

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 1272

17 NOVEMBER 2017

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF
THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT 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 existing rule.

Expressions with solid underline indicate insertions into existing rule.

Definition

1. In this Schedule the "Rules" means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notices Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of 15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1 December 1989, R. 185 of 2 February 1990, R. 1929 of 10 August 1990, R.

1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R. 1723 of 30 December 1998, R. 315 of 12 March 1999, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R. 516 of 8 May 2009, R. 518 of 8 May 2009, R. 86 of 12 February 2010, R. 87 of 12 February 2010, R. 88 of 12 February 2010, R. 89 of 12 February 2010, R. 90 of 12 February 2010, R. 500 of 11 June 2010, R. 591 of 09 July 2010, R. 980 of 19 November 2010, R. 981 of 19 November 2010, R. 464 of 22 June 2012, R. 992 of 7 December 2012, R. 114 of 15 February 2013, R. 262 of 12 April 2013, R. 471 of 12 July 2013, R. 472 of 12 July 2013, R. 759 of 11 October 2013, R. 212 of 28 March 2014, R. 213 of 28 March 2014, R. 214 of 28 March 2014, R. 30 of 23 January 2015, R. 31 of 23 January 2015, R. 317 of 17 April 2015, R. 781 of 31 August 2015, R. 3 of 19 February 2016, R. 678 of 3 June 2016 and R. 1055 of 29 September 2017.

Substitution of rule 46 of the Rules

2. The following rule is hereby substituted for rule 46 of the Rules:

“RULE 46 EXECUTION - IMMOVABLE[S] PROPERTY”

- (1)(a) Subject to the provisions of rule 46A, [No] no writ of execution against the immovable property of any judgment debtor shall be issued [until] unless—
- (i) a return **[shall have]** has 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]** insufficient movable property to satisfy the writ; or
 - (ii) such immovable property **[shall have]** has 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:**] where judgment is granted by the registrar under rule 31(5).

[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.]

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

(i) a full description of the nature, **[and] magisterial district [, 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.

(2) **[An]** The attachment of the immovable property shall be made by any sheriff of the district in which the property is situated **[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.

(3) (a) **[The mode of attachment of immovable property shall be by [n]Notice [in writing]** of the attachment, corresponding substantially with Form 20A of the First Schedule, shall be served by the sheriff **[served]** upon the owner **[thereof]** of the immovable property~~[,]~~ 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]** occupied by some person other than the owner, also upon such occupier.

(b) Any **[such]** notice **[as aforesaid]** 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 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.

(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.

[(a)]

(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 **[(b)]** (d) of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

[(b)]

(c) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record **[what]** 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 46A and any order made by the court, [No] 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 **[, in writing,]** of the intended sale to be served **[by registered post]** upon— **[the preferent creditor, if his address is known and, if the property is rateable, upon the local authority concerned]**

(i) preferent creditors;

(ii) the local authority, if the property is rated; and

(iii) the body corporate, if the property is a sectional title unit;

calling upon **[them]** the aforesaid entities 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]** such entities have 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]** such person to deliver up to **[him]** the sheriff forthwith, all documents in **[his]** 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 **[such]** the attached immovable property, such day being, except by special leave of a magistrate, not less than **[one month]** 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 **[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 may require]**.

(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 [Government] Gazette not less than [5] 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 [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 date of the sale, the sheriff conducting the sale shall 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 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 [be] is 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.

(8)(a)(i) **[The conditions of sale shall, not] Not less than [20]35 days prior to the date of the sale, [be prepared by] the execution creditor shall prepare the conditions of sale, corresponding substantially with Form 21 of the First Schedule, upon which the attached property is to be sold and [the said conditions of sale shall be submitted] shall submit such conditions to the sheriff conducting the sale, [to settle] 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 (Act No. 68 of 2008), and the Regulations promulgated thereunder.
- (b) [(ii)](i) The execution creditor shall thereafter supply the said sheriff with [two] three copies of the conditions of sale, one of which shall lie for inspection by interested parties at [his or her] the office of the sheriff for 15 days prior to the date of the sale.[and the]
- (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) [(b)] **[Any interested party may, not less than 10 days prior to the date of the sale,]** Not less than 10 days prior to the date of the sale, any interested party may, subject to rule 46A and any order made by the court under the provisions thereof, and upon [twenty-four] 24 hours' notice to [the execution creditor and the bondholders] 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 [, as to him may seem meet].
- (9) The execution creditor **[may]** shall appoint **[an attorney]** a conveyancer to attend to the transfer of the attached immovable property **[when]** 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) Immoveable property attached in execution shall be sold by the sheriff by public auction.
- (11)(a) (i) If the purchaser fails to carry out any **[of his or her]** obligations due by the purchaser 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 attached immovable property may **[again]** be put up for sale again.
- (ii) The report shall be accompanied by a notice corresponding substantially with Form 21A of the First Schedule.
- (iii) If the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.

- (b) **[The purchaser shall be responsible for any]** Any loss sustained by reason of **[his or her]** the purchaser's 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]** the purchaser under judgment of **[the]** a judge **[pronounced summarily]** given on a written report by the **[said]** sheriff, after **[such purchaser shall have received]** notice in writing has been given to the purchaser that **[such]** the report will be laid before **[the]** a judge for **[such]** the aforesaid purpose.
- (c) If **[such]** the purchaser is already in possession of the immovable property, the said sheriff may, on **[10 days']** notice to affected persons apply to a judge for an order **[ejecting him or her]** evicting the purchaser or any person claiming to **[hold under him or her therefrom]** occupy the property through the purchaser or otherwise occupying the property.

(12) Subject to the provisions of rule 46A and subrule (5) hereof,—

- (a) the sale shall be **[without reserve and]** 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 **[or]** 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) 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.]

- (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 writ of execution.

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

(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 and to all other sheriffs appointed in that district.

(ii) Immediately thereafter the said sheriff shall give notice to all parties who have lodged writs 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 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) **[the claims]** Claims of preferent creditors ranking in priority in their legal order of preference; and thereafter

(ii) **[the claims]** Claims of other creditors whose writs have been lodged with the sheriff in the order of preference appearing from sections **[ninety-six]** 96, and **[ninety-nine]** 98A to **[one hundred and three]** 103 (inclusive) of the Insolvency Act, 1936 (Act No. 24 of 1936) **[as amended]**.

(d) **[Any interested person objecting to such plan shall, within five 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 bring such objection before a judge for review on 10 days' notice to the sheriff and the said persons.]**

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 judge for review upon 10 days notice to the sheriff and the said persons.

(e) The judge 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 **[to him or her seems meet]** appropriate.

(f) If—

- (i) no objection **[be]** 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 **[magistrate]** sheriff shall, 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.]**

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

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

Insertion of rule 46A in the Rules

3. The following rule is hereby inserted in the Rules after rule 46:

“46A 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 shall not issue a writ 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 2A of Schedule 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 46(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 within 15 kilometres of the office of the registrar 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 within 15 kilometres of the office of the registrar 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 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 amounts 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) 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.”

Substitution of Form 21 of the Rules

4. The following Form is hereby substituted for Form 21 in the First Schedule of the Rules:

"FORM 21

CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

In re:

.....

[Plaintiff] Execution Creditor

and

.....

[Defendant] Judgment Debtor

The immovable property (hereinafter referred to as the "property") which will be put up **[to]** for auction on the day of **[19]** 20....., consists of:

.....

The sale shall be **[subject to]** conducted on the following conditions:

1. The sale shall be conducted in accordance with the provisions of rule 46 of the Uniform Rules of Court and all other applicable law.

[1.]2. The property shall be sold by the sheriff of atto the highest bidder without reserve/**[with]** subject to a reserve price of.....

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

[3.]4. If any dispute arises about any bid, the property may **[be]** again be put up **[to]** for auction.

[4.]5(a) If the **[auctioneer]** sheriff makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified.

(b) If the **[auctioneer]** sheriff suspects that a bidder is unable to pay either the deposit referred to in condition **[6]** 7 or the balance of the purchase price, **[he]** the sheriff may

refuse to accept the bid of such bidder, or accept it provisionally until the bidder satisfies **[shall have satisfied him]** the sheriff that **[he]** such bidder is **[in a position]** able to pay **[both such amounts]** the deposit and the balance of the purchase price.

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

[5.]6(a) The purchaser shall, as soon as possible after the sale~~[,]~~ and immediately on being requested by the ~~[.....]~~ sheriff, sign these conditions ~~[, and if he has bought qua qualitate, state the name of his principal]~~.

~~(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.~~

[6.]7(a) The purchaser shall pay to the sheriff a deposit of **[ten]** 10 per cent of the purchase price in cash or by bank guaranteed cheque on the day of the sale~~[,]~~.

~~(b) [the]~~The balance shall be paid against transfer **[to]** and shall be secured by a **[bank or building society]** guarantee issued by a financial institution ~~[, to be]~~ approved by **[plaintiff's]** the execution creditor or his or her attorney, **[to]** and shall be furnished to the sheriff within days after the date of sale.

[(b) If transfer of the property is not registered within one month after the sale, the purchaser shall be liable for payment of interest to the plaintiff at the rate of per cent p.a. and to thebondholder at the rate of per cent p.a. on the respective amounts of the award to the plaintiff and the bondholder in the plan of distribution as from the expiration of one month after the sale to date of transfer.]

[7. Inasmuch as the defendant is a member of the Group, no bids will be accepted by or on behalf of a person who is not a member of such Group, unless such person exhibits to the auctioneer at the sale a permit from the Minister of the Interior authorizing him to acquire such property.]

8. (a) If the purchaser fails to carry out any **[of his]** obligation~~[s]~~ due by the purchaser under the 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]**

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

(c) **[if he]** If the purchaser is already in possession of the property, the sheriff may, on **[seven days']** notice to affected parties, apply to a judge for an order **[ejecting]** evicting **[him]** the purchaser or any person claiming to **[hold under him therefrom]** occupy the property through the purchaser or otherwise occupying the property.

9[.] **(a)** The purchaser shall immediately on demand pay **[auctioneer's charges on the day of sale and in addition, transfer dues, costs of transfer, and arrear rates, taxes and other charges necessary to effect transfer, upon request by the attorney for the execution creditor.]** the sheriffs' commission 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 **[immediately]** after signature of the conditions of sale, payment of the **[initial]** deposit[,], and upon the balance of the purchase price being secured in terms of condition 7(b). **[and shall after such deposit be at the risk and profit of the purchaser.]**

(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.

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

[c] (d) 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 not occupied.

11.(a) The purchaser **[may]** shall be entitled to obtain transfer forthwith **[if he pays]** upon payment of the whole purchase price and **[complies]** compliance with condition 9, [in which case any claim for interest shall lapse,] [otherwise] 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 **[buildings standing on]** improvements to the property sold shall be immediately insured by the purchaser for **[the] their** full value, **[of the same and the insurance policy handed to him]** proof of insurance given to the sheriff and such insurance policy kept in force **[as long as the whole price has not been paid:]** until transfer is registered.**[if he does not do so, the sheriff may effect the insurance at the purchaser's expense.]**

(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]The sheriff [not holding himself] shall not be liable for any deficiency that may be found to exist in the property [and renouncing all excess]. [The property is also sold subject to all servitudes and conditions specified in the deed of transfer.]

14. The execution creditor shall **[be entitled to]** appoint **[an attorney]** the conveyancer to [attend to the] 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.

Dated at this day of **[19]**
20.....

Sheriff

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

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.”

Insertion of Form 2A in the Rules

5. The following Form is hereby inserted in the First Schedule of the Rules after Form 2:

“FORM 2A

**NOTICE OF APPLICATION TO DECLARE IMMOVABLE PROPERTY EXECUTABLE
IN TERMS OF RULE 46A**

In the High Court of South Africa
(..... Division)

Case No.

In the matter between:

.....Applicant

and

.....Respondent

Please take notice that the applicant herein intends to make application to the above Honourable Court on.....ator as soon thereafter as the matter may be heard for an order in the following terms:

(a)

(b)

(c)

And take notice that—

(a) the affidavit ofannexed hereto, together with annexures thereto, will be used in support of the application; and

(b) the applicant appoints the address below as the address at which service of documents in this application will be accepted.

The/any respondent may oppose the application or make relevant submissions to the court. A respondent intending to do so must—

(a) set out such opposition or submissions in an affidavit;

(b) serve a copy of the affidavit on the applicant/attorney and file the original with the registrar of the above court within 10 days of service of this notice of application;

(c) together with service and filing of the affidavit, appoint an address within 15 kilometres of the office of the registrar of the above court where documents may be served on the respondent; and

(d) appear at the above court on

A respondent who opposes the application must in addition in such respondent's affidavit—

(a) admit or deny the allegations made by the applicant; and

(b) state the reasons for opposing the application and set out the grounds upon which the opposition is based.

Failure by a respondent to do any of the things mentioned in this notice of application may result in the court granting the orders prayed for above.

DATED at this day of 20.....

.....

Applicant /his or her Attorney

Address:

.....

To: The Registrar of the High Court

And to:

.....Respondent

Address:

.....”

Insertion of Form 20A in the Rules

6. The following Form is hereby inserted in the First Schedule of the Rules after Form 20:

“FORM 20A

NOTICE OF ATTACHMENT IN EXECUTION

In the High Court of South Africa

Case No.

In the matter between

..... Execution Creditor

And

..... Judgment Debtor

To:

Take notice that I have this day laid under judicial attachment the property in the attached inventory in pursuance of a warrant directed to me by the registrar of the above Honourable Court, whereby I am required to cause to be raised of your property in this district the sum of R..... and R costs recovered against you

by judgment of this court in this action together with my charges in respect of the said warrant.

Your attention is drawn to the provisions of rule 46(8)(a)(iii) of the Uniform Rules of the above Honourable Court which reads:

“(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.”

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.”

Insertion of Form 21A in the Rules

7. The following Form is hereby inserted in the First Schedule of the Rules after Form 21:

“FORM 21A

**NOTICE TO CANCEL SALE OF IMMOVABLE PROPERTY IN TERMS OF RULE
46(11)(a)**

IN THE HIGH COURT OF SOUTH AFRICA

(..... Division)

Case No.....

In the matter between:

The Sheriff of

Applicant

and

.....

Purchaser

In re:..... Execution
Creditor

and

..... Judgment
Debtor

PLEASE TAKE NOTICE that the Sheriff of.....intends to request a Judge 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 Judge will be made to cancel the sale, is attached hereto.

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

Sheriff of the High Court

..... (Area)

.....

(Address)

To: The Registrar of the above Honourable Court

.....

And to:

Purchaser

.....

.....

(Address)”

Commencement

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

GOEWERMENTSKENNISGEWING
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

No. R. 2017

WET OP REËLSRAAD VIR GEREESHOWE, 1985 (WET NO. 107 VAN 1985)

**WYSIGING VAN DIE REËLS WAARBY DIE VERRIGTINGE VAN DIE VERSKILLENDEN
PROVINSIALE EN PLAASLIKE AFDELINGS VAN DIE HOË HOF VAN SUID-AFRIKA
GEREËL WORD**

Die Reëlsraad vir Gereeshowe het kragtens artikel 6 van die Wet op die Reëlsraad vir Gereeshowe, 1985 (Wet No. 107 van 1985), met die goedkeuring van die Minister van Justisie en Korrektiewe Dienste, die reëls in die Bylae gemaak.

BYLAE

ALGEMENE VERDUIDELIKENDE NOTA:

Uitdrukkings in [] **vet druk** dui uitlatings uit bestaande reëls aan.

Uitdrukkings met 'n volstreep daaronder dui invoegings in bestaande reëls aan.

Woordomskrywing

1. In hierdie Bylae beteken die "Reëls" die Reëls waarby die verrigtinge van die verskillende provinsiale en plaaslike afdelings van die Hoë Hof van Suid-Afrika gereël word gepubliseer kragtens Goewermentskennisgewing No. R. 48 van 12 Januarie 1965, soos gewysig by Goewermentskennisgewings No. R. 235 van 18 Februarie 1966, R. 2004 van 15 Desember 1967, R. 3553 van 17 Oktober 1969, R. 2021 van 5 November 1971, R. 1985 van 3 November 1972, R. 480 van 30 Maart 1973, R. 639 van 4 April 1975, R. 1816 of 8 Oktober 1976, R. 1975 van 29 Oktober 1976, R. 2477 van 17 Desember 1976, R. 2365 van 18 November 1977, R. 1546 van 28 Julie 1978, R. 1577 van 20 Julie 1979, R. 1535 van 25 Julie 1980, R. 2527 van 5 Desember 1980, R. 500 van 12 Maart 1982, R. 773 van 23 April 1982, R. 775 van 23 April 1982, R. 1873 van 3 September 1982, R. 2171 van 6 Oktober 1982, R. 645 van 25 Maart 1983, R. 841 van 22 April 1983, R. 1077 van 20 Mei 1983, R. 1996 van 7 September 1984, R. 2094 van 13

September 1985, R. 810 van 2 Mei 1986, R. 2164 van 2 Oktober 1987, R. 2642 van 27 November 1987, R. 1421 van 15 Julie 1988, R. 210 van 10 Februarie 1989, R. 608 van 31 Maart 1989, R. 2628 van 1 Desember 1989, R. 185 van 2 Februarie 1990, R. 1929 van 10 Augustus 1990, R. 1262 van 30 Mei 1991, R. 2410 van 30 September 1991, R. 2845 van 29 November 1991, R. 406 van 7 Februarie 1992, R. 1883 van 3 Julie 1992, R. 109 van 22 Januarie 1993, R. 960 van 28 Mei 1993, R. 974 van 1 Junie 1993, R. 1356 van 30 Julie 1993, R. 1843 van 1 Oktober 1993, R. 2365 van 10 Desember 1993, R. 2529 van 31 Desember 1993, R. 181 van 28 Januarie 1994, R. 411 van 11 Maart 1994, R. 873 van 31 Mei 1996, R. 1063 van 28 Junie 1996, R. 1557 van 20 September 1996, R. 1746 van 25 Oktober 1996, R. 2047 van 13 Desember 1996, R. 417 van 14 Maart 1997, R. 491 van 27 Maart 1997, R. 700 van 16 Mei 1997, R. 798 van 13 Junie 1997, R. 1352 van 10 Oktober 1997, R. 785 van 5 Junie 1998, R. 881 van 26 Junie 1998, R. 1024 van 7 Augustus 1998, R. 1723 van 30 Desember 1998, R. 315 van 12 Maart 1999, R. 568 van 30 April 1999, R. 1084 van 10 September 1999, R. 1299 van 29 Oktober 1999, R. 502 van 19 Mei 2000, R. 849 van 25 Augustus 2000, R. 373 van 30 April 2001, R. 1088 van 26 Oktober 2001, R. 1755 van 5 Desember 2003, R. 229 van 20 Februarie 2004, R. 1343 van 12 Desember 2008, R. 1345 van 12 Desember 2008, R. 516 van 8 Mei 2009, R. 518 van 8 Mei 2009, R. 86 van 12 Februarie 2010, R. 87 van 12 Februarie 2010, R. 88 van 12 Februarie 2010, R. 89 van 12 Februarie 2010, R. 90 van 12 Februarie 2010, R. 500 van 11 Junie 2010, R. 591 van 09 Julie 2010, R. 980 van 19 November 2010, R. 981 van 19 November 2010, R. 464 van 22 Junie 2012 en R. 992 van 7 Desember 2012, R. 114 van 15 Februarie 2013, R. 262 van 12 April 2013, R. 471 van 12 Julie 2013, R. 472 van 12 Julie 2013, R. 759 van 11 Oktober 2013, R. 212 van 28 Maart 2014, R. 213 van 28 Maart 2014, R. 214 van 28 Maart 2014, R. 30 van 23 Januarie 2015; R. 31 van 23 Januarie 2015, R. 317 van 17 April 2015, R. 781 van 31 Augustus 2015, R. 3 van 19 Februarie 2016, R. 678 van 3 June 2016 en R. 1055 van 29 September 2017.

Vervanging van reël 46 van die Reëls

2. Die volgende reël vervang hierby reël 46 van die Reëls:

**“REËL 46
UITWINNING -
ONROERENDE GOED**

- (1)(a) **[Geen]** Behoudens die bepalings van reël 46A, word geen uitwinningslasbrief teen die onroerende goed van enige vonnisskuldenaar [sal] uitgeneem [word] nie [totdat] tensy—
- (i) 'n relaas gemaak is teen enige lasbrief **[wat]** uitgereik **[kon wees]** teen die roerende goed van die vonnisskuldenaar en waaruit dit voorkom dat sodanige persoon **[nie voldoende]** onvoldoende roerende goed besit om die lasbrief na te kom **[nie]**; of
 - (ii) **[in]** sodanige onroerende goed spesiaal as vatbaar vir eksekusie deur die hof verklaar is of **[, in die geval waar vonnis neergelê is ooreenkomstig reël 31(5), deur die griffier:]** waar vonnis kragtens reël 31(5) deur die griffier 'n eergelê is.
- [Met dien verstande dat, waar die eiendom waarop beslag gelê gaan word, die primêre woning van die vonnisskuldenaar is, geen lasbrief uitgereik sal word nie behalwe as die hof, nadat alle toepaslike omstandighede in oorweging gebring is, 'n bevel teen sodanige eiendom uitvaardig.]**
- (b) 'n Uitwinningslasbrief teen onroerende goed—
- (i) moet 'n volledige beskrywing bevat van die aard **[en ligging (insluitend die adres)]**, landdrosdistrik en fisieke adres van die onroerende goed om die balju in staat te stel om dit op te spoor en te identifiseer **[,]; en**
 - (ii) moet **[vergesel gaan van]** voldoende inligting bevat om **[hom of haar]** die balju in staat te stel om uitvoering te gee aan subreël (3).
- (2) Beslaglegging op die onroerende goed moet uitgevoer word deur 'n balju van die distrik waarin die goed geleë is **[of deur 'n balju van die distrik waarin die kantoor van die registrateur van aktes of ander beampte belas met die registrasie van sodanige eiendom, geleë is]**, kragtens 'n lasbrief wesenlik bewoord soos Vorm 20 in die Eerste Bylae.
- (3) (a) **[Die wyse van beslaglegging van onroerende goed sal wees deur middel van skriftelike kennisgewing]** Kennisgewing van die beslaglegging, wesenlik bewoord soos Vorm 20A in die Eerste Bylae, moet deur die balju [wat] aan die eienaar [daarvan] van die goed [beteken sal word,] en aan die registrateur van akte of ander beampptes belas met die registrasie van sodanige **[onroerende]** goed beteken word, en indien die goed deur iemand anders as die eienaar geokkupeer word, ook aan sodanige okkupant.
- (b) Enige **[sodanige]** kennisgewing **[soos voorheen vermeld]** in paragraaf (a) bedoel sal—
- (i) die aandag op die bepalings van subreël (8)(a)(iii) vestig; en
 - (ii) beteken word behoudens reël 4, behalwe dat betekening aan die registrateur van aktes of ander beampte belas met die registrasie van onroerende goed uitgevoer kan word deur die balju deur middel van 'n

geregistreerde brief, behoorlik vooruitbetaal en gepos, geadresseer aan die beampte aan wie beoog word om dit te beteken.

(4)

(a) By die uitvoer van die beslaglegging, kan die balju geboue of strukture op die onroerende goed betree ten einde vas te stel watter verbeteringe aan die onroerende goed aangebring is, asook die toestand van sodanige verbeteringe: Met dien verstande dat waar die balju na redelike pogings nie toegang tot die onroerende goed of tot enige gebou of struktuur kan kry nie omdat die goed, gebou of struktuur gesluit is, kan die balju 'n slotmaker gebruik om toegang te verkry.

[(a)]

(b) Die uitwinningsverkoop vind plaas in die distrik waar die inbeslaggenome onroerende goed geleë is, en **[word]** moet waargeneem word deur die balju van die distrik wat eerste op die goed beslag gelê het: Met dien verstande dat die balju in die eerste instansie en behoudens paragraaf **[(b)]** van subreël (8), by aanvoering van goeie redes die verkoping elders en deur 'n ander balju kan magtig.

[(b)]

(c) By ontvangs van 'n skriftelike opdrag van die vonnisskuldeiser om met die verkoping voort te gaan, moet die balju vasstel en aanteken watter verbande of ander beswarings teen die inbeslaggenome onroerende eiendom geregistreer is, asook die name en adresse van die persone in wie se guns dit geregistreer is en die vonnisskuldeiser dienooreenkomstig in kennis stel.

(5) **[Onroerende]** Behoudens reël 46A en enige bevel deur die hof gegee word onroerende goed wat onderworpe is aan 'n eis wat voorkeur geniet bo dié van die vonnisskuldeiser [word] nie ter uitwinning verkoop nie tensy-

(a) die vonnisskuldeiser **['n skriftelike]** kennisgewing van die voorgenome verkoping **[per geregistreerde pos]** aan— **[die preferente skuldeiser laat stuur het indien sy adres bekend is en, as die eiendom belasbaar is, ook aan die betrokke plaaslike bestuur,]**

(i) preferente krediteure;

(ii) die plaaslike bestuur, indien die eiendom belas is; en

(iii) die regspersoon, indien die goed 'n deeltiteleenheid is,

laat beteken het waarby **[hulle]** die bogenoemde entiteite opgeroep word om binne **[tien]** 10 dae na 'n bepaalde datum 'n redelike reserweprys vas te stel of skriftelik toe te stem tot 'n verkoping sonder reserwe; en hy aan die balju bewys gelever het dat **[die preferente skuldeiser]** daardie entiteite aldus vasgestel of toegestem het, of

(b) die balju oortuig is dat dit onmoontlik is om enige preferente skuldeiser ingevolge hierdie reël van die voorgenome verkoping kennis te gee of so 'n

skuldeiser, nadat aan hom kennis gegee is, nagelaat het om binne die gestelde tyd 'n reserweprys te bepaal of skriftelik toe te stem tot 'n verkoping sonder reserwe soos in paragraaf (a) bedoel.

- (6) Die balju kan by kennisgewing aan enigiemand vereis dat **[hy]** daardie persoon onverwyld alle dokumente in [sy] daardie persoon se besit of onder [sy] daardie persoon se beheer wat betrekking het op die skuldenaar se titel in die genoemde eiendom, aan [hom] die balju lewer.
- (7)(a) Die balju wat die verkoping hou bepaal 'n dag en plek vir die verkoping van die inbeslaggenome onroerende eiendom, maar behalwe met spesiale verlof van 'n landdros, nie minder as **[een maand] 45 dae** na betekening van die kennisgewing van beslaglegging nie en stel onverwyld al die ander balju's wat in die distrik aangestel is van die dag en die plek in kennis.
- (b) (i) Die vonnisskuldeiser moet in oorleg met die balju 'n kennisgewing van verkoping opstel wat 'n kort beskrywing van die inbeslaggenome onroerende eiendom bevat, **[sy ligging en straatnommer (as daar een is)] die verbeterings daaraan gedoen, die landdrostdistrik en fisieke adres daarvan,** die tyd en plek van die verkoping en die feit dat die voorwaardes by die kantoor van die balju wat die verkoping hou ingesien kan word **[, en hy of sy moet soveel eksemplare daarvan aan genoemde balju verskaf as wat hy verlang].**
- (ii) Die vonnisskuldeiser moet soveel eksemplare van die kennisgewing van verkoping soos die balju vereis, aan die balju voorsien.
- (c) Die eksekusieskuldeiser moet—
- (i) die genoemde kennisgewing een maal in 'n koerant laat plaas wat daaglik of weeklik in die distrik sirkuleer waar die inbeslaggenome onroerende eiendom geleë is en in die *Staatskoerant* minstens **[5] vyf** dae en nie meer as 15 dae voor die datum van die verkoping; en
- (ii) aan die balju wat die verkoping hou een bevredigende fotokopie van elk van die kennisgewings wat onderskeidelik in die koerant en die *Staatskoerant* verskyn het **[of, in die geval van die Staatskoerant, die nommer van die Staatskoerant waarin die kennisgewing verskyn het],** per hand, of per faksimile of elektroniese pos verskaf.
- (d) Minstens 10 dae voor die datum van die verkoping moet die balju wat die verkoping hou **[per geregistreerde pos]** 'n eksemplaar van die kennisgewing van verkoping in paragraaf (b) bedoel, stuur aan elke vonnisskuldeiser wat op die onroerende goed beslag laat lê het en aan elke verbandhouer wie se adres bekend is en moet tegelyk daarmee 'n afskrif van die kennisgewing van verkoping aan al die ander balju's aangestel in daardie distrik stuur.
- (e) Minstens 10 dae voor die verkoping moet die balju wat die verkoping hou—
- (i) een eksemplaar van die kennisgewing op die kennisgewingbord van die landdroshof van die distrik waarin die inbeslaggenome onroerende eiendom geleë is, aanbring, of as die eiendom geleë is in die distrik

[waarin] waar die hof waar die lasbrief uitgereik is, geleë is, dan op die kennisgewingbord van daardie hof~~[,]~~; en

(ii) een eksemplaar op of so na moontlik aan die plek waar die verkoping werklik sal plaasvind, aanbring.

(8)(a)(i) Die vonnisskuldeiser moet minstens **[20]** 35 dae voor die datum van die verkoping die verkoopsvoorwaardes opstel, wesenlik **[bewoord]** bewoord soos Vorm 21 in die Eerste Bylae, waarop die inbeslaggenome eiendom verkoop moet word en dit aan die balju wat die verkoping hou vir **[goedkeuring]** die doeleindes van vasstelling voorlê.

(ii) Benewens enige ander terme, sluit die verkoopsvoorwaardes enige voorwaardes deur die hof beveel, in.

(iii) Enige belanghebbende party kan, minstens 25 dae voor die datum van die verkoping, verdere of gewysigde verkoopsvoorwaardes skriftelik aan die balju voorlê.

(iv) Die balju moet, minstens 20 dae voor die datum van die verkoping, die verkoopsvoorwaardes vasstel.

(v) Die uitwinningsverkoping en die verkoopsvoorwaardes moet voldoen aan die bepalings van enige wet wat verband hou met veilings, in die besonder die 'Consumer Protection Act, 2008' (Wet No. 68 van 2008), en die Regulasies daarkragtens uitgevaardig.

(b) **[(ii)]**(i) Die vonnisskuldeiser moet daarna aan genoemde balju **[twee]** drie eksemplare van die verkoopsvoorwaardes gee, waarvan een in **[sy of haar]** die kantoor van die balju ter insae van belanghebbende partye moet lê vir 15 dae voor die datum van die verkoping. **[en die]**

(ii) Die balju wat die verkoping hou, moet onverwyld 'n afskrif van die verkoopsvoorwaardes verskaf aan alle ander balju's wat in die distrik aangestel is.

(c) Die balju moet, minstens 15 dae voor die datum van die verkoping, een eksemplaar van die verkoopsvoorwaardes aan die vonnisskuldenaar beteken.

(d) **[(b) As 'n belanghebbende party die verkoopsvoorwaardes gewysig wil hê, moet hy minstens 10 dae voor die datum van die verkoping]** Minstens 10 dae voor die datum van die verkoping kan enige belanghebbende party, behoudens reël 46A en enige bevel deur die hof kragtens die bepalings daarvan gegee en met **[vier-en-twintig uur kennisgewing]** 24-uur-kennisgewing aan **[die vonnisskuldeiser en die verbandhouders]** alle bekende geraakte partye by die landdros van die distrik waarin die inbeslaggenome onroerende eiendom verkoop sal word, daarom aansoek doen en die landdros kan daarop **[na goeddunke]** 'n bevel gee, ook 'n gepaste bevel betreffende koste.

- (9) Die vonnisskuldeiser **[kan]** moet 'n **[prokureur]** aktebesorger aanstel om die transport van die **[uitgewonne]** inbeslaggenome onroerende eiendom te doen wanneer dit ter uitwinning verkoop is: Met dien verstande dat die balju die reg het om 'n nuwe aktebesorger aan te stel sou die aktebesorger deur die vonnisskuldeiser aangestel nie betyds of bevredigend met die transport voortgang maak nie.
- (10) Onroerende goed waarop vir uitwinning beslag gelê is, moet deur die balju by openbare veiling verkoop word.
- (11)(a) (i) As die koper versuim om enige **[van sy of haar]** verpligtinge deur die koper verskuldig ingevolge die verkoopsvoorwaardes na te kom, kan die koop summier deur 'n regter op grond van 'n verslag van die balju wat die verkoping hou en na behoorlike kennisgewing aan die koper, gekanselleer word en die inbeslaggenome onroerende eiendom kan weer te koop aangebied word.
- (ii) Die verslag moet vergesel gaan van 'n kennisgewing wat wesenlik bewoord is soos Vorm 21A in die Eerste Bylae.
- (iii) Indien die verkoping gekanselleer word, moet die balju die vonnisskuldenaar van die kansellasië verwittig.
- (b) **[Die koper is aanspreeklik vir]** Enige verliese gelyk vanweë **[sy of haar]** die koper se versuim **[en dit]** kan op aansoek van 'n benadeelde skuldeiser wie se naam op **[genoemde]** die balju se distribusierekening verskyn, van [hom of haar] die koper verhaal word kragtens vonnis van **[die]** 'n regter wat **[summier]** op grond van 'n skriftelike verslag van genoemde balju gegee word nadat die koper skriftelik in kennis gestel is dat **[so 'n]** die verslag vir [daardie] die genoemde doel voor **[die]** 'n regter gelê sal word.
- (c) As **[sodanige]** die koper reeds in besit van die onroerende eiendom is, kan genoemde balju met **[10 dae]** kennisgewing aan geraakte persone by 'n regter 'n uitsettingsbevel kry teen **[hom of haar]** die koper of teen iemand wat voorgee **[namens hom of haar te besit]** die eiendom deur die koper te okkupeer of die eiendom andersins okkupeer.
- (12) Behoudens reël 46A en subreël (5) hiervan—
- (a) geskied die verkoping [sonder reserwe en] op die voorwaardes ingevolge subreël (8) bepaal[.]; en
- (b) die onroerende eiendom word aan die hoogste bieder verkoop.
- (13)
- (a) Alle gelde ten opsigte van die koopprys van die onroerende eiendom in uitwinning verkoop, word aan die balju betaal en die balju hou daardie gelde in die balju se trustrekening totdat transport aan die koper gegee is.
- (b) Die balju wat die verkoping hou gee transport aan die koper teen betaling van die koopsom en vervulling van die verkoopsvoorwaardes. Hy kan vir daardie

doel al die nodige doen en enigiets aldus deur hom of haar gedaan is ewe geldig asof hy of sy die eienaar was.

- (c) Geen bedrag van die kooppeld word uitbetaal totdat aan die bepalings van subreël (14) voldoen is nie.

(14)

[(a) Die balju wat die verkoping hou moet onverwyld alle gelde wat hy of sy ten opsigte van die koopprys ontvang, in die depositorekening van die landdros van die distrik stort en terselfdertyd al die ander balju's wat in daardie distrik aangestel is, inlig oor sodanige inbetaling en dit nie aan die skuldeiser oorbetaal voordat transport gegee is nie.]

- (a) Na die afsluiting van die verkoping, maar voor voorbereiding deur die balju van 'n distribusieplan, moet die vonnissskuldeiser of sy of haar prokureur die balju voorsien van 'n sertifikaat van alle geld deur die vonnissskuldenaar of sy of haar prokureur betaal na die uitreiking van die uitwinningslasbrief.

- [(b) Genoemde balju moet so gou moontlik na die verkoping 'n distribusieplan van die opbrengs opstel in rangorde van voorkeur soos hierna bepaal, en 'n afskrif daarvan aan die griffier en aan al die ander balju's wat in daardie distrik aangestel is stuur. Genoemde balju onmiddellik per aangetekende pos kennis gee aan alle partye wat lasbriewe ingedien het en aan die eksekusieskuldenaar dat die plan 15 dae vanaf 'n bepaalde datum in sy of haar kantoor en in die griffierskantoor ter insae sal lê en tensy die partye skriftelik hul goedkeuring van die plan te kenne gee, moet die plan aldus ter insae lê.]**

- (b) (i) Binne 10 dae na die registrasiedatum van die transport, moet die balju 'n distribusieplan van die opbrengs voorberei hê in rangorde van voorkeur, en moet 'n eksemplaar van daardie plan aan die griffier en aan al die ander balju's in daardie distrik aangestel, stuur.

(ii) Onmiddellik daarna moet die genoemde balju kennis gee aan alle partye wat lasbriewe ingedien het en aan die vonnissskuldenaar dat die distribusieplan vir insae by sy of haar kantoor en die kantoor van die griffier sal lê vir 15 dae vanaf 'n genoemde datum en tensy sodanige partye hul instemming tot die plan skriftelik aandui, sal daardie plan aldus vir insae lê.

- (c) Na aftrekking van uitwinningskoste word die opbrengs in die volgende rangorde van voorkeur verdeel:

- (i) **[die eise]** Eise van preferente skuldeisers in die volgorde van hul geregtelike voorkeur; en daarna

- (ii) **[die eise]** Eise van ander skuldeisers wie se lasbriewe by die balju ingedien is, in die rangorde van voorkeur soos vasgelê in artikels **[ses-en-negentig]** 96, en **[nege-en-negentig]** 98A tot en met **[eenhonderd-en-drie]** 103 van die Insolvensiewet, 1936 (Wet No. 24 van 1936)[, **soos gewysig**].

- (d) **[’n Belanghebbende persoon wat teen so ’n plan beswaar het, moet binne vyf dae na verstryking van die tyd in paragraaf (b) van hierdie subreël vasgestel, skriftelik aan die balju en alle ander belanghebbende persone die besonderhede van sy beswaar meedeel en dit met 10 dae kennisgewing aan hulle, voor ’n regter vir hersiening bring.]**

’n Belanghebbende persoon wat teen so ’n plan beswaar het-

(i) moet voor die verstryking van die tydperk in paragraaf (b)(ii) bedoel, skriftelik aan die balju en alle ander belanghebbende persone skriftelik kennis gee van die besonderhede van die beswaar;

(ii) binne 10 dae na die verstryking van die tydperk in paragraaf (b)(ii) bedoel, sodanige beswaar voor ’n regter bring vir hersiening met 10 dae kennisgewing aan die balju en die genoemde persone.

- (e) Die regter moet die geskilpunt aanhoor en beslis en hy kan die distribusieplan wysig of bekragtig of na goeddunke ’n bevel gee, ook betreffende koste.

- (f) Indien-

- (i) geen beswaar teen so ’n plan ingedien word nie; of
- (ii) die belanghebbende partye te kenne gee dat hulle daarmee saamstem; of
- (iii) die plan by hersiening bekragtig of gewysig word,

moet die **[landdros]** balju na voorlegging van ’n sertifikaat van die aktebesorger dat transport aan die koper gegee is, **[en op versoek van die balju,]** uitbetaal ooreenkomstig die distribusieplan. **[As die adres van ’n geregtigde nie bekend is nie, word die bedrag aan hom verskuldig gestort in die Voogdyfonds, tot stand gebring deur enige wet op die bereddering van boedels.]**

- (15) Nóg ’n balju nóg iemand namens die balju koop by enige verkoping in eksekusie hetsy vir **[homself]** sigself of vir enige ander persoon enige **[van die]** onroerende goed wat te koop aangebied word.

- (16) In hierdie reël, beteken die woord "dae" "hofdae" soos omskryf in reël 1 van die Reëls.”.

Invoeging van reël 46A in die Reëls

3. Die volgende reël word hierby na reël 46 in die Reëls ingevoeg:

“46A Uitwinning teen residensiële onroerende goed

- (1) Hierdie reël is van toepassing wanneer 'n uitwinningskuldeiser teen die residensiële onroerende goed van 'n vonnisskuldenaar wil uitwin.
- (2)(a) 'n Hof wat 'n aansoek ingevolge hierdie reël oorweeg moet—
- (i) vasstel of die onroerende goed waarteen die uitwinningskuldeiser voorneme is om uit te win, die primêre woning van die vonnisskuldeiser is; en
 - (ii) ander maniere oorweeg waarop die vonnisskuldenaar die vonnisskuld kan betaal, anders as uitwinning teen die vonnisskuldenaar se primêre woning.
- (b) 'n Hof magtig nie uitwinning teen onroerende goed wat die primêre woning van 'n vonnisskuldenaar is nie tensy die hof, na oorweging van alle tersaaklike faktore, van oordeel is dat uitwinning teen daardie goed geregverdig is nie.
- (c) Die griffier reik nie 'n lasbrief van uitwinning teen die residensiële onroerende goed van enige vonnisskuldenaar uit tensy 'n hof uitwinning teen daardie goed beveel het nie.
- (3) Elke kennisgewing van aansoek om residensiële onroerende goed vatbaar vir eksekusie te verklaar—
- (a) moet wesenlik soos Vorm 2A van Bylae 1 bewoord wees;
 - (b) moet geskied by kennisgewing aan die vonnisskuldenaar en aan enige ander party wat deur die uitwinningsverkoping geraak kan word, met inbegrip van die entiteite in reël 46(5)(a) bedoel: Met dien verstande dat die hof betekening aan enige ander party wat die hof nodig ag, kan beveel;
 - (c) moet ondersteun word deur 'n beëdigde verklaring wat die redes vir die aansoek en die gronde waarop dit gebaseer is, uiteensit; en
 - (d) moet persoonlik deur die balju aan die vonnisskuldenaar beteken word: Met dien verstande dat die hof betekening op enige ander wyse kan gelas.

- (4)(a) Die applikant moet in die aansoekkennisgewing–
- (i) die datum stel waarop die aansoek aangehoor sal word;
 - (ii) elke respondent daarin vermeld inlig dat indien die respondent voornemens is om die aansoek teen te staan of om versoë aan die hof te rig, die respondent dit in 'n beëdigde verklaring moet doen binne 10 dae vanaf betekening van die aansoek en voor die hof verskyn op die datum waarop die aansoek aangehoor sal word;
 - (iii) 'n fisieke adres aanwys binne 15 kilometer van die kantoor van die griffier waar die applikant betekening van alle dokumente in hierdie verrigtinge sal aanvaar; en
 - (iv) die applikant se pos-, faks- of elektroniese posadres stel, indien beskikbaar.
- (b) Die aansoek word nie terrolle geplaas vir aanhoring op 'n datum minder as vyf dae na verstryking van die tydperk in paragraaf (a)(ii) bedoel nie.
- (5) Elke aansoek word deur die volgende dokumente ondersteun, waar van toepassing, wat bewys gee van:
- (a) die markwaarde van die onroerende goed;
 - (b) die plaaslike bestuur se waardasie van die onroerende goed;
 - (c) die bedrae verskuldig op verbande waarmee die onroerende goed beswaar is;
 - (d) die bedrag aan die plaaslike owerheid as belastinge en ander gelde verskuldig;
 - (e) die bedrae aan 'n regspersoon as heffings verskuldig; en
 - (f) enige ander faktor wat nodig mag wees om die hof in staat te stel om aan subreël (8) gevolg te gee:
- Met dien verstande dat die hof enige ander dokument wat die hof nodig ag, kan aanvra.
- (6)(a) 'n Respondent, by betekening van 'n aansoek in subreël (3) bedoel, kan–
- (i) die aansoek teenstaan; of

- (ii) die aansoek verdedig en verhoë rig wat betrekking het op die gee van 'n gepaste bevel deur die hof; of
 - (iii) sonder om die aansoek te verdedig, verhoë rig wat betrekking het op die gee van 'n gepaste bevel deur die hof.
- (b) 'n Respondent in paragraaf (a)(i) en (ii) bedoel—
 - (i) erken of ontken die bewering deur die applikant in die applikant se openingsverklaring gemaak; en
 - (ii) die redes vir die verdediging van die aansoek en die gronde waarop die aansoek verdedig word, uiteensit.
- (c) Elke verdediging of verhoë in paragrafe (a) en (b) bedoel moet in 'n beëdigde verklaring uiteengesit word.
- (d) 'n Respondent wat 'n aansoek verdedig of verhoë rig moet, binne 10 dae vanaf betekening van die aansoek—
 - (i) die beëdigde verklaring in paragraaf (c) bedoel, lewer;
 - (ii) 'n fisieke adres binne 15 kilometer van die kantoor van die griffier aanwys waar dokumente aan sodanige respondent beteken kan word; en
 - (iii) die respondent se pos-, faks- of elektroniese posadres, waar van toepassing, verstrek.
- (7) Die griffier moet die aangeleentheid terrolle plaas vir verhoë deur die hof op die datum in die Kennisgewing van Aansoek gestel.
- (8) 'n Hof wat 'n aansoek kragtens hierdie reël oorweeg—
 - (a) kan uit eie beweging of by aansoek deur enige geraakte party, gelas dat enige voorwaarde wat die hof gepas ag, in die verkoopsvoorwaardes ingesluit word;

- (b) kan die voorsiening gelas deur—
 - (i) 'n munisipaliteit van belastings deur 'n vonnisskuldenaar daaraan verskuldig;
of
 - (ii) 'n regspersoon van heffings deur 'n vonnisskuldenaar daaraan verskuldig;
 - (c) by die aanvoer van goeie gronde—
 - (i) versuim om enige dokument in bedoel in subreël (5) te voorsien, kondoneer;
of
 - (ii) lewering van 'n beëdigde verklaring buite die tydperk in subreël (6)(d) voorgeskryf;
 - (d) uitwinning gelas teen die primêre woning van 'n vonnisskuldenaar indien daar geen ander bevredigende middele is om die vonnisskuld te betaal nie;
 - (e) 'n reserweprys vasstel;
 - (f) die aansoek op sodanige terme uitstel wat die hof gepas ag;
 - (g) die aansoek weier indien dit geen meriete dra nie;
 - (h) 'n gepaste bevel gee oor koste, met inbegrip van 'n strafbevel teen 'n party wat die afhandeling van 'n aansoek kragtens hierdie reël vertraag; of
 - (i) enige ander gepaste bevel gee.
- (9)(a) In 'n aansoek kragtens hierdie reël, of by die rig van versoë deur 'n respondent, moet die hof oorweeg of 'n reserweprys vasgestel moet word.
- (b) Wanneer besluit word of 'n reserweprys vasgestel moet word en die bedrag waarteen die reserwe vasgestel sal word, moet die hof—
- (i) die markwaarde van die onroerende goed;
 - (ii) die bedrae verskuldig as belastings of heffings;

- (iii) die bedrae verskuldig op geregistreerde verbande;
 - (iv) enige eie kapitaal wat tussen die reserweprys en die markwaarde van die goed gerealiseer kan word;
 - (v) vermindering van die vonnisskuldenaar se skuld op die vonnisskuld en soos beoog in subreël (5)(a) tot (e), hetsy eie kapitaal in die onroerende goed gevind kan word al dan nie, soos in subparagraaf (iv) hierbo bedoel;
 - (vi) die onroerende goed geokkupeer is, die persone wat die goed okkupeer en die omstandighede van daardie okkupasie;
 - (vii) die waarskynlikheid dat die reserweprys nie behaal word nie en die waarskynlikheid dat die onroerende goed nie verkoop gaan word nie;
 - (viii) enige benadeling wat enige party kan ly indien die reserweprys nie behaal word nie; en
 - (ix) enige ander faktor wat na mening van die hof nodig is vir die beskerming van die belange van die vonnisskuldeiser en die vonnisskuldenaar, in ag neem.
- (c) Indien die reserweprys nie behaal word nie, moet die hof, by herooring van die faktore in paragraaf (b) en die bevoegdhede daarvan kragtens hierdie reël, beveel hoe uitwinning moet voortgaan.
- (d) Waar die reserweprys nie by 'n uitwinningsverkoop behaal word nie, moet die balju 'n verslag aan die hof voorlê, binne vyf dae vanaf die datum van die veiling, welke verslag—
- (i) die datum, tyd en plek waar die veiling gehou is;
 - (ii) die name, identiteitsnommers en kontakbesonderhede van die persone wat aan die veiling deelgeneem het;

- (iii) die hoogste bod of aanbod gemaak; en
- (iv) enige ander tersaaklike faktor wat die hof kan bystaan in die verrigting van die hof se funksie in paragraaf (c),
bevat.
- (e) Die hof kan, na oorweging van die faktore in paragraaf (d) en enige ander tersaaklike faktor, beveel dat die goed verkoop word aan die persoon wat die hoogste aanbod of bod gemaak het.

Vervanging van Vorm 21 van die Reëls

4. Vorm 21 in die Eerste Bylae van die Reëls word hierby deur die volgende vorm vervang:

“VORM 21

VERKOOPSVOORWAARDES BY UITWINNING VAN ONROERENDE GOED

Insake:

.....

[Eiser] Uitwinningskuldeiser

.....

en

[Verweerder] Vonnisskuldenaar

Die onroerende eiendom (hierna die “eiendom” genoem) wat te koop aangebied sal word op die dag van **[19] 20**....., bestaan uit:

Die verkoping sal **[aan]** volgens die volgende voorwaardes **[onderworpe wees]** gehou word:

1. Die verkoping word behoudens die bepalings van die Eenvormige Hofreëls en alle ander toepaslike wetsbepalings gehou word.

[1.]2. Die eiendom sal deur die balju van te aan die hoogste bieder sonder 'n reserweprys/[met] onderhewig aan 'n reserweprys van..... verkoop word.

[2.]3. Die verkoping geskied in rande en geen bod van minder as [een] eenduisend rand sal aanvaar word nie.

[3.]4. Indien 'n geskil betreffende 'n bod ontstaan, kan die eiendom weer vir verkoping aangebied word.

[4.]5(a) Indien die [afslaer] balju 'n fout by die verkoping maak, is so 'n fout nie op enige van die partye bindend nie maar kan dit reggestel word.

(b) Indien die [afslaer] balju vermoed dat 'n bieder nie in staat is om of die deposito wat in voorwaarde [6] 7 genoem word of die balans van die koopprys te betaal nie, kan [hy] die balju weier om die bod van so 'n bieder te aanvaar of kan hy dit voorwaardelik aanvaar totdat die bieder [hom] die balju oortuig [het] dat [hy] die beider in staat is om [beide sodanige bedrae] die deposito en die balans van die koopprys te betaal.

(c) By die weiering van 'n bod in die omstandighede in paragraaf (b) bedoel, kan die eiendom onmiddellik weer vir verkoping aangebied word.

[5.]6(a) Die koper moet so spoedig doenlik na die verkoping en onmiddellik wanneer deur die [.....] balju versoek, hierdie voorwaardes onderteken [en indien hy as verteenwoordiger gekoop het, die naam van sy prinsipaal vermeld].

(b) Indien die koper as verteenwoordiger koop, moet die koper die naam van die prinsipaal of persoon namens wie die eiendom gekoop word, bekendmaak.

[6.]7(a) Die koper moet 'n deposito van [tien] 10 persent van die koopprys kontant of per bankgewaarborgde tjek op die dag van die verkoping aan die balju betaal[.].

(b) [die] Die balans [betaalbaar] word teen transport betaal en verseker [te word] deur 'n waarborg [van 'n bank of bougenootskap] uitgereik deur 'n finansiële instelling [wat] deur die [eiser se] vonnisskuldeiser of sy of haar prokureur goedgekeur [is], en die waarborg [aan die balju] moet binnedae na die datum van die verkoping aan die balju verstrek [te] word.

[(b) Indien die transport van die eiendom nie binne een maand na die verkoping geregistreer is nie, sal die koper aanspreeklik wees vir die betaling van rente aan die eiser teenpersent per jaar en aan die verbandhouer teenpersent per jaar op die onderskeie bedrae van die toekenning aan die eiser en die verbandhouer in die distribusieplan, vanaf die verloop van een maand na die verkoping tot die datum van transport.

7. Aangesien die verweerder 'n lid van die groep is, sal geen bod gemaak deur of namens iemand wat nie 'n lid van dieselfde groep is nie, aanvaar word nie tensy so iemand aan die afslaer by die verkoping 'n permit van die Minister van Binnelandse Sake toon waarby hy gemagtig word om die eiendom te verkry.]

8. (a) As die [verkoper] koper versuim om enige [van sy] verpligting[e] van die koper ingevolge die verkoopsvoorwaardes na te kom, kan die koop summier deur 'n regter op grond van 'n verslag van die balju en na behoorlike kennisgewing aan die koper, gekanselleer word en die eiendom kan weer te koop aangebied word.[: en]

(b) [Die] Indien die omstandighede in paragraaf (a) voorkom, is die koper [is] aanspreeklik vir verliese gelyk vanweë [sy] sodanige versuim en dit kan op aansoek van 'n benadeelde skuldeiser wie se naam op die balju se distribusierekening verskyn, van [hom] die koper verhaal word kragtens vonnis van [die] 'n regter wat [summier] op grond van 'n skriftelike verslag van die balju gegee word nadat die koper skriftelik in kennis gestel is dat so 'n verslag vir daardie doel voor die regter gelê sal word.

(c) As die koper reeds in besit van die eiendom is, kan die balju met sewe dae kennisgewing by 'n regter 'n [uitsettingsbevel] bevel kry [teen hom] wat die koper of [teen] iemand wat voorgee die eiendom deur [hom te besit] die koper te okkupeer of die eiendom andersins okkupeer, uitsit.

9[.] (a) Die koper moet [afslaersgelde op die dag van die verkoping betaal en ook hereregte, transportkoste en agterstallige belastinge en ander uitgawes wat nodig is om transport te laat geskied, op versoek van die prokureur van die vonnisskuldeiser] onmiddellik op aandrang die balju se kommissie betaal, wat soos volg bereken word:

.....;

(b) Die koper is aanspreeklik om, binne 10 dae nadat die koper deur die aangestelde aktebesorger versoek is om dit te doen, die volgende te betaal:

(i) Alle bedrae verskuldig aan die munisipaliteit wat die eiendom bedien, ingevolge die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet No. 32 van 2000), vir munisipale diensgelde, ekstra betalings op gelde, eiendombelasting en ander munisipale belastinge, heffings en regte wat aan 'n munisipaliteit verskuldig kan wees; en waar van toepassing

(ii) Alle heffings verskuldig aan 'n regspersoon ingevolge die Wet op Deeltitels, 1986 (Wet No. 95 van 1986) of bedrae verskuldig aan 'n huiseienaars- of ander vereniging wat dienste aan die eiendom lewer.

(iii) Die koste van transport, met inbegrip van aktebesorgingsgeld, hereregte en enige ander bedrag nodig vir die oordrag van transport na die koper.

10. **[a]** Die eiendom kan **[onmiddellik]** na ondertekening van verkoopsvoorwaardes, betaling van die **[eerste]** deposito en wanneer die balans van die koopprys ingevolge voorwaarde 7(b) gewaarborg is in besit geneem word **[en sal na die betaling daarvan op die risiko en tot voordeel van die koper gehou word]**.

(b) Indien die koper besit van die eiendom neem, is die koper aanspreeklik vir okkupasiehuur teen die koers van R.....per maand van.....tot datum van transport.

[b] (c) Wanneer die koper besit neem, is die eiendom op die risiko en tot voordeel van die koper.

((c)) (d) Die vonnisskuldeiser en die balju gee geen waarborg dat die koper persoonlike en/of vakante okkupasie van die eiendom sal kan kry nie of dat die eiendom nie geokkupeer is nie.

11. **(a)** Die koper **[kan]** is geregtig om onverwyld transport te kry **[as hy]** by betaling van die hele koopprys **[betaal]** en by voldoening aan voorwaarde 9 **[voldoen in welke geval]**

enige eis vir rente verval]. Anders sal transport gegee word eers nadat die koper voorwaardes [6] 7 en 9 hiervan nagekom het.

(b) Indien die transport deur die koper verdraag word, is die koper aanspreeklik vir rente teen die koers vanpersent per jaar op die koopprys.

12[.] (a) Die balju kan eis dat enige **[gebou]** verbetering op die verkoopte eiendom onmiddellik deur die koper vir die volle waarde daarvan verassureer word **[en dat die assuransiepolis aan hom oorhandig en],** bewys van assuransie aan die balju gegee word en sodanige assuransiepolis van krag gehou word **[vir solank as wat die koopprys nog nie ten volle betaal is nie]** totdat transport geregistreer is. **[As hy dit nie doen nie, kan die balju die assuransie op die koper se koste uitneem.]**

(b) Sou die koper versuim om aan die verpligtinge in paragraaf (a) te voldoen, kan die balju die nodige assuransie uitneem en die koste van daardie assuransie sal op die koper se koste wees.

13[.](a) Die eiendom word verkoop soos deur die titelaktes en kaart of deelplan voorgestel[;], behoudens alle serwitute en voorwaardes van vestiging, watter ook al op die eiendom van toepassing is.

(b) [die] Die balju is nie aanspreeklik vir enige tekort wat op die eiendom gevind mag word nie **[en doen afstand van enige oorskot].** **[Die eiendom word ook verkoop onderhewig aan alle serwitute en voorwaardes in die transportakte vermeld.]**

14. Die vonnisskuldeiser **[is geregtig om 'n prokureur aan te]** stel 'n aktebesorger aan om die transport van die eiendom na die koper te behartig[.]; Met dien verstande dat die balju geregtig sal wees om 'n nuwe aktebesorger aan te stel sou die aktebesorger deur die vonnisskuldeiser aangestel nie betyds of bevredigend met die transport voortgaan nie.

Te hierdie dag van **[19]**
20......

Balju

Ek sertifiseer dat die voormelde eiendom vandag vir aan
in my teenwoordigheid verkoop
 is:.....

Ek, die ondergetekende,....., woonagtig te in die distrik
 verbind my hierby as koper van die voormelde eiendom om die koopprys
 te betaal en om al die bogenoemde voorwaardes na te kom.”

Invoeging van Vorm 2A in die Reëls

5. Die volgende Vorm word hierby in die Eerste Bylae van die Reëls na Vorm 2 ingevoeg:

“VORM 2A

KENNISGEWING VAN AANSOEK OM ONROERENDE GOED VATBAAR VIR UITWINNING INGEVOLGE REËL 46A TE VERKLAAR

In die Hooggeregshof van Suid-Afrika
 (..... Afdeling)

Saakno.

In die aangeleentheid tussen:

.....Applikant

en

.....Respondent

Neem asseblief kennis dat die applikant hierin voornemens is om by die bogenoemde
 Agbare Hof op om of so gou daarna as wat die
 aangeleentheid aangehoor kan word, aansoek te doen om 'n bevel luidens die volgende:

(a)

(b)

(c)

En neem kennis dat—

(a) die beëdigde verklaring vanhierby aangeheg, saam met aanhangsels daarby, ter ondersteuning van die aansoek gebruik sal word; en

(b) die applikant die adres hieronder aanwys as die adres waar betekening van dokumente in hierdie aansoek aanvaar sal word.

Die/enige respondent kan die aansoek verdedig of tersaaklike verdoel aan die hof rig. 'n Respondent wat dit wil doen moet—

(a) sodanige verdediging of verdoel in 'n beëdigde verklaring uiteensit;

(b) 'n afskrif van die beëdigde verklaring aan die applikant/prokureur beteken en die oorspronklike liasseer by die griffier van die bogenoemde hof binne 10 dae vanaf betekening van hierdie aansoekkennisgewing;

(c) saam met betekening en liassering van die beëdigde verklaring, 'n adres binne 15 kilometer van die kantoor van die griffier van die bogenoemde hof aanwys waar dokumente aan die respondent beteken kan word; en

(d) voor die bogenoemde hof verskyn op

'n Respondent wat die aansoek verdedig moet benewens daardie respondent se beëdigde verklaring—

(a) die bewerings deur die applikant gemaak erken of ontken; en

(b) die redes stel vir die verdediging van die aansoek en die gronde uiteensit waarop die verdediging gegrond is.

Versuim deur 'n respondent om enige van die dinge in hierdie aansoekkennisgewing genoem te doen, kan daartoe lei dat die hof die bevel waarvoor hierbo gevra word, toestaan.

GEDATEER te hierdie dag van
20.....

.....

Applikant /sy of haar prokureur

Adres:

.....

Aan: Die Griffier van die Hooggeregshof

En aan:

.....Respondent

Adres:

.....”

Invoeging van Vorm 20A in die Reëls

6. Die volgende Vorm word hierby in die Eerste Bylae van die Reëls na Vorm 20 ingevoeg:

“VORM 20A

KENNISGEWING VAN GEREGETELIKE BESLAGLEGGING

In die Hooggeregshof van Suid-Afrika

Saakno.

In die aangeleentheid tussen

.....

Vonnisskuldeiser

En

..... Vonnisskuldenaar

Aan:

Neem kennis dat ek op hierdie dag die goed in die aangehegte inventaris onder geregtelike beslaglegging geneem het ingevolge 'n lasbrief aan my gerig deur die griffier van die bogenoemde Agbare Hof, waarvolgens daar van my vereis word om uit u eiendom in hierdie distrik die som byeen te bring van R..... en R kostes teen u verhaal deur vonnis van hierdie hof in hierdie aksie saam met tariewe ten opsigte van die genoemde lasbrief.

U aandag word gevestig op die bepalings van reël 46(8)(a)(iii) van die Eenvormige Reëls van die bogenoemde Agbare Hof, wat bepaal:

“(iii) Enige belanghebbende party kan, minstens 25 dae voor die datum van die verkoping, verdere of gewysigde verkoopsvoorwaardes skriftelik aan die balju voorlê.”

Die verkoopsvoorwaardes waaronder die inbeslaggenome goed deur openbare veiling verkoop staan te word, sal deur die vonnisskuldeiser voorberei word.

Gedateer te..... hierdie dag van
....., 20.....

.....

Balju.”

Invoeging van Vorm 21A in die Reëls

7. Die volgende Vorm word hierby na vorm 21 in die Eerste Bylae van die Reëls ingevoeg:

"VORM 21A**KENNISGEWING OM VERKOPING VAN ONROERENDE GOED TE KANSELLEER
INGEVOLGE REËL 46(11)(a)****IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA**

(..... Afdeling)

Saakno.

In die aangeleentheid tussen:

Die Balju van

Applikant

en

..... Koper

Insake:

.....
Vonnisskuldeiser

en

.....
Vonnisskuldenaar

NEEM ASSEBLIEF KENNIS dat die Balju van..... voornemens is om 'n Regter in kamers, op 'n datum deur die griffier toegeken, te versoek om die verkoping te kanselleer van onroerende goed beskryf as, verkoop deur openbare veiling op 20.....en om te magtig dat die genoemde eiendom weer opgeveil word.

NEEM VERDER KENNIS dat die verslag van die genoemde balju, waarop die versoek aan die Regter gemaak sal word om die verkoping te kanselleer, hierby aangeheg is.

GEDATEER te..... hierdie dag van
.....20.....

Balju van die Hooggeregshof

..... (Area)

.....

(Adres)

Aan: Die Griffier van die bogenoemde Agbare Hof

.....

En aan:

Koper

.....

.....

(Adres)"

Inwerkingtreding

8. Hierdie reëls tree in werking op 22 Desember 2017.

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:

<i>"Rule No.</i>	<i>Subject</i>	<i>Previous Rule No.</i>
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[CHAPTER 1 (rules 3-69)]		
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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 of 20.....

.....
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: ”.

SIHLOKOMISO SIKARHULUMENTE**ISEBE LOBULUNGISA NOKUPHUHLISWA KOMGAQO-SISEKO**

esinguNombolo R..... 2017

I-RULES BOARD FOR COURTS OF LAW ACT 107 KA-1985**KWENZIWA UTSHINTSHO KWIMIGAQO ELAWULA UKUQHUTYWA KWAMATYALA
KWIINKUNDLA ZEEMANTYI ZASEMZANTSI-AFRIKA**

Ngokugunyazwa sisiqendu 6 se*Rules Board for Courts of Law Act 107 ka-1985*, ngemvume yoMphathiswa Wobulungisa Nokuphuhliswa KoMgaqo-siseko, iBhodi Yemigaqo Yeenkundla Zomthetho iqulunqe imigaqo ekwiSihlomelo.

SIHLOMELO**INKCAZELO NGOKUBANZI:**

Amagama akwizibiyeli ezisisikweri ezingqindilili [] abonisa okukhutshiweyo kwimigaqo ekhoyo

Amagama akrwelwe umgca ngaphantsi abonisa okufakelweyo kwimigaqo ekhoyo

Ukuchazwa kwamagama

1. Kwesi Sihlomelo “iMigaqo” yiMigaqo Elawula Ukuqhutywa Kwamatyala KwiiNkundla ZeeMantyi ZaseMzantsi-Afrika esipapashwe phantsi kweSihlokomiso SikaRhulumente esinguNombolo R. 740 sika-Agasti 23, 2010, esathi sona senziwa utshintsho siSihlokomiso SikaRhulumente esinguNombolo R. 1222 sikaDisemba 24, 2010, nesinguR. 611 sikaJulayi 29, 2011, nesinguR. 1085 sikaDisemba 2011, nesinguR. 685 sika-Agasti 31, 2012, nesinguR. 115 sikaFebruwari 15, 2013, nesinguR. 263 sikaEpreli 12, 2013, nesinguR. 760 sikaOktobha 11, 2013, nesinguR. 183 sikaMatshi 18, 2014, nesinguR. 507 sikaJuni 27, 2014, nesinguR. 5 sikaJanuwari 5, 2015, nesinguR. 32 sikaJanuwari 23, 2015, nesinguR. 33 sikaJanuwari 23, 2015, nesinguR. 318 sikaEpreli 17, 2015, nesinguR. 545 sikaJuni 30, 2015, nesinguR. 2 sikaFebruwari 19, 2016, nesinguR. 1055 sikaSeptemba 29, 2017.

Kwenziwa utshintsho KULUHLU LOKUQULETHWEYO NAKULUHLU LWAMANANI EMIGAQO EMITSHA NAMANANI AHAMBISANA NAYO EMIGAQO YANGAPHAMBILI

2. Kwenziwa utshintsho KULUHLU LOKUQULETHWEYO NAKULUHLU LWAMANANI AHAMBISANA NOKUQULETHWEYO EMIGAQO YANGAPHAMBILI ngokuthi endaweni yalo kufakwe ULUHLU OLULANDELAYO LOKUQULETHWEYO NAMANANI AHAMBISANA NALO:

“Inani loMgaqo

Umxholo

Inani loMgaqo langaphambili

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Kufakwa uMgaqo 43 endaweni yowangaphambili

3. Endaweni yoMgaqo 43 wangaphambili kufakwa lo mgaqo ulandelayo:

"43 Ukuthinjwa kwempahla engenakuthwaleka

(1)(a) Ngokulawulwa koko kutshiwo nguMgaqo 43A, akuyi kukhutshwa sigunyazisi sokuthimba impahla engenakuthwaleka yomntu otyala omnye ngokwesigqibo senkundla, ngaphandle kokuba—

(i) kubuyiswe ingxelo malunga nomyalelo wokuthimba impahla engenakuthwaleka yomntu otyala omnye ngokwesigqibo senkundla ekubonakala kuloo ngxelo ukuba loo mntu akanampahla yaneleyo efunwa sisigunyazisi eso; okanye

(ii) loo mpahla engumzi okanye umhlaba ivakaliswe yinkundla iyimpahla enokuthinjwa.

(b) Isigunyazisi sokuthimba impahla engumzi okanye umhlaba masibe—

(i) nenkcazelo ephelileyo yobunjani baso, sixele nesithili semantyi nedilesi yesitrato apho ukhoyo umzi lowo ukuze kukwazeke ukuya kuyo nokuthi yaziwe ngunothimba; kananjalo

(ii) masibe nengcombolo eyaneleyo ukuze unothimba akwazi ukuphumeza umgaqwana (3).

(2) Ukuthinjwa kwempahla engumzi makwenziwe nguye nawuphi na unothimba wesithili ekukho kuso impahla leyo, ngesigunyazisi sokuthimba esifana kanobom neFomu 32 kwiSongezo 1.

(3)(a) Isaziso sokuthinjwa esifana kanobom neFomu 33 kwiSongezo 1 masisiwe ngunothimba kumnini womzi nakumbhalisi wokuthengiswa kwemizi nemihlaba okanye elinye igosa eliphathiswe ukubhaliswa kwaloo mzi, kuze kuthi ukuba umzi lowo ugcinwe ngumntu ongenquye umniniwo, isigunyazisi sokuthimba sinikwe nalowo ongumgcini wawo.

(b) Nasiphi na isaziso ekuthethwe ngaso kwisigendu (a)—

(i) masitsalel' ingqalelo kokutshiwo ngumgaqwana (8)(a)(iii); kwaye

(ii) sisiwe emntwini ngokoMgaqo 9, kodwa ke ukusiwa kwaso kumbhalisi wokuthengiswa kwemizi okanye elinye igosa eliphathiswe ukubhaliswa kwemizi kunokwenziwa ngunothimba esebenzisa iposi erejistiweyo ehlawulelwe iindleko zeposi ezaneleyo yaza yabhekiswa kwigosa ekumele ukuba ibhekiswe kulo.

(4)(a) Xa unothimba ethimba unokuthi angene kwizakhiwo ukuze aqinisekise uphuculo olwenziweyo kwisakhiwo eso, nobume bophuculo olwenziweyo, kodwa ke xa unothimba engakwazi ukungena kumzi lowo emva kokuba ezamile izihlandlo eziliqela unokuthi asebenzise umntu oshishina ngezitshixo ukuze avule.

(b) Emva kokuba yalathiwe impahla yokuthinjwa, ukuthengiswa kwayo makwenzeke kwisithili ekuso impahla leyo, kwaye makwenziwe ngunothimba wesithili owaba ngowokuqala ukwalatha impahla yokuthinjwa, kodwa ke unothimba wokugala, elawulwa koko kutshiwo sisigendu (d) somgaqwana (8) unokuthi ngesizathu esivakalayo agunyaze ukuba ukuthengiswa kwenziwe kwenye indawo, kusenziwa ngomnye unothimba.

(c) Esakufumana imiyalelo ebhaliweyo evela kulowo utyalwayo yokuba aqhubeke athengise, unothimba makaqinisekise kwaye abhale phantsi imiqathango ehambisana naloo mpahla ethinjiweyo, kubekho namagama needilesi zabantu ebhaliswe ngabo imiqathango aze ke azise lowo utyalwayo.

(5) Ngokulawulwa nguMgaqo 43A kunye nawo nawuphi na umyalelo okhutshwe yinkundla, akukho mzi oya kuthengiswa ngaphandle kokuba—

(a) lowo otyalwayo wenze ukuba isaziso sokuthengiswa kwayo esifana kanobom neFomu 34 kwiSongezo 1 sisiwe—

(i) ngenkqu kwabo batyalwayo abafanele bazuze kugala;

(ii) kumasipala, ukuba umzi lowo kulindeleke ukuba uhlawulelwe iirates;

(iii) nakwigumrhu labaphathi beeflethi, ukuba umzi okanye iflethi ngumzi okanye iflethi enokuhlalwa ngabantu ngabantu;

exelela aba bantu bakhankanywe ngentla ukuba baxeke zingekapheli iintsuku ezili-10 ukususela kumhla oxeliweyo, baxeke ixabiso elikumlinganiselo ofanelekileyo emakuvunyelwane ngawo ngokubhala ukuba uthengiswe ngelo xabiso, kwaye anike unothimba ubungqina bokuba abo bantu bavumile, okanye

(b) ngokulawulwa koko kutshiwo sisigendu 66(2)(b) salo Mthetho, unothimba wanelisekile kwinto yokuba akunakwenzeka ukwazisa umntu otyalwayo, ngokwalo Mthetho, esaziswa ngokuthengiswa okucetywayo, okanye ukuba lowo otyalwayo woyisakele okanye wakutyeshela ukunika ixabiso ekuvunyelwene ngalo ngokubhala njengoko kuxelwe kwisigendu (a) lingekapheli ixesha elixelwe kweso saziso.

(6) Unothimba unokuthi, ngesaziso esinikwe nawuphi na umntu, afune ukuba loo mntu anike unothimba ngoko nangoko, onke amaxwebhu akuye loo mntu amalunga nelungelo lomntu otyalayo kwimpahla exeliweyo.

(7)(a) Unothimba othengisayo makamisele usuku nendawo yokuthengisa impahla ethinjiweyo, olo suku lungabi nganeno kwiintsuku ezingama-45 ukususela ekunikweni isaziso sokuthinjwa, ngaphandle kokuba unothimba ufumene imvume ekhethekileyo kwimantyi, kwaye ngoko nangoko makazise bonke abanye oonothimba abamiselweyo kweso sithili, ebazisa ngosuku olo nendawo.

(b)(i) Lowo ekuthinjelwa yena makathi, emva kokubonisana nonothimba othengisayo, abhale isaziso sentengiso esigulethe inkcazelo emfutshane yomzi, nezinto eziphuculiweyo kuwo, isithili semantyi nedilesi yesitrato, nexesha nendawo yokuthengisa, axele nokuthi imiqathango yomzi lowo inokuthi ihlolwe kwiofisi kanothimba othengisayo.

(ii) Lowo kuthengiselwa yena makanike unothimba iikopi ezininzi kangangoko kunokwenzeka zezaziso zentengiso ezinokuthi zifunwe ngunothimba.

(c) Lowo kuthengiselwa yena—

(i) makapapashe isaziso kube kanye kwiphephandaba elithengiswa mihla le okanye elithengiswa veki zonke kwisithili ekuso impahla engumzi ethinjiweyo, asipapashe naku *Shicilelo-Mithetho (Gazette)* kusasele ixesha elingekho ngaphantsi kweentsuku ezintlanu, kodwa elingekho ngaphezulu kweentsuku ezili-15 xa kubalwa kususela kumhla wentengiso; kwaye

(ii) anike unothimba othengisayo, emnika ngesandla, okanye ngefeksi okanye nge-imeyile, emnika ikopi eyanelisayo yesaziso ngasinye kwizaziso ezipapashwe kwiphephandaba naku *Shicilelo-Mithetho*.

(d) Kusasele iintsuku ezingekho ngaphantsi kwe-10 ngaphambi komhla wentengiso unothimba othengisayo makathumeke ikopi yesaziso sentengiso ekuthethwe ngaso kwisiqendu (b), esithumela kumntu ngamnye ekuthengiselwa yena oye wabangela ukuba loo mpahla engumzi ithinjwe, isaziso sisiya kwibhanki ebolekisa ngemali edilesi yayo yaziwayo, aze ngaxesha-nye abanike ikopi yesaziso sentengiso bonke abanye oonothimba abamiselwe kweso sithili.

(e) Kusasele iintsuku ezingekho ngaphantsi kwe-10 ngaphambi komhla wentengiso, unothimba othengisayo makanamathisele—

(i) ikopi yesaziso kwibhodi yezaziso kwinkundla yemantyi yesithili ekukho kuso impahla engumzi, okanye ukuba loo mzi ukwisithili ekwakhutshwa kuyo isigunyazisi, sixhonywe kwibhodi yezaziso yaloo nkundla; kananjalo

(ii) unamathisele ikopi enye kwindawo okanye kufutshane kangangoko nendawo loo ntengiso eza kwenziwa kuyo.

(8)(a)(i) Kusasele iintsuku ezingekho ngaphantsi kwama-35 ngaphambi komhla wentengiso, lowo kuthengiselwa yena makaqulunge imiqathango yentengiso, efana kanobom neFomu 33A yeSongozo 1, eya kuthi impahla leyo ethinjiweyo ithengiswe ngaloo miqathango, kwaye loo miqathango makayinike unothimba othengisayo, ngenjongo yokuba ayihlole.

(ii) Ukongezelela kwimiqathango, imiqathango yentengiso mayiquke imiqathango eyalelwe yinkundla.

(iii) Kusasele iintsuku ezingekho ngaphantsi kwama-25 nawuphi na umntu ochaphazelekayo unokuthi anike unothimba eminye imiqathango ebhaliweyo yentengiso, okanye imiqathango etshintshiweyo.

(iv) Kusasele iintsuku ezingekho ngaphantsi kwama-20 ngaphambi komhla wentengiso, unothimba makayihlole imiqathango yentengiso.

(v) Ukuthengiswa kwempahla ethinjiweyo nemiqathango yentengiso makuvisisane noko kutshiwo ngumthetho omalunga nentengiso yasesidlangalaleni, ngokukodwa i *Consumer Protection Act* ka-2008 kunye neMimiselo eyathi yaqulunqwa phantsi kwalo Mthetho.

(b)(i) Lowo ekuthengiselwa yena makathi emva koko anike unothimba iikopi ezintathu zemiqathango yentengiso, enye ikopi ihlolwe ngabantu abachaphazelekayo kwiofisi kanothimba, ihlale apho iintsuku ezili-15 ngaphambi komhla wentengiso.

(ii) Unothimba othengisayo makathi ngoko nangoko anike bonke abanye oonothimba abamiselweyo kweso sithili ikopi yemiqathango yentengiso.

(c) Kusaele iintsuku ezingekho ngaphantsi kwe-15 ngaphambi komhla wentengiso, unothimba makanike umntu ofunyaniswe yinkundla etyala omnye, amnike ikopi enye yemiqathango yentengiso.

(d) Kusasele iintsuku ezingekho ngaphantsi kwe-10 ngaphambi komhla wentengiso, nawuphi na umntu ochaphazelekayo unokuthi, ngokulawulwa nguMgqo 43 nangumyalelo wenkundla, kwaye enika isaziso kusasele iiyure ezingama-24 kubo bonke abantu

abachaphazelekayo, enze isicelo kwimantyi yesithili ekuza kuthengiswa kummandla wayo impahla engumzi ukuze kuhlengahlengiswe imiqathango yentengiso kwaye inokuthi imantyi ikhuphe umyalelo, kuquka nomyalelo ofanelekileyo weendleko.

(9) Lowo kuthengiselwa yena makafune igqwetha lonaniselwano ngemizi ukuze lenze umsebenzi wokudluliselwa kwaloo mzi komnye ummntu, kodwa ke, unothimba unelungelo lokuqesha igqwetha elitsha lonaniselwano ngemizi ukuba igqwetha eliqeshwe ngulowo kuthengiselwa yena aliqalisi ngexesha okanye ngendlela eyanelisayo ukudlulisela umzi lowo.

(10)(a) Impahla engumzi ethinjiweyo mayithengiswe kwintengiso yasesidlangalaleni ngunothimba okanye ngumthengisi ongengokarhulumente omiselwe ngokwesiqendu (b).

(b) Umntu ekuthengiselwa yena okanye umntu ochaphazelekayo ekuthengisweni ngendlela efanelekileyo kwempahla ethengiswayo unokuthi, ngesaziso esinikwe unothimba zingekapheli iintsuku ezili-15 emva kokuthinjwa, kodwa ngokulawulwa koko kutshiwo apha, afune ukuba loo mpahla ithengiswe ngumthengisi ngendlela eqhelekileyo, kwaye unokuthi kwakweso saziso akhethe umthengisi oza kusetyenziswa.

(c)(i) Xa isaziso esingokwesiqendu (b) sinikwa umntu ongenguye lowo ekuthengiselwa yena, eso saziso masiphelekwe yimali ehlawulwa tanci esisixa esaneleyo ukuba igubungele iindleko zentengiso evenziwa ngumthengisi ngendlela eqhelekileyo, kuze kuthi xa ingekho loo mali engumhlawulwa-tanci sibe eso saziso siphuthile.

(ii) Isaziso esingokwesiqendu (b) masiphelelwe ukuba iinkonzo zomthengisi azifumaneki.

(iii) Ukuba emva kokulihlawula ibango lalowo kuthengiselwa yena nazo zonke izigunyazisi zokuthengisa ezifakwe ngunothimba ngomhla okanye ngaphambi komhla owandulela owentengiso nazo zonke iindleko, ukuba kuthi kubekho imali esalayo, imali engumhlawulwa-tanci mayibuyiselwe kulowo iphume kuye, kodwa ke, ukuba akukho mali isalayo, imali engumhlawulwa-tanci mayithi, kangangoko kuyimfuneko isetyenziswe ekuhlawuleni iimali zomthengisi neendleko zakhe.

(c) Ukuba kunikwa izaziso ezibini okanye ngaphezulu ngokwesiqendu (b), kubhetele ukuba kube zezimbini.

(11)(a)(i) Ukuba umthengi uyoyisakala ukuphumeza iimbopheleleko ekufuneka ziphunyezwe ngumthengi ngokwemiqathango yentengiso, intengiso inokuthi ichithwe ngumantyi xa efumana ingxelo kanothimba othengisayo, emva kokuba azisiwe ngumthengi, kwaye inokuthi impahla ethinjiweyo ithengiswe kwakhona.

(ii) Ingxelo leyo mayiphelekwe sisaziso esifana kanobom neFomu 33B kwiSongezo 1.

(iii) Ukuba intengiso iyarhoxiswa, unothimba makazise lowo ofunyaniswe etyala omnye, emazisa ngokurhoxiswa kwayo.

(b) Nayiphi na ilahleko ethe yabakho ngenxa yokusilela komthengi inokuthi, kusakwenziwa isicelo ngumntu otyalwayo okhalazayo ogama lakhe livelayo kwi-akhawunti yeentengiso zikanothimba, inokuthi loo lahleko ifunwe kumthengi ngokwesigqibo semantyi esinikwe kwingxelo ebhaliweyo kanothimba, emva kokuba kunikwe isaziso esibhaliweyo sanikwa umthengi sokuba ingxelo iza kuthiwa thaca phambi kwemantyi ngaloo njongo.

(c) Ukuba sele ukuye kakade umzi, unothimba unokuthi, akuba ebazisile abantu abachaphazelekayo, enze isicelo kwimantyi sokufumana umyalelo okhuphela ngaphandle umthengi kwindlu yakhe okanye nawuphi na umntu othi unelungelo lokuhlala kuloo ndlu.

(12) Ngokulawulwa koko kutshiwo nguMqago 43A nangumgaqwana (5) wawo—

(a) intengiso mayiqhutywe ngemiqathango exelwe kumgaqwana (8); kwaye

(b) impahla leyo engumzi mayithengiselwe umntu onokuhlawula elona xabiso liphezulu.

(13)(a) Zonke iimali ezizezexabiso lokuthenga umzi othengiswe kuthinjwa mazinikwe unothimba aze yena azigcine ezo mali kwi-akhawunti yakhe de ube umzi lowo udluliselwe kumthengi.

(b) Unothimba othengisayo makawudlulisele umzi kumthengi esakuhlawula ixabiso lokuthenga, kananjalo esakuyifeza imiqathango yentengiso, kwaye unokuthi enze nayiphi na

into eyimfuneko ukudlulisela umzi kumthengi, kwaye nayiphi na into eyenziweyo nguye iya kuba semthethweni ngokungathi ungumnini womzi lowo.

(c) Akukho mali yexabiso lokuthenga enokuthi ikhutshwe de kube konke okutshiwo ngumgaqwana (4) kwenziwe.

(14)(a) Yakuba iqukunjelwe intengiso, kodwa ngaphambi kokuba unothimba enze isicwangciso solwabiwo, lowo kuthengiselwa yena okanye igqwetha lakhe makanike unothimba isiqinisekiso sayo yonke imali ehlawulwe ngulowo utyala omnye ngokwesigqibo senkundla, ayinike lowo otyalwayo ngokwesigqibo senkundla okanye ayinike igqwetha lakhe emva kokuba kukhutshwe isigunyazisi sokuthimba.

(b)(i) Zingekapheli iintsuku ezili-10 ukususela kumhla wokubhaliswa kokudluliselwa komzi egameni lomnye ngokusemthethweni, unothimba uya kube sele enze isicwangciso solwabiwo ize impahla ethengisiweyo yabelwe abatyalwayo ngendlela amabalandelelane ngayo, kwaye makathumele ikopi yeso sicwangciso kumabhalane wenkundla nakubo bonke abanye oonothimba abamiselwe kweso sithili.

(ii) Kamsinya emva koko unothimba makanike bonke abantu abafake izigunyazisi, anike nalowo ufunyaniswe etyala omnye ngokwesigqibo senkundla, emnika isicwangciso solwabiwo esiya kuthi sihlolwe kwiofisi yakhe nakwiofisi kamabhalane wenkundla iintsuku ezili-15 ukususela kumhla okhankanyiweyo, kwaye ngaphandle kokuba abo bantu bathi babhale phantsi into yokuba bayasivuma isicwangciso eso, siya kuhlala apho ukuze sihlolwe.

(c) Emva kokuba kwimali efumanekileyo kukhutshwe iindleko zokuthimba, izinto mazilandelelane ngolu hlobo lulandelayo:

(i) amabango abantu abatyalwayo ekufuneka kuzuze bona kuqala ngokomyalelo womthetho; kuze kulandele

(ii) amanye amabango abantu abatyalwayo abazigunyazisi zabo zokuthimba ziye zanikwa unothimba ngolandelelwano oluvela kwisiqendu 96 nesiqendu 98A ukuya kwese-103 se *Insolvency Act* 24 ka-1936.

(d) Nawuphi na umntu ochaphazelekayo osichasayo isicwangciso makathi—

(i) lingekapheli ithuba lexesha ekuthethwe ngalo kwisiqendu (b)(ii), anike unothimba nabo bonke abantu abachaphazelekayo isaziso esibhaliweyo, ebanika iinkcukacha zokuchasa kwakhe; kananjalo

(ii) zingekapheli iintsuku ezili-10 emva kokuba liphelile ithuba lexesha ekuthethwe ngalo kwisiqendu (b)(ii), azise ukuchasa kwakhe phambi kwemantyi ukuze kugwalaselwe enike unothimba nabantu abaxeliweyo isaziso seentsuku ezili-10.

(e) Xa imantyi iugwalasela umcimbi iya kwenza isigqibo kwimbambano leyo kwaye inokuthi yenze utshintsho okanye ivumelane naso isicwangciso solwabiwo okanye ikhuphe umyalelo oquka umyalelo wokuhlawulwa kweendleko ngokokubona kwayo.

(f) Ukuba—

(i) akubangakho kuchaswa kweso sicwangciso; okanye

(ii) abantu abachaphazelekayo babonisa ukuba bayavumelana naso; okanye

(iii) isicwangciso eso kuyavunyelwana naso okanye senziwa utshintsho.

unothimba makathi esakuvelisa isiqinisekiso esivela kwigqwetha lonaniselwano ngemizi esithi umzi udluliselwe kumthengi, ahlawule ngokwesicwangciso solwabiwo.

(15) Unothimba okanye nawuphi na umntu osebenza egameni likanothimba akavumelekanga ukuba xa kuthengiswa impahla ethinjiweyo engumzi ayithenge yena ngokwakhe, eyithengela yena okanye omnye umntu.”

Kufakwa uMgaqo 43A omtsha**4. Kufakwa umgaqo olandelayo endaweni yoMgaqo 43A wangaphambili:****“43A Ukuthinjwa kwempahla engumzi wokuhlala**

(1) Lo mgqo uyasebenza nanini na lowo kuthinjelwa yena efuna ukuba kuthinjwe impahla engumzi wokuhlala yalowo otyalayo.

(2)(a) Inkundla eqwalasela isicelo ngokwalo mgqo—

(i) mayizame ukuqonda ukuba impahla engumzi lowo otyalwayo afuna ukuba ithengiswe ngumzi ongowona ubalulekileyo kusini na walowo utyalayo; kwaye

(ii) mayicinge ngezinye iindlela anokuthi ngazo lowo utyalayo ahlawule imali ayityalayo kunokuba kuthinjwe umzi ongowona ubalulekileyo ahlala kuwo.

(b) Inkundla ayiyi kugunyaza ukuba kuthinjwe umzi ongowona ubalulekileyo walowo utyalayo ngaphandle kokuba inkundla, emva kokuqwalasela zonke izibakala, ibona ukuba ukuthinjwa kwaloo mzi kuyathetheleleka.

(c) Umabhalane wenkundla akayi kukhupha isigunyazisi sokuthimba sokuba kuthinjwe umzi wokuhlala womntu otyalayo ngaphandle kokuba yinkundla eyalele ukuthinjwa kwawo.

(3) Isaziso ngasinye sesicelo sokuba umzi ubhengezwe njengonokuthinjwa—

(a) masifane kanobom neFomu 1B yeSongezo 1;

(b) masinikwe lowo otyalayo kunye nawuphi na omnye umntu ochatshazelwe kukuthengiswa komzi, kuquka nabantu ekuthethwe ngabo kuMgaqo 43A(a), kodwa ke inokuthi iyalele ukuba kwaziswe nawuphi na omnye umntu ebona kuyimfuneko ukuba aziswe;

(c) masiphelekwe yinkcazelo ebhaliweyo yafungelwa eya kuthi ichaze izizathu zesicelo nezibakala esisekelwe kuzo; kwaye

(d) masinikwe lowo otyalayo esinikwa ngunothimba buqu, kodwa ke, inkundla inokuyalela ukuba asinikwe nangayiphi na enye indlela.

(4)(a) Umenzi-sicelo makathi kwisaziso eso sokwenza isicelo—

(i) axele umhla esiya kuphulaphulwa ngawo isicelo;

(ii) azise ummangalelwa ngamnye okhankanyiweyo apho kuso, emazisa ukuba ukuba ummangalelwa lowo unenjongo yokusichasa isicelo okanye unenjongo yokuzithethelela enkundleni, makenze njalo ngenkcazelo ebhaliweyo yafungelwa zingekapheli iintsuku ezili-10 esinikiwe isaziso sesicelo aze avele enkundleni ngomhla esiya kuphulaphulwa ngawo;

(iii) axele idilesi yesitrato ekuya kuthi ukuba kukho iiofisi zamagqwetha ezintathu nangaphezulu kuloo mmandla, idilesi ayikhethileyo ibe nganeno kweekhilomitha ezili-15 ukusuka enkundleni, ekuyidilesi aya kunikwa kuyo onke amaxwebhu amalunga nesi sicelo; kananjalo

(iv) axele idilesi yeposi yomenzi-sicelo nefeksi okanye i-imeyile, ukuba unazo.

(b) Xa isicelo simiselwa umhla esiya kuphulaphulwa ngawo makube ngumhla ongekho ngaphantsi kweentsuku ezintlanu emva kokuba liphelile ixesha ekuthethwe ngalo kwisiqendu

(a)(ii).

(5) Isicelo ngasinye masiphelekwe ngamaxwebhu alandelayo, kwiimeko afuneka kuzo, ebonisa:

(a) ixabiso lomzi;

(b) ixabiso elithelekelelwa ngumasipala ngaloo mzi;

- (c) iimali ezityalwa ibhanki ngaloo mzi;
- (d) iimali ezityalwa umasipala ezinjengeerates nezinye iimali;
- (e) iimali ezityalwa iqumrhu labaphathi beeflethi xa kuyiflethi; kunye
- (f) nayo nayiphi na enye into enokuba yimfuneko ukuze inkundla iphumeze okufunwa ngumgaqwana (8).

kodwa ke inkundla inokufuna naluphi na olunye uxwebhu ebona kuyimfuneko ukulufuna.

(6)(a) Ummangalelwa unokuthi, esakunikwa isaziso sesicelo ekuthethwe ngaso kumgaqwana (3).—

- (i) asichase isicelo; okanye
- (ii) asichase isicelo kwaye azithethelele ngendlela eya kwenza ukuba inkundla ikhuphe umyalelo ofanelekileyo; okanye
- (iii) ngaphandle kokusichasa isicelo, abeke izibakala ezinokwenza ukuba inkundla ikhuphe umyalelo ofanelekileyo.

(b) Ummangalelwa ekuthethwe ngaye kwisiqendu (a)(i) no-(ii)—

- (i) makazivume okanye azikhanyele izityholo ezenziwe ngumenzi-sicelo kwinkcazelo yakhe ebhaliweyo yafungelwa; aze
- (ii) axele izizathu zokusichasa isicelo nezibakala asichasa ngazo.

(c) Ngongoma nganye achasa ngayo okanye sibakala ngasinye asibekayo ekuthethwe ngaso kwisiqendu (a) no-(b) mazichazwe kwinkcazelo ebhaliweyo yafungelwa.

(d) Ummangalelwa ochasa isicelo okanye obeka izibakala makathi zingekapheli iintsuku ezili-10 ewanikiwe amaxwebhu—

- (i) athumele inkcazelo ebhaliweyo yafungelwa ekuthethwe ngayo kwisiqendu (c);
- (ii) akhethe idilesi yesitrato eya kuthi, ukuba kukho iiofisi zamagqwetha ezintathu nangaphezulu ezisebenza zizimele qeqe enye kwenye, ibe kwisithuba seekhilomitha ezili-15 ukusuka enkundleni apho amaxwebhu enokusiwa khona anikwe ummangalelwa lowo;
- (iii) axele idilesi yakhe yeposi, ifeksi, okanye i-imeyile, ukuba unazo.

(7) Umabhalane wenkundla makasifake isicelo eso kuludwe lwamatyala angaphulaphulwa yinkundla ngomhla oxelwe kwiSaziso Sesicelo.

(8) Inkundla eqwalasela isicelo phantsi kwalo mgago inokuthi—

- (a) yona ngokunokwayo okanye kusakwenziwa isicelo ngomnye wabachaphazelekayo, iyalele ukuba kuqukwe kwimigathango yentengiso umqathango ewubona ufanelekile;
- (b) iyalele ukuba—
 - (i) umasipala axele iirates azityalwa ngulowo otyalayo; okanye
 - (ii) iqumrhu labaphathi beeflethi lixele iimali elizityalwa ngulowo otyalayo;
- (c) xa kukho izizathu ezivakalayo inokuthi ikubethe ngoyaba—
 - (i) ukusilela ukuza noxwebhu ekuthethwe ngalo kumgaqwana (5); okanye
 - (ii) ukuthunyewa seliphelile ixesha kwenkcazelo ebhaliweyo yafungelwa exelwe kumgaqwana (6)(d);
- (d) iyalele ukuba kuthinjwe umzi ongowona ubalulekileyo walowo utyalayo ukuba ayikho enye indlela eyanelisayo yokuhlalula ityala;
- (e) iqingqe ixabiso elilelona liphantsi;
- (f) isibekela omnye umhla isicelo ngemigathango enokuyibona ifanelekile;
- (g) isikhabe isicelo ukuba asibhadlanga;

(h) ikhuphe umyalelo ofanelekileyo malunga neendleko, kuquka nomyalelo osisohlwayo kumntu obambezele ukuqosheliswa kwesicelo phantsi kwalo mgago; okanye

(i) ikhuphe nawuphi na omnye umyalelo ofanelekileyo.

(9)(a) Kwisicelo esenziwa phantsi kwalo mgago, okanye xa ummangalelwa ebeka izibakala, inkundla mayiqwalasele ukuba lingaqingqwa kusini na ixabiso elilelona liphantsi.

(b) Xa isenza isigqibo sokuba iliqingqe kusini na ixabiso elilelona liphantsi nokuthi malibe yimalini, inkundla mayicingele—

- (i) ixabiso lomzi lowo;
- (ii) imali etyalwayo eziirates okanye ezinye iimali;
- (iii) iimali ezityalwayo kwimali-mboleko yokuthenga umzi;
- (iv) ixabiso elixolisayo elinokufikelelwa phakathi kwexabiso elilelona liphantsi nexabiso lomzi;
- (v) ukuncitshiswa kwetyala elityalwa ngumntu otyalayo ngokwesigqibo senkundla nanjengoko kuxelwe kumgaqwana (5)(a) ukuya ku-(e), ukubona ukuba bunokwenziwa kusini na ubulungisa malunga nomzi njengoko kuxelwe kwisiqendwana (iv);
- (vi) into yokuba umzi lowo uyahlaliwa kusini na, nabantu abahlalayo kuwo, neemeko zokuhlala kwabo;
- (vii) ukuthi inokwenzeka kusini na into yokuba ixabiso elilelona liphantsi lingabi nakufikelelwa nokuthi kunokwenzeka kusini na ukuba umzi lowo ungathengiseki;
- (viii) ukuchaneka komnye wababambeneyo ukuba ixabiso elilelona liphantsi alifikelelwa; kunye
- (ix) nayo nayiphi na enye into inkundla enokuyibona iyimfuneko ukuze angachaneki lowo kuthinjelwa yena nalowo uthinjelwayo.

(c) Ukuba alifikelelwa ixabiso elilelona liphantsi kwintengiso yokuthinjwa, inkundla mayithi, ngokuqwalasela ngokutsha izinto ezikwisiqendu (b) phantsi kwalo mgagwana negunya enalo phantsi kwalo mgago, iyalele indlela ekuza kuqhutywa ngayo ekuthengiseni.

(d) Xa ixabiso elilelona liphantsi lingafikelelwa kwintengiso yokuthimba, unothimba makangenise ingxelo enkundleni, zingekapheli iintsuku ezintlanu kuthengisiwe, ngxelo eya kuthi—

- (i) ibe nomhla, nexesha, nendawo eyayiqhutywa kuyo intengiso;
- (ii) ibe namaqama, neenombolo zezazisi, neenombolo zoqhaqamshelwano zabantu ababeninxaxheba kwintengiso;
- (iii) ibe nelona xabiso liphezulu umntu othengayo awaba nalo; kunye
- (iv) nayiphi na enye into efanelekileyo enokunceda inkundla ekwenzeni umsebenzi wayo ngokwesiqendu (c).

(e) Inkundla inokuthi iyalele ukuba umzi uthengiselwe umntu oye wazimisela ukuhlawula elona xabiso liphezulu, ikwenza oko emva kokuqwalasela izinto ezikwisiqendu (d) nazo naziphi na ezinye ezifanelekileyo.”

Kufakelwa uMgaqo 43B kwiMigaqo

5. Kufakelwa umgaqo olandelayo emva koMgaqo 43A:

“43B Ukunyanzeliswa kwesigqibo senkundla yelinye ilizwe kwityala lembambano

(1) Nanini na xa ikopi esethifayiweyo yesigqibo senkundla ekuthethwe ngaso kwisigendu 3(1) se-*Enforcement of Foreign Civil Judgments Act* 32 ka-1988 singeniswa kumabhalane wenkundla apha kwiRiphabliki, umabhalane wenkundla makasibhalise eso sigqibo senkundla ngokusinika inombolo nonyaka esithe sangeniswa ngawo ngokubhala iinkcukacha ngesigqibo senkundla ekuthethwe ngaso kwisigendu (a), (b) no-(c) weso sigendu, ekubhala oko kumphandle woqweqwe lwefayile.

(2) Lowo otyalwayo ngokwesigqibo senkundla makathi, ephethe ikopi esethifayiweyo yesigqibo senkundla ekuthethwe ngaso kumgaqwana (1)—

(a) angenise inkcazelo ebhaliweyo yafungelwa eyenziwe nguye okanye ngomnye umntu onokuthi aqinisekise izibakala ezilandelayo—

(i) ubungakanani benzala efunekayo, umlinganiselo ofanelekileyo wenzala nokuthi ibalwe njani loo nzala;

(ii) nokuthi ikho kusini na imali ethe yahlawulwa ngulowo otyala omnye ngokwesigqibo senkundla ukususela oko kwathi kwakhutshwa isigqibo senkundla, nokuthi, ukuba kunjalo, loo mali iye yaxhuzulwa na kwimali eyintloko yesigqibo senkundla okanye yaxhuzulwa kwinzala okanye kwiindleko; nokuthi

(b) ukuba imali emayihlawulwe ngokwesigqibo senkundla iyimali yelinye ilizwe, angenise isiqinisekiso esikhutshwe yibhanki ebhaliswe ngokwesigqibo 4 se*Banks Act* 23 ka-1965 esixela amandla emali xa ithelekiswa nevelinye ilizwe ngomhla wokukhutshwa kwesigqibo senkundla.

(3) Isaziso esikhutshwe ngokwesigqibo 3(2) se-*Enforcement of Foreign Civil Judgments Act* 32 ka-1988 masibe—

(a) nenombolo elandela enye ekuthethwe ngayo kumgaqwana (1);

(b) nomhla esabhaliswa ngawo isigqibo senkundla;

(c) nemali eseleyo emayihlawulwe ngokwesigqibo senkundla;

(d) neendleko ezihluziweyo ezivunye yinkundla yelinye ilizwe;

(e) nenzala, ukuba ikho, ethi ngokomthetho okanye ngokomyalelo wenkundla yelinye ilizwe ibe iyafuneka phezu kwemali emayihlawulwe ngokwesigqibo senkundla kude kube lixesha lokubhaliswa kwesigqibo senkundla;

(f) neendleko ezingaxhomanga zokubhaliswa kwesigqibo senkundla, kuquka iindleko zokufumana ikopi esethifayiweyo yesigqibo senkundla;

(g) namagama abantu ababambeneyo;

(h) negama lenkundla ekwakhutshwa kuyo isigqibo.”

Kwenziwa utshintsho kuLuhlu Lwamanani lweSongezo 1 seMigaqo

6. Kwenziwa utshintsho kuLuhlu Lwamanani lweSongezo 1 seMigaqo ngokuthi kufakelwe uLuhlu Lwamanani lweSongezo A kwiSihlomelo.

Kwenziwa utshintsho kwiSongezo 1 seMigaqo

7. Kwenziwa utshintsho kwiSongezo 1 seMigaqo ngokuthi—
- (a) iFomu engu-33 nengu-34 indawo yayo ithatyathwe yiFomu entsha engu-33 nengu-34 omtsha kwiSongezo B sesi Sihlomelo;
 - (b) kongezwe iFomu engu-1B, nengu-33A no-33B ezikwiSongezo B sesi Sihlomelo.

Ukuqalisa kwayo ukusebenza

8. Le migaqo iqalisa ukusebenza ngomhla **22 Disemba 2017**.

ISONGEZO A**“ISONGEZO 1****IIFOMU****ULUDWE LWAMANANI****Inombolo yeFomu**

1. Isaziso Sesicelo (iFomu emfutshane)
- 1A. Isaziso Sesicelo (iFomu ende)
- 1B. Isaziso sokwenza isicelo sokuba ivakaliswe inokuthinjwa impahla enjengomzi ngokoMgaqo 43A
2. Isamani emfutshane
- 2A. Isamani: xa icacile imali efunwayo
- 2B. Isamani ende
- 2C. Isamani ende: (kumatyala oqhawulo-mtshato)
3. Isamani (ekukhulwa kuyo isithintelo sengqesho esizenzekelayo)
4. Ukuhambisa amaxwebhu omthetho kwelinye ilizwe/ukuwahambisa ngendlela engaqhelekanga: indlela emfutshane
5. Isicelo sokukhutshwa kwesigqibo senkundla engekho ummangalelwa
- 5A. Isicelo sokukhutshwa kwesigqibo senkundla engekho ummangalelwa xa ummangalelwa ekuvumile ukuba netyala kwakhe waza wathembisa ukulihlawula ityala ngezavunge okanye ngenye indlela — isiqendu 57 salo Mthetho
- 5B. Isicelo sokukhutshwa kwesigqibo senkundla engekho ummangalelwa xa ummangalelwa evumile ukuba sikhutshwe — isiqendu 58 salo Mthetho
6. Isaziso sokurhoxisa isimangalo/isicelo
7. Isaziso sokwenz' isicelo sesigqibo esikhawulezileyo
8. Inkcazelo ebhaliweyo yafungelwa exhasa isicelo sesigqibo esikhawulezileyo
9. Inkcazelo ebhaliweyo yafungelwa ngokwesiqendu 32 salo Mthetho
10. Isibambiso ngokwesiqendu 32 salo Mthetho
11. Umyalelo ngokwesiqendu 32 salo Mthetho
12. Ukuvuma ukuthengiswa kwempahla ethinjwe ngokwesiqendu 32 salo Mthetho
13. Ukudandalazisa amaxwebhu oza kuwasebenzisa — ifomu yenkcazelo ebhaliweyo yafungelwa
14. Isaziso ngokoMgaqo 23(5)
15. Ukudandalazisa amaxwebhu oza kuwasebenzisa — isaziso sokuwaveza
- 15A. Ukudandalazisa amaxwebhu oza kuwasebenzisa — isaziso sokuba kuhlolwe amaxwebhu
- 15B. Ukudandalazisa amaxwebhu oza kuwasebenzisa — isaziso sokuveza amaxwebhu ahambisana neempendulo, njl.
16. Umyalelo osisithinteli ofunyenwe ngowenza isicelo eyedwa
17.
18. Umyalelo wokuthinjwa kwempahla ngenjongo yokwenza inkundla ibe negunya
19. Ukuxelelwa ukuba makuyiwe kwintlanganisano yangaphambi kwetyala

20. Umyalelo — intlanganiso yangaphambi kokuxoxwa kwetyala
21. Isicelo sokuba imantyi ibe nabancedisi xa lixoxwa
22. Isamani eya kumncedisi wemantyi
23. Iikomishoni zokuthatha ubungqina obubhaliweyo kumntu ongeziyo enkundleni
24. Uxwebhu olubizela ingqina enkundleni
25. Isigunyazisi sokuhlawula ifayini okanye sokubanjwa kwengqina elingezanga enkundleni
26. Isigunyazisi sokubanjwa kwengqina elingezanga enkundleni
27. Isibambiso xa kuthinjwa okanye isithintelo xa umenzi-sicelo eyedwa
28. Isibambiso xa ukuthimba kunqunyanyisiwe logama kubheniwe
29. Isibambiso xa ukuthimba kuvunyelwe logama kubheniwe
30. Isigunyazisi sokukhupha umntu endlwini
31. Isigunyazisi sokuthunyelwa kwempahla
32. Isigunyazisi sokuthimba
33. Isaziso sokuthimba
- 33A. Imiqathango yokuthengiswa kwempahla ethinjiweyo enjengomzi
- 33B. Isaziso sokurhoxiswa kokuthengiswa kwempahla enjengomzi ngokoMgaqo 43(11)A
34. Isaziso **[esiya kotyalwayo omakahlawulwe kuqala]** ngokoMgaqo 43(5)(a) [isiqendu 66(2)(a) salo Mthetho]
35. Isamani yomnqakathi [isiqendu 69(1) salo Mthetho]
36. Isamani yomnqakathi [isiqendu 69(2) salo Mthetho]
37. Isibambiso phantsi koMgaqo 38
38. Umyalelo wokuthinjwa kweemali ezifunyanwayo
39. Umyalelo wokuxhuzul' imali emvuzweni
40. Isaziso sokuvela enkundleni ngokwesiqendu 65A(1) salo Mthetho
- 40A. Isigunyazisi sokubamba ngokwesiqendu 65A(6) salo Mthetho
- 40B. Isaziso sokuvela enkundleni ngokwesiqendu 65A(8)(b) salo Mthetho
41. Isaziso somhla wetyala ophoselwe kolunye usuku ngokwesiqendu 65E(3) salo Mthetho
42. Isaziso ngokoMgaqo 58(2)(a)
43. Isaziso esiya komnye umntu ongabandakanyekanga etyaleni
44. Isicelo sokuphathwa kwemicimbi yomntu ngabanye abantu ngokwesiqendu 74(1) salo Mthetho
45. Inkcazelo ngemeko yomntu otyalayo kwisicelo somyalelo wokuphathwa kwemicimbi yomntu ngabanye abantu ngokwesiqendu 65I(2) okanye 74A salo Mthetho
46. Isiqinisekiso sokunikwa amaxwebhu elinye ilizwe
47. Isaziso esiya kotyalayo sokuba kukho omnye otyalwayo ofake ibango letyala elibekho ngaphambi kokuba kukhutshwe umyalelo wokuphathwa kwemicimbi ngabanye abantu
48. Isaziso esiya kotyalwayo esithi otyalwayo ufake ibango ngetyala elibekho emva kokukhutshwa komyalelo wokuphathwa kwemicimbi yomntu ngabanye abantu
49. Isaziso sokongezwa komnye otyalwayo kuluhlu lwabantu abatyalwayo betyalwa ngumntu omicimbi yakhe iphathiswe abanye
50. Isaziso esiya kotyalwayo sokuba igama lakhe longezwe kuluhlu lwabatyalwa ngumntu omicimbi yakhe iphathiswe abanye
51. Umyalelo wokuphathwa kwemicimbi yomntu ngabanye abantu

- 52. Iakhawunti yolwabiwo ngokwesiqendu 74J(5) salo Mthetho
- 52A. Ukucinywa komyalelo wokuphathwa kwemicimbi yomntu ngabanye abantu
- 53. Isaziso sokuliyeka ibango okanye sokuyeka ukuzithethelela
- 54. Ukuvuma ukungabheni
- 55. Isicelo sokuhlola ingxelo ebhaliweyo
- 56. Umqulu wamatyala olwaphulo-mthetho
- 57. Isaziso ngokwesiqendu 309B(2)(d) se*Criminal Procedure Act* 51 ka-1977".

ISONGEZO B**“1B — Isaziso sesicelo sokuvakaliswa kwempahla enjengomzi inokuthinjwa ngokoMgaqo 43A*****Yeyokusetyenziswa kwiNkundla Yesithili**

KwiNkundla YeMantyi Yesithili sase.....ehleli e.....

iNombolo Yetyala.....ka-20..

Kwityala eliphakathi kuka-

.....Umenzi-sicelo

no-

.....Ummangalelwa

Kubhekiswa kummangalelwa oxelwe ngentla:

UYAZISWA ukuba u-.....(obizwe apha ngokuthi ngumenzi-sicelo) uzimisele ukwenza isicelo kule Nkundla ngomhla ixesha:..... okanye kamsinya emva koko, efuna umyalelo othi (1) (2) (3).....(xela umyalelo owufunayo) kananjalo inkcazelo ebhaliweyo yafungelwa ka-....., kunye namaxwebhu aqhotyoshelwe kuyo aya kusetyenziswa ukuxhasa esi sicelo.

UYAZISWA ukuba umenzi-sicelo ukhethe idilesi engezantsi ukuba kube lapho aya kuwafumana khona amaxwebhu amalunga nesi sicelo.

UYAZISWA ukuthi ukuba uzimisele ukusichasa esi sicelo kufuneka uthi zingekapheli iintsuku ezili-10 usinikwe isaziso sesi sicelo—

- (a) ubhale inkcazelo efungelweyo apho uvuma okanye ukhanyele izityholo ezikwinkcazelo ebhaliweyo yafungelwa yomenzi-sicelo;
- (b) uxele kuloo nkcazelo yakho ebhaliweyo yafungelwa izizathu zokusichasa kwakho nezibakala ogamele ngazo ekusichaseni kwakho;
- (c) unike umenzi-sicelo okanye igqwetha lakhe ikopi yenkcazelo yakho ebhaliweyo yafungelwa; uze
- (d) iorijinali yayo uvinike umabhalane wenkundla.

UYAZISWA KANANJALO ukuthi ukuba ungwenela ukubeka izibakala ezinokwenza ukuba kukhutshwe umyalelo ofanelekileyo njengokuqingqwa kwexabiso elilelona liphantsi, kufuneka uthi zingekapheli iintsuku ezili-10 zokusebenza kwenkundla wazisiwe ngesi sicelo—

- (a) uxele kwinkcazelo yakho ebhaliweyo yafungelwa izibakala zakho zokufuna kube njalo;
- (b) ikopi yenkcazelo yakho ebhaliweyo yafungelwa uyinike umenzi-sicelo okanye igqwetha lakhe;
- (c) iorijinali uyinike umabhalane wenkundla.

UYAZISWA KANANJALO ukuba—

- (a) ekusinikeni kwakho inkcazelo yakho ebhaliweyo yafungelwa, kufuneka usinike idilesi yakho yesitrato, nedilesi yeposi xa unayo, nefeksi ne-imeyile;
- (b) kwinkcazelo yakho ebhaliweyo yafungelwa kufuneka ubonise idilesi okhetha ukuba uwaziselwe kuyo onke amaxwebhu amayela nesi sicelo, ekuya kuthi xa uwanikwe kuloo dilesi uthathwe ngokuthi uwafumene, ngaphandle kokuba inkundla ifuna ukuba anikwe wena esandleni; kananjalo
- (c) idilesi yesitrato osinike yona kufuneka, ukuba kukho iiofisi zamagqwetha ezintathu nangaphezulu ezisebenza geqe enye kwenye, ibe kwisithuba seekhilomitha ezili-15 ukusuka enkundleni.

UYAZISWA KANANJALO ukuba kufuneka uvele phambi kwale Nkundla Ebekekileyo engentla ngomhla

UYAZISWA KANANJALO ukuba ukungenzi kwakho nayiphi na kwezi zinto zixelwe kwesi saziso kungabangela ukuba isuke inkundla ikhuphe le miyalelo ecelwa ngumenzi-sicelo.

IBHALWE NGALO MHLA20.....

Umenzi-sicelo/igqwetha lomenzi-sicelo

Idilesi yesitrato (enganeno kweekhilomitha ezili-15 ukusuka enkundleni):

.....

Idilesi yeposi:.....

Idilesi ye-imeyile:.....

Ifeksi:.....

Iya kuMabhalane Wenkundla

Naku:-

.....

Ummangalelwa

Idilesi:.....

Idilesi yeposi:.....

Idilesi ye-imeyile:.....

Ifeksi:.....

1B — Isaziso sesicelo sokuvakalisa impahla enjengomzi inokuthinjwa ngokoMgaqo 43A

***Yeyokusetyenziswa kwiNkundla Yengila**

KwiNkundla YeNqila YeCandelo LeNqila lase.....

Ihleli e..... iNombolo yetyala.....20.....

Kwityala eliphakathi kuka:-

.....Umenzi-sicelo

no-

.....Ummangalelwa

Kubhekiswa kummangalelwa ongentla:

UYAZISWA ukuba u.....(obizwe apha ngokuthi ngumenzi-sicelo) uzimisele

ukwenza isicelo kule Nkundla ngomhla.....ixesha.....okanye

kamsinya emva koko, efuna umyalelo othi

(1).....(2).....(3).....(bhala apha

umyalelo owufunayo) kwaye inkcazelo ebhaliweyo yafungelwa ka..... kunye

nokuqhotyeshelweyo kuyo kuya kusetyenziswa ukuxhasa esi sicelo.

UYAZISWA ukuba umenzi-sicelo ukhethe idilesi engezantsi ukuba kube lapho aya kuwafumana khona amaxwebhu amalunga nesi sicelo.

UYAZISWA KANANJALO ukuthi kuba uzimisele ukusichasa esi sicelo, kufuneka uthi zingekapheli iintsuku ezili-10 usinikiwe—

- (a) kwinkcazelo yakho ebhaliweyo yafungelwa uvume okanye ukhanyele izityholo ezikwinkcazelo ebhaliweyo yafungelwa yomenzi-sicelo;
- (b) kuloo nkcazelo yakho ebhaliweyo yafungelwa uxele izizathu zokusichasa kwakho isicelo nezibakala ogamele ngazo;
- (c) ikopi yenkcazelo yakho ebhaliweyo yafungelwa uyinike umenzi-sicelo okanye igqwetha lakhe; uze
- (d) iorijinali yayo uyinike umabhalane wenkundla.

UYAZISWA KANANJALO ukuthi ukuba unqwenela ukubeka izibakala ezinokwenza ukuba inkundla ikhuphe umyalelo ofanelekileyo onjengokuqingqwa kwexabiso elilelona liphantsi, kufuneka uthi, zingekapheli iintsuku ezili-10 zokusebenza kwenkundla usifumene esi sicelo—

- (a) uxele kwinkcazelo ebhaliweyo yafungelwa izibakala nezizathu zakho zokwenza njalo;
- (b) ikopi yenkcazelo yakho ebhaliweyo yafungelwa uyinike umenzi-sicelo okanye igqwetha lakhe; uze
- (c) iorijinali uyinike umabhalane wenkundla.

UYAZISWA KANANJALO ukuba—

- (a) ngexesha elinye xa unika umenzi-sicelo nomabhalane wenkundla inkcazelo yakho ebhaliweyo yafungelwa, kufuneka ubanike nedilesi yakho yesitrato, nedilesi yeposi, nefeksi ne-imeyile, xa unazo;
- (b) kwinkcazelo yakho ebhaliweyo yafungelwa kufuneka ubonise ukuba ukhethe ukuba uwaziselwe kweyiphi idilesi onke amaxwebhu amalunga nesi sicelo, ekuya kuthi xa uwaziselwe kuloo dilesi uthathwe njengowafumeneyo, ngaphandle kokuba umyalelo wenkundla ufuna ukuba uwanikwe buqu esandleni; kananjalo

(c) idilesi yesitrato osinike yona kufuneka, ukuba kukho iiofisi zamagqwetha ezintathu nangaphezulu ezisebenza zizimele geqe enye kwenye, ibe nganeno kweekhilomitha ezili-15 ukusuka enkundleni.

UYAZISWA KANANJALO ukuba kufuneka uvele phambi kwale Nkundla Ebekekileyo ngalo mhla:.....

UYAZISWA KANANJALO ukuba ukungenzi kwakho enye yezi zinto ezikhankanywe kwesi saziso sesicelo kungabangela ukuba inkundla imnike umenzi-sicelo imiyalelo ayicelileyo ngentla.

SIBHALWE ngalo mhla: kwinyanga ka:.....20.....

.....
Umenzi-sicelo/igqwetha lakhe

Idilesi yesitrato (enganeno kweekhilomitha ezili-15 ukusuka enkundleni):

.....

.....

Idilesi yeposi:.....

Idilesi ye-imeyile:.....

Ifeksi:.....

Iya kuMabhalane weNkundla

Naku:-

.....
Ummangalelwa

Idilesi:.....

.....
Idilesi yeposi:.....

I-imeyile:.....

Ifeksi:

33 — Isaziso sokuthinjwa***Yeyokusetyenziswa kwiNkundla Yesithili**

KwiNkundla YeMantyi Yesithili sase.....

Ihleli e.....Inombolo yetyala20.....

Kwityala eliphakathi kuka-

.....Otyalwayo

no-

.....Otyalayo

Iya ku-.....

Otyalayo

Uyaziswa ukuba namhlanje ndithimbe impahla **[equka izinto ezingentla]** ekuludwe olughotyoshelwe apha ngenxa yesigunyazisi esithunyelwe kum **[ngesandla sika-]** ngumabhalane wenkundla wesithili sase....., ekufuneka ukuba kule mpahla ekwesi sithili okanye ekule nqila ndenze kufumaneke imali e-R..... kunye nemali e-R..... eziindleko emazihlawulwe nguwe ngokwesigqibo senkundla exeliweyo kweli tyala kunye neemali ekufuneka ndihlawulwe zona ekuphumezeni isigunyazisi esixeliweyo.

Ucelwa ukuba ufunde okutshiwo nguMgaqo 43(8)(a)(iii) kwimigaqo yale Nkundla Ebekekileyo engentla, mqaqo lowo othi:

“(iii) Kusasele iintsuku ezingekho ngaphantsi kwama-25 ngaphambi komhla wentengiso, nawuphi na umntu ochaphazelekayo unokunika unothimba eminye imiqathango yentengiso okanye imiqathango etshintshiweyo.”

Imiqathango yentengiso eya kuthengiswa ngayo impahla ethinjiweyo kwintengiso yasesidlangalaleni iya kuqulunqwa ngulowo otyalwayo.

Ibhalwe ngalo mhla:.....kwinyanga20.....

.....
Unothimba

33 — Isaziso sokuthinjwa***Yeyokusetyenziswa kwiNkundla Yenqila**

KwiNkundla YeNqila YeCandelo LeNqila lase.....

Ihleli e.....Inombolo yetyala20.....

Kwityala eliphakathi kuka-

.....Otyalwayo

no-

.....Otyalayo

Iya ku-.....

Otyalayo

Uyaziswa ukuba namhlanje ndithimbe impahla **[equka izinto ezingentla]** ekuludwe oluqhotyoshelwe apha ngenxa yesigunyazisi esithunyelwe kum **[ngesandla sika-]** ngumabhalane wenkundla kwinqila yase....., ekufuneka ukuba kule mpahla ekwesi sithili okanye ekule nqila ndenze kufumaneke imali e-R.....

kunye nemali e-R..... eziindleko emazihlawulwe nguwe ngokwesigqibo senkundla exeliweyo kweli tyala kunye neemali ekufuneka ndihlawulwe zona ekuphumezeni isigunyazisi esixeliweyo.

Ucelwa ukuba ufunde okutshiwo nguMgaqo 43(8)(a)(iii) kwimigaqo yale Nkundla Ebekekileyo engentla, mqaqo lowo othi:

“(iii) Kusasele iintsuku ezingekho ngaphantsi kwama-25 ngaphambi komhla wentengiso, nawuphi na umntu ochaphazelekayo unokunika unothimba eminye imiqathango yentengiso okanye imiqathango etshintshiweyo.”

Imiqathango yentengiso eya kuthengiswa ngayo impahla ethinjiweyo kwintengiso yasesidlangalaleni iya kuqulunqwa ngulowo otyalwayo.

Ibhalwe ngalo mhla:.....kwinyanga20.....

.....
Unothimba

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33A — Imigathango yentengiso xa kuthinjwe impahla enjengomzi***Yeyokusetyenziswa kwiNkundla Yesithili**

Kwityala lika-

.....Otyalwayo

no-

.....Otyalayo

Impahla engenakufuduswa enjengomzi (eza kubizwa apha ngokuthi “ngumzi”) eza kuthengiswa esidlangalaleni ngomhlakwinyanga.....20..... izezi zinto zilandelayo:

Intengiso iza kuqhutywa ngale migathango ilandelayo:

1. Intengiso iza kuqhutywa ngokoMgaqo 43 weMigaqo Yeenkundla Zeemantyi nangokweminye imithetho esebenza kule meko.

2. Umzi lo uza kuthengiswa ngunothimba wase.....okanye ngabathengisi base.....kwindawo ese.....beyithengisela umntu oya kuthi azimisele ukuhlawula elona xabiso liphezulu, lingabikho ixabiso ekungenakwehlelwa ngaphantsi kwalo/kubekho ixabiso ekungenakwehlelwa ngaphantsi kwalo elileli:.....

3. Ixabiso liza kuhlawulwa ngemali eziirandi, kwaye aliyi kwamkelwa ixabiso elehlela ngaphantsi kwewaka leerandi.

4. Ukuba kuthi kubekho isikhalazo ngexabiso elinikiweyo, umzi lo unokuthi uthengiswe esidlangalaleni kwakhona.

5(a) Ukuba unothimba okanye umthengisi uthe wenza impazamo ekuthengiseni, loo mpazamo ayiyi kubankqamangela ababandakanyekileyo, kodwa inokuthi ilungiswe.

(b) Ukuba unothimba okanye umthengisi urhanela ukuba ovakalise umnqweno wokuthenga uyoyisakala ukuza nemali engumhlawulwa-tanci ekuthethwe ngayo kumgathango 7 okanye uyoyisakala ukugqibezela imali eseleyo, unothimba okanye umthengisi unokuthi ale ukwamkela isithembiso saloo mntu sokuthenga, okanye unokuthi asamkele okwexeshana de loo mntu onqwenela ukuthenga amenze aneliseke unothimba okanye umthengisi kwinto yokuba unako ukuyihlawula imali engumhlawulwa-tanci okanye unako ukugqibezela imali eseleyo.

(c) Xa saliwe isithembiso sokuthenga kwiimeko ezixelwe kwisiqendu (b), umzi usengaphinda uthengiswe esidlangalaleni kwakhona.

6(a) Ngoko nangoko emva kwentengiso, kwaye ngoko nangoko esakucelwa ngunothimba, umthengi makawatyikitye la maxwebhu.

(b) Ukuba umthengi uthenga emele omnye umntu, makadandalazise igama lomntu ammeleyo okanye athenga egameni lakhe.

7(a) Umthengi makahlawule unothimba imali engumhlawulwa-tanci eli-10 ekhulwini yexabiso lilonke lokuthenga, ehlawula ngemali eyimali okanye ngetsheke eqinisekiswa yibhanki ngomhla wentengiso.

(b) Imali eseleyo mayihlawulwe xa umzi sele udluliselwa egameni lakhe kwaye isibambiso kuza kuiba sisiginisekiso esivela kwibhanki akholwa yiyo lowo utyalwayo okanye liqqwetha lakhe, ize inikwe unothimba zingekapheli iintsuku ezi..... emva komhla wentengiso.

(8)(a) Ukuba umthengi uyoyisakala ukufeza nayiphi na into emele ifezwe nguye kule miqathango yentengiso, intengiso ingatshitshiswa ngokukhawulezileyo yimantyi ngenxa yengxelo kanothimba, azisiwe umthengi, kwaye umzi lowo unokuthi uthengiswe kwakhona.

(b) Xa zithe zenzeka iimeko ezikwisiqendu (a), ngumthengi oza kuthwal' ityala lokulahlekelwa okuthe kwadaleka ngenxa yokoyisakala kwakhe, lahleko leyo enokuthi, xa omnye wabatyalwayo olahlekelweyo ogama lakhe livelayo kuluhlu lolwabiwo, ifunwe kumthengi ngesiqqibo semantyi esivakaliswe kwingxelo ebhaliweyo kanothimba, emva kokuba loo mthengi enikwe isilumkiso esibhaliweyo esithi loo ngxelo iza kuthiwa thaca phambi kwemantyi ngaloo njongo.

(c) Ukuba umthengi sele engenile kuwo umzi, unothimba unokuthi, emva kokuba eqale wazisa abo bachaphazelekayo, enze isicelo kwimantyi somyalelo wokukhupha umthengi okanye nawuphi na umntu othi ungene kuwo umzi ngegunya lomthengi, nokuba ke uhleli njani na kuloo mzi.

(9)(a) Umthengi uya kuthi ngoko nangoko ahlawule ikomishini kanothimba xa eyifuna okanye ahlawule iimali zomthengisi kunye neendleko ezibalwe ngolu hlobo:

.....:

(b) Umthengi kuza kufuneka ahlawule iimali ezilandelayo zingekapheli iintsuku ezili-10 eceliwe ukuba enze njalo liqqwetha lonaniselwano ngemizi:

(i) Zonke iimali ezifanele ziye kumasipala onika iinkonzo kulo mzi ngokwe *Local Government: Municipal Systems Act* 32 ka-2000, iirates zomzi kunye nezinye iirhafu ezifunwa ngumasipala;

(ii) Zonke iimali ezifanele ziye kwiqumrhu labaphathi beeflethi ngokwe *Sectional Titles Act* 95 ka-1986 okanye iimali ezifanele ziye kubanini-mzi okanye komnye umbutho owenzela loo mzi iinkonzo ezithile.

(iii) lindleko zokudluliselwa komzi komnye umntu kunye nezinye iimali ezifunekayo ukuze umzi ube kwiqama lomthengi.

10(a) Umzi unokuthathwa emva kokuba kutyikitywe imiqathango yokuthengiswa kwawo, kwahlawulwa imali engumhlawulwa-tanci nasemva kokuba kuhlalulwe imali eseleyo ngokomqathango 7(b).

(b) Xa umthengi engena kuwo umzi, kuya kufuneka ahlawule irenti yokuhlala kuwo ungekabhaliswa ngaye eyi-R..... ngenyanga ukususela kumhla ukuza kutsho kumhla obhaliswa ngaye ngawo.

(c) Akungena umthengi kuwo umzi, konke okwenzekayo kuwo kuza kufuna umthengi.
(d) Lowo otyalwayo kunye nonothimba okanye umthengisi abaniki siqinisekiso sokuba umthengi
uza kuthi xa engena awufumane umzi ungenamntu.

11(a) Umthengi uza kuba nelungelo lokuba umzi uguqulelwe egameni lakhe ngoko nangoko
esakulihlawula lonke ixabiso lomzi, ekwenzile nokufunwa ngumqathango 9, kungenjalo umzi uza
kuguqulelwa egameni lakhe akuba ekwenzile okutshiwo ngumqathango 7 nowe-9.

(b) Ukuba ukudluliselwa komzi egameni lomthengi kubanjezelwa ngumthengi, umthengi kuza
kufuneka ehlawule inzala engumlinganiselo we..... ekhulwini ngonyaka yexabiso
lomzi.

12(a) Unothimba usengafuna ukuba izinto eziphuculiweyo ezenziwe kuwo umzi mazikhuselwe
nge-inshorensi ngoko nangoko ngumthengi egubungela ixabiso lazo elipheleleyo, buze
ubungqina bokuba ukwenzile oko bunikwe unothimba, ize loo inshorensi ihlale ikho de umzi
ubhaliswe ngegama lomthengi.

(b) Xa umthengi engakwenzi okufunwa kwisiqendu (a), unothimba unokuyithatha ngokwakhe i-
inshorensi, ize ihlawulelwe ngumthengi.

13(a) Umzi uthengisiwe njengoko kuboniswa yitayitile nomzobo, phantsi kwemiqathango
esenokuba ikho.

(b) Unothimba/umthengisi kwintengiso yasesidlangalaleni akayi kuba natyala ngento enokuthi
kufumaneke ukuba ayikho kuwo umzi.

14. Lowo otyalwayo ekuthinjelwa yena makafune igqwetha lonaniselwano ngemizi ukuze
liwubhalise umzi ngomthengi, kodwa ke unothimba unelungelo lokufuna igqwetha elitsha
lonaniselwano ngemizi ukuba igqwetha elifunwe ngulowo otyalwayo lithe lalibazisa okanye
alenza ngendlela eyanelisayo.

Kutyikitywe e..... ngalo mhla:..... kwinyanga ka.....
20.....

Ndiyaqinisekisa ukuba ngale mini yanamhlanje ndikho, umzi
oxelwe ngentla uye wathengiswa ngemali e..... uthengiselwa
U.....

Unothimba/Umthengisi esidlangalaleni

Mna, otyikitye ngezantsi,....., ohlala e.....kwisithili
sase.....ndiyazinkqamangela njengomthengi womzi oxelwe ngentla
ukuba ndihlawule ixabiso lawo ndize ndifezekise yonke imiqathango ekhankanywe ngentla.

.....
Umthengi

33A — Imiqathango yentengiso yokuthinjwa komzi***Yeyokusetyenziswa kwiNkundla Yenqila**

Kwityala lika:

.....Otyalwayo

no-

.....Otyalayo

Impahla engenakufuduswa enjengomzi (eza kubizwa apha ngokuthi “ngumzi”) eza kuthengiswa esidlangalaleni ngomhlakwinyanga.....20..... izezi zinto zilandelayo:

Intengiso iza kuqhutywa ngale miqathango ilandelayo:

1. Intengiso iza kuqhutywa ngokoMgaqo 43 weMigaqo YeeNkundla ZeeMantyi nayo yonke eminye imithetho esebenza kule meko.

2. Umzi lo uza kuthengiswa ngunothimba wase.....okanye ngaBathengisi abangu.....e.....uthengiselwa umntu ozimisele ukuwuthenga ngelona xabiso liphakamileyo, kungabikho xabiso emakungehlelwa ngaphantsi kwalo/kubekho ixabiso emakungehlelwa ngaphantsi kwalo eliyi-.....

3. Uza kuthengiswa ngeerandi, kwaye akayi kwamkelwa umntu ofuna ukuwuthenga ngemali engaphantsi kwewaka leerandi.

4. Ukuba kuthi kubekho imbambano ngemali azimisele ukuhlawula yona umntu, unokuphinda uthengiswe kwakhona umzi.

5(a) Ukuba unothimba/umthengisi wasesidlangalaleni uthi enze impazamo ekuthengiseni, loo mpazamo ayiyi kubankqamangela ababandakanyekileyo, koko inokuthi ilungiswe.

(b) Ukuba unothimba/umthengisi wasesidlangalaleni urhanela ukuba umntu ofuna ukuthenga uyoyisakala ukuhlawula imali engumhlawulwa-tanci ekuthethwe ngayo kumqathango 7 okanye imali eseleyo, unothimba/umthengisi wasesidlangalaleni usenokwala ukukwamkela ukuthenga kwaloo mntu, okanye akwamkele phantsi kwemiqathango de lowo ofuna ukuthenga amenze aneliseke unothimba/umthengisi wasesidlangalaleni kwinto yokuba angayihlawula imali engumhlawulwa-tanci okanye eseleyo.

(c) Xa kusaliwa ukuthenga komntu othengayo kwiimeko ezixelwe kwisiqendu (b), umzi unokuthi uthengiswe kwakhona.

6(a) Umthengi makayityikitye ngoko nangoko le miqathango emva kokuthenga, ngoko nangoko esakucelwa ngunothimba/ngumthengisi wasesidlangalaleni.

(b) Ukuba othengayo uthenga egameni lomnye, makalixele iqama lomntu athengela yena.

7(a) Umthengi makahlawule unothimba imali engumhlawulwa-tanci eli-10 ekhulwini yexabiso lomzi eyihlawula ngemali eyimali okanye ngetsheke eqinisekiswa yibhanki ngomhla wentengiso.
(b) Eseleyo mayihlawulwe xa udluliselwa egameni lomnye kwaye isibambiso masiphume kwibhanki evunywe ngulowo utyalwayo okanye ligqwetha lakhe, kwaye iza kunikwa unothimba zingekapheli iintsuku ezi..... ukususela kumhla wentengiso.

8(a) Ukuba othengayo uyoyisakala ukufeza umqathango ekufuneka ufezwe ngumthengi kwimiqathango yentengiso, intengiso ingapheliswa yimantyi ngokukhawuleza ngengxelo kanothimba emva kokuba unothimba lowo azise umthengi, uze ke umzi lowo ube nokuthengiswa kwakhona.

(b) Xa zenzekile iimeko ezixelwe kwisiqendu (a), iza kuthwalwa ngumthengi ilahleko ebangelwe kukwenzeka kwazo, lahleko leyo enokuthi xa enokwenza isicelo otyalwayo okhalazayo ogama lakhe livelayo kwi-akhawunti yolwabiwo kanothimba, iindleko zayo zibuyiswe kumthengi ngesigqibo semantyi esivakaliswe ngokwengxelo ebhaliweyo kanothimba, emva kokuba loo mthengi enikwe isaziso esibhaliweyo sokuba loo ngxelo iza kuthiwa thaca phambi kwemantyi ngaloo njongo.

(c) Ukuba umthengi sele engenile kuwo umzi, unothimba unokuthi, emva kokuba egale wazisa abo bachaphazelekayo, enze isicelo kwimantyi somyalelo wokukhupha umthengi okanye nawuphi na umntu othi ungene kuwo umzi ngegunya lomthengi, nokuba ke uhleli njani na kuloo mzi.

9(a) Ngoko nangoko isakufunwa imali yoko, umthengi makahlawule iimali zikanothimba/zomthengisi wasesidlangalaleni neendleko ezibalwe ngale ndlela:

.....;

(b) Umthengi makahlawule okulandelayo zingekapheli iintsuku ezili-10 eceliwe ukuba enze njalo ecelwa ligqwetha lonaniselwano ngemnizi:

(i) zonke iimali ezifanele ziye kumasipala owenza iinkonzo kuloo mzi, ngokwe *Local Government: Municipal Systems Act* 32 ka-2000, iirates zomzi nezinye iimali zikamasipala;

(ii) zonke iimali ezifanele ziye kwiqumrhu labaphathi beeflethi ngokwe *Sectional Titles Act* 95 ka-1986 okanye iimali ezifanele ziye kubanini-mzi okanye omnye umbutho owenzela umzi iinkonzo.

(iii) iindleko zokudluliselwa komzi komnye umntu kunye nezinye iimali ezifunekayo ukuze umzi ube kwiqama lomthengi.

10(a) Umzi unokuthathwa emva kokuba kutyikitywe imiqathango yokuthengiswa kwawo, kwahlawulwa imali engumhlawulwa-tanci nasemva kokuba kuhlawulwe imali eseleyo ngokomqathango 7(b).

(b) Xa umthengi engena kuwo umzi, kuya kufuneka ahlawule irenti yokuhlala kuwo ungekabhaliswa ngawe eyi-R..... ngenyanga ukususela kumhla ukuza kutsho kumhla obhaliswa ngaye ngawo.

(c) Akungena umthengi kuwo umzi, konke okwenzekayo kuwo kuza kufuna umthengi.

(d) Lowo otyalwayo kunye nonothimba okanye umthengisi abaniki siqinisekiso sokuba umthengi uza kuthi xa engena awufumane umzi ungenamntu.

11(a) Umthengi uza kuba nelungelo lokuba umzi uguqulelwe egameni lakhe ngoko nangoko esakulihlawula lonke ixabiso lomzi, ekwenzile nokufunwa ngumqathango 9, kungenjalo umzi uza kuguqulelwa egameni lakhe akuba ekwenzile okutshiwo ngumqathango 7 nowe-9.

(b) Ukuba ukudluliselwa komzi egameni lomthengi kubanjelwa ngumthengi, umthengi kuza kufuneka ehlawule inzala engumlinganiselo we..... ekhulwini ngonyaka yexabiso lomzi.

12(a) Unothimba usengafuna ukuba izinto eziphuculiweyo ezenziwe kuwo umzi mazikhuselwe nge-inshorensi ngoko nangoko ngumthengi egubungela ixabiso lazo elipheleleyo, buze ubungqina bokuba ukwenzile oko bunikwe unothimba, ize loo inshorensi ihlale ikho de umzi ubhaliswe ngegama lomthengi.

(b) Xa umthengi engakwenzi okufunwa kwisiqendu (a), unothimba unokuyithatha ngokwakhe i-inshorensi, ize ihlawulelwe ngumthengi.

13(a) Umzi uthengisiwe njengoko kuboniswa yitayitile nomzobo, phantsi kwemiqathango esenokuba ikho.

(b) Unothimba/umthengisi kwintengiso yasesidlangalaleni akayi kuba natyala ngento enokuthi kufumaneke ukuba ayikho kuwo umzi.

14. Lowo otyalwayo ekuthinjelwa yena makafune igqwetha lonaniselwano ngemizi ukuze liwubhalise umzi ngomthengi, kodwa ke unothimba unelungelo lokufuna igqwetha elitsha lonaniselwano ngemizi ukuba igqwetha elifunwe ngulowo otyalwayo lithe lalibazisa okanye alenza ngendlela eyanelisayo.

Kutyikitywe e..... ngalo mhla:..... kwinyanga ka.....
20.....

Ndiyaqinisekisa ukuba ngale mini yanamhlanje ndikho, umzi
oxelwe ngentla uye wathengiswa ngemali e..... uthengiselwa
U.....

Unothimba/Umthengisi esidlangalaleni

Mna, otyikitye ngezantsi....., ohlala e.....kwisithili
sase.....ndiyazinkgamangela njengomthengi womzi oxelwe ngentla
ukuba ndihlawule ixabiso lawo ndize ndifezekise yonke imiqathango ekhankanywe ngentla.

Umthengi

33B — Isaziso sokurhoxisa ukuthengiswa komzi ngokomgaqo 43(11)(a)

***Yeyokusetyenziswa kwiNkundla Yesithili**

KwiNkundla YeMantyi Yesithili Sase.....

ehleli e.....iNombolo Yetyala20.....

Phakathi kuka:

Nothimba wase.....Umenzi-sicelo

no-

.....Umthengi

Malunga netyala lika-:

.....Otyalwayo

no-

.....Otyalayo

UYAZISWA ukuba unothimba wase.....uzimisele ukucela imantyi iseofisini yayo, ngomhla oza kuxelwa ngumabhalane wenkundla, ukuba irhoxise ukuthengiswa komzi ochazwe ngokuthi othengiswe kwintengiso yasesidlangalaleni ngomhla20..... nokuba igunyaze ukuba loo mzi uthengiswe ngokutsha.

UYAZISWA KWAKHONA ukuba iqhotyoshelwe apha ingxelo kanothimba esiza kusekelwa kuyo isicelo esiya kwimantyi sokuba irhoxise ukuthengiswa kwawo.

SENZIWE e..... ngalo mhla.....kwinyanga ka.....20.....

.....
Unothimba weNkundla
(Ummandla)
(Idilesi)

Iya kuMabhalane weNkundla

.....
Naku-

.....
Umthengi
(Idilesi)

33B — Isaziso sokurhoxiswa kokuthengiswa komzi ngokoMgago 43(11)(a)***Yeyokusetyenziswa kwiNkundla yeNqila**

KwiNkundla YeNqila YeCandelo LeNqila lase.....

ehleli e.....iNombolo Yetyala.....20....

Phakathi kuka:

Nothimba wase.....Umenzi-sicelo

no-

.....Umthengi

Malunga netyala lika-:

.....Otyalwayo

no-

.....Otyalayo

UYAZISWA ukuba unothimba wase.....uzimisele ukucela imantyi iseofisini yayo, ngomhla oza kuxelwa ngumabhalane wenkundla, ukuba irhoxise ukuthengiswa komzi ochazwe ngokuthi othengiswa kwintengiso yasesidlangalaleni ngomhla20..... nokuba igunyaze ukuba loo mzi uthengiswa ngokutsha.

UYAZISWA KWAKHONA ukuba iqhotyoshelwe apha ingxelo kanothimba esiza kusekelwa kuyo isicelo esiya kwimantyi sokuba irhoxise ukuthengiswa kwawo.

SENZIWE e..... ngalo mhla.....kwinyanga ka.....20.....

.....
Unothimba weNkundla

(Ummandla)

(Idilesi)

Iya kuMabhalane weNkundla

.....
Naku-

.....
Umthengi
(Idilesi)

34 — Isaziso [esiya kotyalwayo omakahlawulwe kuqala] ngokoMgago 43(5)(a)

***Yeyokusetyenziswa kwiNkundla Yesithili**

[Isiqendu 66(2)(a) soMthetho 32 ka-1944]

KwiNkundla YeMantyi Yesithili Sase.....

ehleli.....iNombolo Yetyala.....20.....

Kwityala eliphakathi kuka-

.....Otyalwayo

no-

.....Otyalayo

Iya ku.....

(Otyalwayo omakahlawulwe kuqala/kuMasipala/kwiQumrhu Labaphathi Beeflethi)

Njengoko umzi oxelwe ngezantsi wathi waba phantsi kokuthinjwa ngunothimba ngomhla
kwinyanga ka.....20..... uyaziswa ukuba uza kuthengiswa
 kwintengiso yokuthinjwa e.....(indawo) ngomhla.....kwinyanga
 ka.....20.....ngexesha.....(bhala ixesha)

Inkcazelo emfutshane yomzi nendawo okuyo:

.....

.....

Uyalelwa ukuba uxele zingekapheli iintsuku ezili-10 ukususela(bhala umhla)
ixabiso ekungenakwehlelwa ngezantsi kwalo okanye uvume ukuthengiswa kwawo
kungabekwanga xabiso ekungenakwehlelwa ngezantsi kwalo.

Yenziwe ngalo mhlakwinyanga ka.....20.....

.....
Umntu otyalwayo/lgqwetha lomntu otyalwayo

Idilesi:.....

34 — Isaziso [esiya kotyalwayo omakahlwulwe kuqala] ngokoMgaqo 43(5)(a)

***Yeyokusetyenziswa kwiNkundla YeNqila**

[Isiqendu 66(2)(a) soMthetho 32 ka-1944]

KwiNkundla YeNqila YeCandelo LeNqila lase.....

ehleli e.....Inombolo Yetyala.....20.....

Kwityala eliphakathi kuka-

.....Otyalwayo

no-

.....Otyalayo

Iya ku-.....

(Otyalwayo omakahlawulwe kuqala/kuMasipala/kwiQumrhu Labaphathi Beeflethi)

Njengoko umzi oxelwe ngezantsi wathi waba phantsi kokuthinjwa ngunothimba ngomhla
kwinyanga ka.....20..... uyaziswa ukuba uza kuthengiswa
 kwintengiso yokuthinjwa e.....(indawo) ngomhla.....kwinyanga
 ka.....20.....ngexesha.....(bhala ixesha)

Inkcazelo emfutshane yomzi nendawo okuyo:

.....

.....

Uyalelwa ukuba uxele zingekapheli iintsuku ezili-10 ukususela(bhala umhla)
ixabiso ekungenakwehlelwa ngezantsi kwalo okanye uvume ukuthengiswa kwawo
kungabekwanga xabiso ekungenakwehlelwa ngezantsi kwalo.

Yenziwe ngalo mhlakwinyanga ka.....20.....

.....
Umntu otyalwayo/lqgqetha lomntu otyalwayo

Idilesi:.....”