a delay in payment because the attorneys fail to furnish the sheriffs with the execution debtor's bond account number. Sheriffs will only pay into this account and not to the attorneys trust account.

We suggest that a workshop between sheriffs and the banks attorneys be held in order to discuss the reciprocal problems we may have with one another with the prime objective of enhancing service delivery to the bank. Please let us know what your views may be on this.

**6. Section 118 of the Local Government Municipal Systems Act 32 of 2000:**

As the banks are aware, this provision makes the municipality preferant above all other creditors (including the bank) for any outstanding balance linked to the property over the last 30 years. In essence it means that after granting a loan, cancelling same, incurring all the expenses for the sale in execution, the bank may have to forward all the sale proceeds to the municipality to first satisfy its debt before the bank can claim anything. In other words the municipality does not incur a cent in costs, remains passive for 30 years and conveniently collects its due at the expense of the bank.

The matter has gone to court where it was ruled that where the bank sells by way of sale in execution, the bank retains its preference above the municipality. Perregrine Joseph Mitchell v City of Tshwane Metropolitan Municipality. However where the property is sold by way of private treaty, example the bank's quick sales, the bank loses its preference against the municipality. It is therefore recommended that the banks avoid private sales and rather sell the properties by way of execution sales. City of Tshwane Metropolitan Municipality v Mathabathe & another.

**7. Evictions:**



Though we don't know what the bank can do about this, one of the factors militating against better prices is the difficulty in evicting execution debtors once the property has been transferred.

We are in talks with the Consumer Protection Regulator and the banks will also be invited for their inputs.

**8. Unclaimed and Unallocated Funds in Trust:**

Sheriffs have over a period of time accumulated the sum of between R65 to R100 million in their trust accounts nationally. We believe that the bulk of these funds belong to the banks collectively. We merely wish to inform Standard Bank regarding this.

We trust that these inputs are of some value and would enhance the relationship between Standard Bank, its attorneys and the profession.

Yours faithfully,

Mr. A. Makwetu.



**GUARANTEES AND OTHER PROBLEMS MILITATING AGAINST EFFECTIVE SERVICE DELIVERY**

1. GUARANTEES PAID TO WRONG ACCOUNT (BUSINESSES INSTEAD OF TRUST).
2. GUARANTEES PAID TO WRONG SHERIFF.
3. INCORRECT AMOUNTS PAID, USUALLY SHORTFALLS.
4. AMOUNTS PAID WITH INSUFFICIENT INFORMATION & MONIES LIE IN SUSPENSE.
5. PAYMENTS MADE TO INSTRUCTING AGENCIES INSTEAD OF SHERIFF.
6. TRANSFER DOCUMENTS FORWARDED WITHOUT GUARANTEES.
7. GUARANTEES MAKING NO PROVISION FOR INTEREST.
8. GUARANTEES' NOT PAYING OUT INTEREST EVEN THOUGH PROVISION HAS BEEN MADE.
9. GUARANTEES NOT PAYING OUT AT ALL, DESPITE TRANSFER.
10. LIMITED GUARANTEES.

11. ATTORNEYS FURNISHING "GUARANTEES" ON THEIR LETTERHEADS.

12. ATTORNEYS FAILURE TO INFORM SHERIFF OF TRANSFER EVEN THOUGH GUARANTEE HAS PAID OUT.

13. ATTORNEYS FAIL TO FURNISH SHERIFFS WITH THE DEFENDANT'S BOND ACCOUNT PARTICULARS.

14. GAURANTEES WITHDRAWN AND RENEWED WITHOUT NOTIFYING SHERIFF.

**OTHER PROBLEMS**

15. INTERDICTS FRAUDULENTLY UPLIFTED AT DEEDS OFFICE.

16. CHANGE OF RULES REGARDING IMMOVABLE ATTACHMENTS IN HIGH COURT.

17. ADDITIONAL FEES FOR WORK DONE BUT WHERE THERE IS NO TARIFF.

**SEMPER PARATI**



# SANAPS

SOUTH AFRICAN NATIONAL ASSOCIATION OF PROGRESSIVE SHERIFFS

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Date: 28 November 2014

Our Ref: Rules Board Proposal – Cap on Commission Immovable Property

Your Ref: Raj Daya

Per: E-mail

The Rules Board

Attention: Mrs. Charmaine Kemp

Dear Madam,

**Uniform Rule 68 Item 5(XIV) and Item 16(a) and 16(b) of Table C of Annexure 2 to the Magistrates' Court Rules – Sheriffs Commission when Immovable Property is Sold in Execution**

We refer to your e-mail dated 16 October 2014. In response thereto, for both the High and Low Courts:

(i) **Whether the cap on commission should be removed:**

We submit that the cap on commission should not be removed. However a higher cap needs to be determined. The reasons for this are:

- An uncapped commission would undermine our sales as commissions would be too high.
- We believe that the recommendations hereunder is a balance between the public interest, our interest and compares favorably to commissions charged by estate agents which is generally in the region of 10% of the purchase price.
- The new commission structure would allow us a fair budget in marketing the immovable to obtain the best possible price.

We recommend the commission structure for both courts as follows:

6% on the first R400 000.00 and thereafter 3.5 % on the balance subject to a maximum of R40 000.00.

Minimum Commission - R10 000.00.

Cancellation within 7 court days of the sale – R10 000.00.

The amount of R10 000.00 is requested for disbursements incurred by the sheriff for marketing the property. This amount would have been deducted from the commission had the auction taken place.

(ii) **The commission structure for sheriffs should the cap be removed:**

No comment as we submit that the cap should not be removed.

We trust you find the above in order and thank you for the opportunity to comment.

Yours faithfully,

Mr. A. Makwetu.



# SANAPS

SOUTH AFRICAN NATIONAL ASSOCIATION OF PROGRESSIVE SHERIFFS

www.sanaps.org.za

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DRAFT

Date: 03 December 2014

Our Ref: Request for a Seat on the Legal Chamber

Per: E-mail

SASSETA - Legal Chamber

Attention: The CEO

Dear Sir,

## Motivation for a Seat in the Legal Chamber

### Introduction:

The South African National Association of Progressive Sheriffs (SANAPS), founded 8 years ago, is a voluntary association whose prime objective is to protect the interest of and empower our members which includes sheriffs, acting sheriffs, deputy sheriffs and office staff. Our sheriff's membership number is 141 of which approximately 70% are Blacks and 30% Whites.

The deputy sheriffs and office staff, who are affiliated to our Association via the **S.A. National Deputy Sheriffs Forum** consists of 120 members, the ethnic profile of which is broken up as 80% Blacks and 20% Whites.

We are the biggest association representing the industry.

We are fully recognized as a representative body by the **Department of Justice and Correctional Services, The Rules Board of South Africa, the State Law Advisors, the Parliamentary Legal Portfolio Committee and the South African Board for Sheriffs.**

We are affiliated to the **Union Internationale des Huissiers de Justice** which is the internationally recognized sheriffs representative body which is in turn recognized inter-alia by the **International Court of Justice** at the Hague and the **World Bank.**

We deal with NGO's such as **SANCO, the Banking Council of SA, the Banking Forum** and other statutory bodies such as **the Road Traffic Management Corporation, the Chief Master of the Supreme Court, the Judge President and Commissioners of the Labour Courts, the Law Societies, numerous trade unions and bargaining councils, the Legal Aid Board, the Re- demarcation Board and the S.A. Human Rights Commission.**

### **Motivation for a Seat on the Legal Chamber:**

All sheriffs and deputy sheriffs are appointed by the Minister of the Department of Justice and Constitutional Development and the South African Board for Sheriffs (SABFS) respectively.

Over the last 2 years, without any financial assistance from the South African Board for Sheriffs, the profession (save for donations) have held workshops for the profession from which almost 400 people benefitted.

Our training is very specialized in that the content is specifically geared for the sheriff's profession. The training goes beyond the various Acts and Rules in that it includes material on ethics and the values enshrined in the SA Constitution.

We provide one on one training, workshops, mentoring and facilitation. Some of our members are qualified facilitators and assessors.

Where finances permit, we try and have at least 9 workshops a year, one in each Province, alternatively we combine Provinces.

We have drawn up material which we wish to present in a different manner than that which has been presented over all these years. We wish to use distant learning and the internet to reach out to our rural colleagues whilst saving on venue and travelling expenses.

We are in the process of handing over our training material to the National Qualifying Authority and register ourselves as a service provider.

We have noted over the years that the service providers who have furnished training from the profession were outsiders who had to rely extensively to sheriffs within the profession.

Over the last 2 years, the South African Board for Sheriffs has focused its training on basic knowledge of the profession to the newly appointed sheriffs. All existing sheriffs received no training whatsoever on the new Acts, Rules and Regulations. This gap however was filled by this association.

Our sole purpose in seeking a seat in the Legal Services Chamber is to contribute to the future of sheriffs in the skills development arena and to ensure that Labour is represented by the appropriate structure. We are aware that the sheriffs' profession has been represented by the Employer only, these past three years and we would urge you to correct this imbalance in respect of representivity.

We wish to re-iterate that as a result through our funding via the SASSETA the training and workshops that we have provided resulted in about 50 former employees being appointed as sheriffs. This is our contribution to empowerment and we believe that all of these objectives would be achieved if we granted a seat in the Legal Chamber.

Attached please find:

1. A copy of our Constitution.
2. A copy of our Certificate of Incorporation.
3. A list of our members. (SANAPS and SA National Deputy - Sheriffs Forum)

We trust that the above meets with your approval. Should there be any queries please do not hesitate to contact us.

We thank you in anticipation.

Yours faithfully,

Mr. A. Makwetu.



E



**RULES BOARD FOR COURTS OF LAW  
REPUBLIC OF SOUTH AFRICA**

PO Box 13106, The Tramshed, 0120- 8<sup>th</sup> Floor, Die Maart Building, 298 Thabo Setume (Andries) Street, PRETORIA - Tel (012) 326 8014/ 8046, Fax (012) 326 8018

18 August 2014

Our ref : Raj Daya

Your ref :

Dear Sir/Madam,

**PROPOSED AMENDMENTS TO UNIFORM RULE 48: EXECUTION**

The Rules Board proposes to amend various aspects of Uniform Rule 48, which regulates execution against immovable property in the High Court.

Attached hereto marked "A", is a draft containing the proposed amendments to the rule. Explanatory notes have been inserted into the draft for assistance on how the proposed amendments were considered and arrived at.

To assist it in finalising the proposed amendments to the rule, the Board requests your comments on the draft amendments.

Please may I have your written comments on by 10 October 2014. Comments maybe be posted or hand delivered to the Secretariat of the Rules Board or emailed to [JBalkshun@justice.gov.za](mailto:JBalkshun@justice.gov.za)

Yours faithfully,

**Raj Daya**  
Deputy Chief State Law Adviser  
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“ A ”

## PROPOSED DRAFT AMENDMENTS TO UNIFORM RULE 48

### General explanatory notes:

Expressions in square brackets in bold [ ] represent omissions from existing text

Expressions with solid underline represent insertions into existing text

### 48. Execution - immovables

- (1)
- (a) No writ of execution against the immovable property of any judgment debtor shall issue until—
- (i) a return shall have been made of any process which may have been issued against the movable property of the judgment debtor from which it appears that the said person has not sufficient movable property to satisfy the writ; or
- (ii) such immovable property shall have been declared to be specially executable by the court; [or, in the case of a judgment granted in terms of rule 31(5), by the registrar:]

Provided that, where the property sought to be attached is the primary residence of the judgment debtor, no writ shall issue unless the court, having considered all the relevant circumstances, orders execution against such property.

#### Explanatory Note:

*Rule 31(5) has been amended to provide that execution against residential property of the judgment debtor must be overseen and authorised by the court. The words "or, in the case of a judgment granted in terms of rule 31(5), by the registrar", which are proposed to be deleted therefore appear to be inconsistent with rule 31(5), as amended.*

- (b) A writ of execution against immovable property [shall] must contain;
- (i) a full description of the nature, [and] situation [[including the address]] and physical address of the immovable property to enable it to be traced and identified by the sheriff; [and shall]
- (ii) [be accompanied by] sufficient information to enable [him or her] the sheriff to give effect to subrule (3) hereof.

[Subr. (1) substituted by GN R981/2010]

#### Explanatory Notes:

1. For purposes of clearer expression, what the writ must contain has been separated.
2. It is proposed that the words "be accompanied by" in sub paragraph (ii) should be deleted because the writ is the authority to the sheriff and all information should be contained in it and not extraneously in some other document.

2.

- (2) **[An] The attachment [shall] must** be made by any sheriff of the district in which the property is situate or by any sheriff of the district in which the office of the registrar of deeds or other officer charged with the registration of such property is situate, upon a writ corresponding substantially with Form 20 of the First Schedule.

[Subr. (2) amended by GN R1343/2008]

- (3)
- (a) **[The mode of] Attachment of immovable property [shall] must** be by notice in writing by the sheriff served upon the owner thereof, and upon the registrar of deeds or other officer charged with the registration of such immovable property, and if the property is in the occupation of some person other than the owner, also upon such occupier.
- (b) Any such notice as aforesaid shall be served according to the provisions of rule 4, 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.

**Explanatory Note:**

*Sub paragraph (b) was amended on 2 May 2014. For purposes of consistency, the word "shall" in the first line should be changed to "must" when the entire rule is amended.*

- (4)
- (a) After attachment, any sale in execution **[shall] must** take place in the district in which the attached property is situate and **must** 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 (b) of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

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

[Subr. (4) amended by GN R1343/2008]

- (c) The sheriff may enter any buildings or structures on the immovable property to ascertain the condition of such buildings and structures as well as the improvements to the immovable property.**

**Explanatory Note:**

*Paragraph (c) is proposed as a measure to address the concerns of sheriffs that they are unable to enter the property to inspect it and to give a more meaningful description of the improvements and their condition.*

- (5) No immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless-

3.

- (a) the execution creditor has caused notice, in writing, of the intended sale to be served by registered post upon the preferent creditor, if [his] the address of the preferent creditor is known and, if the property is rateable, upon the local authority concerned calling upon them to stipulate within [ten] 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 the preferent creditor has so stipulated or agreed, or
- (b) 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) of this subrule within the time stated in such notice.
- (6) The sheriff may by notice served upon any person require him or her to deliver up to [him] the sheriff forthwith all documents in his or her possession or control relating to the debtor's title to the said property.
- (7)
- (a) The sheriff conducting the sale [shall] must appoint a day and place for the sale of such property, such day being, except by special leave of a magistrate, not less than one month after service of the notice of attachment and [shall] must forthwith inform all other sheriffs appointed in the district of such day and place.
- (b) The execution creditor [shall] must, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the property, its situation and street number, if any, 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, and he or she shall furnish the said sheriff with as many copies of the notice as the [latter] sheriff may require.
- (c) The execution creditor [shall] must publish the notice once in a newspaper circulating in the district in which the immovable property is situated and in the [Government] Gazette not less than 5 days and not more than 15 days before the date of the sale and provide the sheriff conducting the sale, by hand or by facsimile, with one photocopy of each of the notices published in the newspaper and the [Government] Gazette, respectively, or in the case of the [Government] Gazette, the number of the [Government] Gazette in which the notice was published.
- (d) Not less than 10 days prior to the sale, the sheriff conducting the sale [shall] must forward by registered post a copy of the notice of sale referred to in paragraph (b) above to every [Judgment] execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and 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] must affix;
- (i) one copy of the notice on the notice-board of the magistrate's court of the district in which the property is situated, or if the property [be] is

4.

situated in the district [in which] where the court out of which the writ 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.

[Subr. (7) amended by GN R2004/67, GN R785/98, GN R1024/98 and GNR1343/2008]

**Explanatory Note:**

*The separation in paragraph (e) of the places where the notice of sale must be affixed and the other amendments to paragraph (e) are proposed in the interest of clearer reading.*

(8)

(a)

(i) [The conditions of sale shall,] Not less than 20 days prior to the date of the sale, the sheriff conducting the sale must prepare the conditions of sale upon which the immovable property will be put up for auction, [be prepared by the execution creditor corresponding substantially with Form 21 of the First Schedule, and the said conditions of sale shall be submitted to the sheriff conducting the sale to settle them].

(ii) Any interested party may not less than 20 days prior to the date of sale confer with the sheriff to include conditions in addition to the minimum conditions prescribed in paragraph (b).

**Explanatory Notes:**

1. *Mpakathi v Kghotso Development CC and Others 2005 (3) SA 343 (SCA), settled that the execution creditor is not a party to the contract of sale. It is therefore incongruous that the execution creditor should determine the conditions of sale.*
2. *The sheriff, as an officer of the court and a party to the contract, should prepare the conditions of sale.*
3. *The discarding of the capping on sheriff's fees for sales in execution of immovable property is being considered so as to compensate sheriffs for the additional work required to be performed.*

**(b) The conditions of sale must:**

(i) comply with the requirements of any law regulating auctions;

(ii) regulate the following minimum terms:

(aa) Payment of a deposit;

(bb) The method of securing the balance of the purchase price;

(cc) Interest on the balance of the purchase price;

(dd) Payment of rates and levies;

(ee) Occupation and the passing of risk and benefit;

(ff) Whether the sale will be conducted with or without reserve;

(gg) Breach and cancellation; and

(viii) contain any conditions determined by the court.

5.

Explanatory Note:

*In lieu of the proposed repeal of Form 21, which constitutes a guide, it is proposed that minimum criteria, which should be included in conditions of sale so as to protect the judgment debtor, should be included in the rule itself.*

- (c)  
 [(11)] [The execution creditor shall thereafter supply the said sheriff with two copies of the conditions of sale], [one of which] One copy of the conditions of sale [shall] must lie for inspection by interested parties at [his or her office and] the office of the sheriff conducting the sale [shall] and the sheriff must forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.

[Para. (a) amended by GN R2410/91 and GN R1343/2008]

- (d) One copy of the conditions of sale must be sent to the judgment debtor by the sheriff conducting the sale, by means of a registered letter, duly prepaid and posted to the last known address of the judgment debtor.

Explanatory Note:

*Paragraph (d) has been inserted to clarify that a copy of the conditions of sale must be sent to the judgment debtor.*

- (e)  
 [(b)] Any interested party may, not less than 10 days prior to the date of the sale, upon [twenty-four] 24 hours' notice to [the execution creditor and the bondholders] all affected parties apply to the magistrate of the district in which the property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an order as to costs, as to [him] the magistrate may seem meet.

[Para. (b) amended by GN R2410/91]

- (9) ~~[The execution creditor may] The sheriff must appoint [an attorney] a conveyancer to attend to the transfer of the property when sold in execution.~~

Explanatory Notes:

1. *The sheriff, and not the execution creditor, is a party to the sale. The conveyancer acts as the agent of the sheriff (Mpakathi v Kghatso Development CC and Others 2003 SA (3) 429 (W)).*

2. *The appointment of a conveyancer would make the subrule consistent with subrule 14(f), which calls for a certificate from a conveyancer.*

- (10) Immovable property attached in execution [shall] must be sold by the sheriff by public auction.

(11)

- (a) If the purchaser fails to carry out any of his or her obligations under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the property may again be put up for sale.

6.

- (b) The purchaser [shall be] is responsible for any loss sustained by reason of his or her default, which loss may, on the application of any aggrieved creditor whose name appears on the said sheriff's distribution account, be recovered from him or her under judgment of the judge pronounced summarily on a written report by the said sheriff, after such purchaser [shall have] has received notice in writing that such report will be laid before the judge for such purpose.
- (c) If such purchaser is already in possession of the property, the said sheriff may, on 10 days' notice apply to a judge for an order ejecting him or her or any person claiming to hold under him or her therefrom.

[Subr. (11) amended by GN R2410/91 and GN R1343/2008]

(12) Subject to the provisions of subrule (5)[I];

(a) the sale [shall be without reserve and] must be conducted upon the conditions stipulated under subrule (8) as well as upon any conditions imposed by the court; and

(b) the property [shall] must be sold to the highest bidder.

*Explanatory Notes:*

1. Removal of the prescript that the sale must be without reserve allows any party to approach the court to set a reserve price. Conversely the setting of a reserve price is not stipulated but is left open to the parties to agree on a reserve price or to approach the court.
2. Separation of the prescripts that the sale must be subject to the conditions stipulated and be sold to the highest bidder augurs for clearer reading.

(13)

(a) The sheriff conducting the sale [shall] must 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 or 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.

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

*Explanatory Note:*

Paragraph (b) is proposed so as to ensure that the purchase price is not paid out before transfer takes place.

[Subr. (13) amended by GN R1343/2008]

(14)

**[(a) The sheriff conducting the sale shall not pay out to the creditor the purchase money until transfer has been given to the purchaser, but upon receipt thereof he or she shall forthwith pay into the deposit account of the magistrate of the district all moneys received in respect of the purchase price and simultaneously inform all other sheriffs appointed in that district of such payment.]**

7.

- (a) The execution creditor or his or her attorney must, after conclusion of the sale, but before preparation by the sheriff of a plan of distribution, 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 writ of execution.

Explanatory Notes:

1. There no longer appears to be the need for money to be paid to the magistrate since sheriffs operate trust account under section 22 of the Sheriff's Act, 1990, into which the purchase money or any portion thereof can be paid pending transfer and the approval of a plan of distribution. Hence it is proposed that paragraph (a) be repealed.

2. The provision relating to the sheriff who conducts the sale informing all other sheriffs in the district of the payment into court, appears to suffer the defect of preferring some creditors over others, since sheriffs out of the district who hold writs would not be informed. It is therefore proposed that the condition be removed.

3. The proposed new paragraph (a) is intended to cover instances where money paid by the judgment debtor to the execution creditor or attorney is either not reflected or is appropriated as costs or fees without the judgment debtor or sheriff having knowledge of it.

- (b) (i) The [said] sheriff [shall] conducting the sale must as soon as possible after the sale prepare in order of preference, as hereinafter provided, a plan of distribution of the proceeds and [shall] must forward a copy of such plan to the registrar of the court and to all other sheriffs appointed in that district.

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

[Subr. (14) amended by GN R2410/01 and GN R1343/2008]

- (c) After deduction from the proceeds of the costs and charges of execution, the following [shall] must be the order of preference:
- (i) the claims of preferent creditors ranking in priority in their legal order of preference; and thereafter
- (ii) the claims of other creditors whose writs have been lodged with the sheriff in the order of preference appearing from sections ninety-six and ninety-nine to one hundred and three (inclusive) of the Insolvency Act, 1936 (Act No. 24 of 1936) as amended.
- (d) Any interested person objecting to such plan [shall] must, within [five] 5 days of the expiry of the period referred to in paragraph (b) of this subrule give notice in writing to the sheriff and all other interested persons of the particulars of his objection and [shall] must bring such objection before a judge for review on 10 days' notice to the sheriff and the said persons.

[Para. (d) amended by GN R2410/01]



8.

- (e) The judge on review ~~[shall]~~ **must** 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 to him or her seems meet.
- (f) If-
- (i) no objection be lodged to such plan, or
  - (ii) the interested parties signify their concurrence therein, or
  - (iii) the plan is confirmed or amended on review,

the ~~[magistrate shall]~~ **sheriff must**, on production of a certificate from the conveyancer that transfer has been given to the purchaser [and on the request of the sheriff], pay out in accordance with the plan of distribution. [If the address of a payee is not known the amount due to him shall be paid into the Guardian's Fund established under any law relating to the Administration of Estates.]

Explanatory Notes:

1. The reference to the "magistrate" in paragraph (f) is proposed to be changed to the "sheriff" so as to be consistent with the proposed removal of the original paragraph (e).

2. Surplus money must be paid into the National Revenue Fund. However the rules as subordinate legislation can regulate this position. It is therefore proposed that the portion of paragraph (f) which refers to payment of surplus money be removed and be left to applicable legislation.

- (15) Neither a sheriff nor any person on behalf of the sheriff ~~[shall]~~ **can** at any sale in execution purchase any of the property offered for sale either for himself or herself or for any other person.

[Subr. (15) added by GN R1843/93]

- (16) In this rule, the word "days" shall have the same meaning as "court days" as defined in rule 1 of the Rules.

[Subr. (16) added by GN R1748/96]

F

**IN THE [INSERT NAME OF HIGH COURT] HIGH COURT**

**HELD AT [INSERT SEAT OF HIGH COURT]**

**CASE NUMBER:**

In the matter between:

**[INSERT NAME OF EXECUTION CREDITOR]**

**Plaintiff**

and

**[INSERT NAME OF EXECUTION DEBTOR]**

**Defendant**

---

**CONDITIONS OF SALE IN EXECUTION  
OF IMMOVABLE PROPERTY**

---

**DESCRIPTION OF PROPERTY AND PARTICULARS OF SALE**

The property which, on this the.....at, will be put up to auction on the ..... day of 20.. consists of:

CERTAIN:

SITUATED AT:

REGISTRATION DIVISION:

MEASURING:

AS HELD BY THE DEFENDANT UNDER DEED OF TRANSFER NUMBER T.....

THE PROPERTY IS ZONED:

**THE SALE SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS:-****1. THE SALE**

- 1.1. The sale is conducted in accordance with the provisions of Rule 46 of the Uniform Rules of the High Court, as amended, as well as the provisions of the Consumer Protection Act, no 68 of 2008, the Regulations promulgated thereunder and the "Rules of Auction", where applicable. These provisions may be viewed at [www.acts.co.za](http://www.acts.co.za) (the Act) and [www.info.gov.za](http://www.info.gov.za) (the Regulations).
- 1.2. The headings to the clauses are for the purposes of convenience and reference only, and shall not be used in the interpretation of, nor modify, nor amplify the conditions of this sale nor any clause. In these conditions, unless a contrary intention clearly appears, words importing any one gender shall include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or otherwise) and vice versa. Any reference to days shall mean business days.
- 1.3. The property shall be sold by the sheriff to the highest bidder subject to such reserve price, if any, as may be stipulated by a preferent creditor or local authority in terms of Court Rule 46(5)(a).

**2. MANNER OF SALE**

- 2.1. The sale shall be for South African Rands and no bid of less than R1000.00 (one thousand Rand) in value above the preceding bid will be accepted.

- 2.2. The execution creditor shall be entitled to cancel the sale at any stage before the auction has commenced. The execution creditor shall be entitled to bid at the auction.
- 2.3. If any dispute arises about any bid, the property may, at the discretion of the Sheriff, immediately again be put up for auction.
- 2.4. If the Sheriff makes any mistake in selling, such mistake shall not be binding on any of the parties, but shall be rectified immediately.
- 2.5. If the Sheriff suspects that a bidder is unable to pay either the deposit or the balance of the purchase price, he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of a bid under such circumstances, the property may immediately again be put up for auction.

### **3. OBLIGATIONS OF PURCHASER AFTER AUCTION**

- 3.1. The purchaser shall, as soon as possible after the Sheriff announces the completion of the sale by the fall of the hammer, or in any other customary manner, immediately on being requested by the Sheriff sign these conditions of sale.
- 3.2. If the purchaser has bought as an agent for a principal then the sale will also be subject to the following conditions:
  - 3.2.1. The principal's address as furnished by the purchaser shall be the address as chosen by the principal as his/her address for the service of all forms, notices and documents in respect of any legal proceedings which may be instituted by virtue hereof (*domicilium citandi et executandi*).

- 3.2.2 If the principal is not in existence at the time of the auction the purchaser shall be the contracting party.
- 3.3 **In the event of the purchaser being a Company, Close Corporation or a Trust, a Trustee/Trustees, or any person acting in a representative capacity, then the person signing these conditions of sale shall be deemed to have bound himself/herself/themselves as surety(ies) and co-principal debtor(s) for all the obligations of the purchaser (and, if applicable, jointly and severally with any other persons signing these conditions of sale on behalf of the purchaser), such surety(ies) hereby renouncing the benefits of excussion and division, no value received and errors in calculation, the effect of which he/she/they acknowledges himself/ herself/ themselves to be aware.**
- 3.4 The purchaser shall not be entitled to nominate a third party to obtain transfer of the property in his/her/its stead. This clause may not be overruled by adding the words "*or nominee*" or similar wording to the signature of the purchaser or anywhere else.
- 3.5 If the Purchaser is married in community of property such Purchaser shall furnish the Sheriff with the written consent of the other spouse, as required in terms of Section 15(1)(g) of the Matrimonial Property Act 88 of 1984, within 48 hours of the signature of the conditions of sale.
- 3.6 the purchaser shall on demand sign all necessary transfer and ancillary documents with the transferring attorneys.

#### **4 CONDITIONS OF PAYMENT**

- 4.1 The purchaser shall on completion of the sale, pay a deposit of 10% of the purchase price immediately on demand by the sheriff.
- 4.2 Payment shall be made in cash, by bank guaranteed cheque or by way of an electronic transfer, provided that satisfactory proof of payment is furnished immediately on demand to the sheriff.
- 4.3 The balance of the purchase price shall be paid to the Sheriff against transfer and shall be secured by a bank guarantee, to be approved by the execution creditor's attorney, which shall be furnished to the Sheriff within 21 days after the date of sale. Should the purchaser fail to furnish the sheriff with a bank guarantee within 21 days after the date of sale, the sheriff may in his/her sole discretion grant the purchaser a 5 day extension within which to provide the required bank guarantee. Should the Purchaser fail to furnish the sheriff with a bank guarantee, which is approved by the execution creditor's attorney, within the required time, the sale may be cancelled.
- 4.4 The deposit will be deposited immediately by the sheriff into a trust account held in terms of Section 22 of the Sheriffs Act 90 of 1986.
- 4.5 If the transfer of the property is not registered within 1 month after the date of the sale, the purchaser shall be liable for payment of interest at the rate of \_\_\_\_% [INSERT RATE AS PER MORTGAGE LOAN AGREEMENT] Nominal Annual Compounded Daily to the execution creditor, and to any other bondholder at the rate due to them, on the respective amounts of the award in the plan of distribution, as from the expiration of 1 (one) month after the sale to date of transfer.

- 4.6 The purchaser shall be responsible for payment of all costs and charges necessary to effect transfer, including but not limited to conveyancing costs, transfer duty or VAT attracted by the sale and any Deeds Registration Office levies. The purchaser shall further be responsible for payment, within 7 days after been requested to do so by the appointed conveyancer:
- 4.6.1 of all amounts required by the Municipality for the issue of a clearance certificate in terms of section 118(1) of the Local Government Municipal Systems Act, No.32 of 2000, to the effect that all amounts due in connection with immovable property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid; and
- 4.6.2 of all levies due to a Body Corporate in terms of section 37 of the Sectional Title Act, No.95 of 1986 or Home Owners Association.
- 4.7 The purchaser is hereby informed of the following charges:
- 4.7.1 Arrear rates and taxes, estimated at R .....
- 4.7.2 Arrears charges payable in terms of the Sectional Titles Act, Act 95 of 1996, estimated at R .....
- 4.7.3 Arrear amounts payable to the home owners association, estimated at R.....

The Sheriff and the Purchaser note that the amount set forth in this clause are a reasonable estimate only. Neither the Sheriff nor the

execution creditor warrant the accuracy of this estimate. The Purchaser shall not be able to avoid its obligations hereunder, nor will it have any claims against the Sheriff or the execution creditor, arising out of the fact that the arrear rates and taxes and arrear charges payable in terms of the Sectional Titles Act no. 95 of 1986 are greater than the estimated charges set forth herein. The actual amounts owing in respect of arrear rates and taxes or arrears charges payable in terms of the Sectional Titles Act, 95 of 1996 must be paid by the Purchaser within 7 days after being requested to do so by the attorney attending to the transfer.

4.8 The Purchaser shall, immediately on demand by the sheriff, pay the Sheriff's commission as follows:

4.8.1 6% on the first R30 000.00 of the proceeds of the sale, and

4.8.2 3.5% on the balance thereof,

subject to a maximum commission of R9 655.00 in total plus VAT and a minimum of R485.00 plus VAT.

4.9 If the purchaser pays the whole purchase price and complies with conditions 4.1, 4.6, 4.7, and 4.8, within 21 days from the date of sale any claim for interest shall lapse, otherwise transfer shall be passed only after the purchaser has complied with the provisions of conditions 4.1, 4.3, 4.6, 4.7 and 4.8 hereof.

4.10 In the event that the purchaser being the execution creditor who is also a consumer exempted in terms of Section 5(2)(b) from the provisions of the Consumer Protection Act, 68 of 2008, the execution creditor shall be required to pay the commission set out in the clause 4.8, without demand, within 7 days. Such execution



creditor shall not be required to make any deposit nor furnish a guarantee as provided for in terms of 4.1 and 4.3, except insofar as the purchase price may exceed the total amount as set out in the warrant of execution. The difference between the purchase price and the total amount as set out in the warrant of execution, plus interest as provided for in 4.5, is to be paid or secured to the sheriff within 21 days from the date of sale, without demand. Such execution creditor shall at the date of registration of transfer provide the sheriff with satisfactory proof that the defendant's account has been credited accordingly.

## **5. COMPLIANCE CERTIFICATES**

- 5.1 The purchaser shall at his/her own cost obtain a valid electrical installations certificate of compliance and test report, in the prescribed form, as required in the Electrical Installation Regulations, 2009 and an electric fence system certificate of compliance in the prescribed form as required in the Electrical Machinery Regulations, 2011 issued in terms of the Occupational Health and Safety Act, 1993. The purchaser agrees that this undertaking relieves the Sheriff and the execution creditor from any duty that may be imposed upon either or both of them in terms of Section 10 of the Occupational Health and Safety Act, 1993. The purchaser accordingly agrees that there is no obligation on the Sheriff or execution creditor to furnish the said electrical installations certificate of compliance and test report.
- 5.2 The purchaser agrees that there is no obligation on the Sheriff or the execution creditor to furnish an Entomologist's certificate.

- 5.3 If applicable, the purchaser shall at his/her/its own cost obtain a valid gas installation and plumbing certificate of compliance and test report.

## **6. RISK AND OCCUPATION**

- 6.1 The property shall be at the risk and profit of the purchaser after the fall of the hammer and the signing of the conditions of sale and payment of the initial deposit.
- 6.2 The purchaser shall be liable to keep insured all buildings standing on the property sold for the full value of same from the fall of the hammer and the signing of the conditions of sale and payment of the initial deposit to the date of transfer. Failing which the sheriff may effect the insurance at the purchasers expense.
- 6.3 The execution creditor and the Sheriff give no warranty that the purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is unoccupied and any proceedings to evict the occupier(s) shall be undertaken by the purchaser at his/her/its own cost and expense.
- 
- 6.4 The property is sold as represented by the Title Deeds and diagram and the Sheriff is not liable for any deficiency that may be found to exist. The property is sold as it stands (voetstoots) and without warranty or representation and also subject to all servitudes and conditions specified in the Deed of Transfer, including any real rights reserved in favour of a developer or body corporate in terms of Section 25 of the Sectional Titles Act, No. 95 of 1986. Notwithstanding anything to the contrary hereinbefore contained, the property is sold free from any title conditions pertaining to the reservation of personal servitudes in favour of third parties and in

respect of which servitudes preference has been waived by the holder thereof in favour of the execution creditor.

- 6.5 The Sheriff and the execution creditor shall not be obliged to point out any boundaries, beacons or pegs in respect of the property hereby sold.

## **7. SALE SUBJECT TO EXISTING RIGHTS**

Where the Property is subject to a lease agreement the following conditions apply:

- 7.1 Insofar as the property is let to tenants and the Sheriff is aware of the existence of such tenancy then:
- 7.1.1 if that lease was concluded before the execution creditor's mortgage bond was registered, then the property shall be sold subject to such tenancy;
  - 7.1.2 if the lease was concluded after the execution creditor's mortgage bond was registered, the property shall be offered first subject to the lease and if the selling price does not cover the amount owing to the execution creditor as reflected on the Warrant of execution plus interest as per Writ, then the property shall be offered immediately thereafter free of the lease.
- 7.2 Notwithstanding any of these provisions, the purchaser shall be solely responsible for ejecting any person or other occupier claiming occupation, including a tenant, at the purchaser's cost. No obligation to do so shall vest in the Sheriff and/or the execution creditor.
- 7.3 The property is furthermore sold subject to any lien or liens in respect thereof.

## 8. BREACH OF AGREEMENT

- 8.1. If the purchaser fails to carry out any of his obligations under these Conditions of Sale, the sale may be cancelled by a Judge summarily on the report of the Sheriff after due notice to the purchaser, and the property may again be put up for sale; and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the Sheriff's distribution account, be recovered from him under judgment of the Judge pronounced summarily on a written report by the Sheriff, after such purchaser shall have received notice in writing that such report will be laid before the Judge for such purpose; and if he is already in possession of the property, the Sheriff may, on 7 days' notice, apply to a Judge for an order ejecting him or any person claiming to hold under him there from.
- 8.2 In the event of the sale being cancelled as aforesaid the deposit shall be retained by the Sheriff in trust for such period that is stipulated in the judgment in terms of Rule 46(11) or if no such period is stipulated therein then until such time that the property has been sold to a third party and the execution creditor's damages have been quantified and judgment has been granted in respect thereof.

## 9. ADDRESS FOR LEGAL PROCEEDINGS

The purchaser chooses the address set out in Annexure "A" hereunder as his/her/its address for the service of all forms, notices and documents in respect of any legal proceedings which may be instituted following from this sale or its cancellation (*domicilium citandi et executandi*). In the event of the

purchaser failing to choose a *domicilium citandi et executandi* hereunder, the property which is the subject matter of the sale will be deemed to be the purchaser's *domicilium citandi et executandi*.

**10. CONFIRMATION OF THE PURCHASER**

The Sheriff and Purchaser confirm that the property is sold:

with lease

without lease

for an amount of:

R.....

(.....)

Which amount excludes the amounts referred to in clause 4.6 (if applicable), 4.7, 4.8 & 4.9 and accepts all further terms and conditions as set out herein, which acceptance is confirmed by his signature below.

**11. JOINT AND SEVERAL LIABILITY**

In the event of there being more than one purchaser, they will be jointly and severally liable in terms hereof.

**12. TRANSFERRING CONVEYANCER**

The execution creditor shall be entitled to appoint the conveyancer to attend to the transfer of the property. The conveyancer's details are as follows:

12.1 Name: \_\_\_\_\_

12.2 Name of Firm: \_\_\_\_\_

12.3 Tel: \_\_\_\_\_

I, the undersigned, Sheriff of \_\_\_\_\_ hereby certify that today the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ and as advertised, the aforementioned property was sold for R..... to .....

\_\_\_\_\_

SHERIFF

I, the undersigned, \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ do hereby bind myself as the purchaser of the aforementioned property on the conditions of sale as contained herein

\_\_\_\_\_

PURCHASER

If married in community of property, married according to Muslim rights, married in terms of customary law in a monogamous marriage, or married in terms of customary law as from 15 November 2000 then both spouses are to sign.

**(and where applicable in terms of these conditions of sale as surety and co-principal debtor)**

(and where applicable on behalf of the below mentioned Principal being duly authorised in terms of a power of attorney / mandate which is attached hereto as Annexure B)

FULL NAME OF PRINCIPAL AS PER POWER OF ATTORNEY:

PHYSICAL ADDRESS OF PRINCIPAL:

**ANNEXURE "A"****Purchaser's details:**

1. Full names:.....
  2. Spouse's Full Names: .....
  3. Married/Divorced/Widowed/Single: .....
  4. If married – Date: .....
- By Antenuptial Contract / Married in Community of Property
5. Where married: .....
- (husband's *domicilium citandi et executandi* at the time of the marriage)
6. Identity number: .....
  7. Physical address (*domicilium citandi et executandi*): .....
  - .....
  8. Postal address:.....
  - .....
  9. Telephone numbers:
- Home: .....Work:.....
- Telefax (if any) ..... Cell Number:.....

**ANNEXURE "B"**

POWER OF ATTORNEY



G



**SANAPS Workshop Programme to be held at the Colosseum Hotel, Arcadia Pretoria Gauteng Province, on Saturday the 18<sup>th</sup> October 2014 at 09:00 for 09:30 am. Training material will be provided.**

1. Welcome.
2. Opening prayer.
3. **New Proposed Amendments to Rule 46 High Court Uniform Rules:**
  - 3.1 What are the changes? Broad overview of the proposed amendments.
  - 3.2 Entering into premises for the purposes of valuating and advertising the immovable **46 (4) (c)**.
  - 3.3 The Sheriff will be required to prepare the conditions of sale. **46 (8) (a) (i)**. How should this be prepared? Standardisation is essential.
  - 3.4 Conditions in addition to the minimum conditions. **46 (8) (a) (ii)**. What are these?
  - 3.5 Explanatory Notes 3: Page 4 "The objective of the capping on sheriffs fees for sales in execution on immovable property is being considered so as to compensate sheriffs for the additional work required to be performed". What is the ramification of this?
  - 3.6 The sheriff must appoint a conveyancer. **46 (9)**. How should this be done?
  - 3.7 The execution creditor must supply the sheriff with a certificate of balance. **46 (14) (a)**. How do we obtain this? What is this? Why do we need it? How do we use it?
  - 3.8 Additional costs for our new duties resulting from the amendments.
  - 3.9 General questions and answers specifically relating to the R 46 amendments.
4. Tea Break. (11:00 am)
5. General questions relating to any other topic raised by the participants.
6. Vote of thanks.
7. Lunch break and end of workshop. (1:00pm).



# SANAPS

SOUTH AFRICAN NATIONAL ASSOCIATION OF PROGRESSIVE SHERIFFS

www.sanaps.org.za

CHAIRPERSON: A M MAKWETU

SECRETARY: I D MAHOMED P.O. BOX 9118 AZAADVILLE 1720 TEL: 0117602505 FAX: 0117606525 CELL: 07222333935 E-MAIL: iqubaldawood@gmail.com

DRAFT

Date: 03 December 2014

Our Ref: Plea for Fee Increment

Per: E-mail

The Department of Justice & Correctional Services

The Honourable Minister Tshililo Michael Masutha (MP)

Dear Honourable Minister,

## **Plea for Fee Increment**

We refer to our letter dated 19 August 2014 to which we have not had a response.

Honourable Minister since then, it has come to our attention that two sheriffs intend to give up their post and a third has resigned after admitting to the misappropriation of trust funds of approximately R800 000.00 which she is incapable of repaying.

Whilst we do not condone the wrongful act of any sheriff, clearly Sir, this is an indication of the dire financial situation the profession finds itself in.

These resignations and abuse of the trust funds is just the tip of the ice berg. The essential reason for this behavior is the inability for sheriffs to continue providing a service on the present tariffs.

The failure of the Honourable Minister to grant us an increase leads to the failure of service delivery.

Sheriffs are suggesting that a strike or a march to parliament seems to be the only way to get your attention to this serious injustice to the profession, While the SABFS and your deputy Minister propagate to restore professionalism in our ranks, we are forced to perform at meager rates.

It has been proven by scientific study that we are 35 to 40% behind the general inflation increases of the past 10 years, yet our increases are being put on the back burner and delayed for no reason that we can fathom.

The issue has been dragging on for the past two years and we are not afforded the respect that we as servants of the justice system deserve.

We lay at the mercy of the Honourable Minister and kindly request the Honourable Minister to allow us the increase as we have been requesting since the beginning of this year.

We thank you in anticipation.

Yours faithfully,

Mr. A. Makwetu.



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Date: 27 November 2014

Our Ref: ATSASA Auctioneering Learnership

Per: E-mail

Dear Colleagues,

## **ATASA Auctioneering Learnership**

A meeting was held yesterday between ATASA, the Service SETA, the SABFS and the associations in Cape Town.

The following was resolved:

1. At the behest of the Board an extension date is to be requested.
2. We have informed all parties that the ultimate choice of proceeding or not lies with you the learners. Whilst we cannot deny the advantage of qualifying, we are also sensitive as to the difficulties learners have in completing the learnership and running their offices.
3. Pending the number of learners the service seta may agree to the extension.
4. There is no guarantee that an extension will be granted.
5. A letter will be addressed by the SABFS to each learner in order to ascertain the level of interest in completing the learnership in order to motivate the extension.  
**Please be on the lookout for this correspondence and once received kindly promptly reply thereto.**
6. All learners who complete the learnership programme will be fully accredited.
7. All learners who no longer wish to proceed with the learnership will not be sued for any damages or any further claims from any other party.
8. Any learner who has not completed the learnership will not be prejudiced in attending any future learnership financed by the service seta.

**General Comments:**

- We have expressed our view that should the learners not wish to proceed the project has to be shut down.
- There is an audit investigation as to why the learnership has been delayed.
- If the Board is found to be at fault, there may be repercussions for future financing for training by the service seta.

Yours faithfully,

Mr. A. Makwetu.