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VISION

The vision of the Board for Sheriffs:

A transformed, professional, publicly accountable and credible Sheriffs' institution, which reflects the human rights culture of the Constitution.

MISSION

The mission of the Board is to:

- **Provide professional and credible services to all our clients and other stakeholders.**
- **Develop skilled, knowledgeable and motivated staff.**
- **Develop a unified and committed Board with focused leadership.**
- **Conduct all activities and execute its mandate in a manner that is accountable to the public and to government.**
- **Enhance the image and goodwill of the Sheriffs' Profession.**

VALUES

The values guiding the Board for Sheriffs and the Sheriffs' Profession:

Transparency

- ☀ Practices of the Board for Sheriffs and the Sheriffs' Profession should be open to internal and external scrutiny.
- ☀ Everyone should have equal access to the services they have a right to receive.

Accountability

- ☀ Responsibilities of the Board for Sheriffs should be clearly defined.
- ☀ Officials and members of the Board should be held accountable for carrying out their responsibilities conscientiously and with integrity.
- ☀ Sheriffs should ensure that their actions are in line with the content and spirit of the Constitution.

Equity

- ☀ The Board for Sheriffs is committed to employment equity, and should provide equal opportunities to all staff.
- ☀ The practices of the Board should follow the law and be free from all forms of unfair discrimination, including unfair discrimination based on any of the 17 grounds listed in the Constitution.
- ☀ Discrimination should only be allowed where it is proved that it is fair, or that it is necessary to achieve the affirmative action aims of the Constitution.

Efficiency

- ☀ The resources of the Board for Sheriffs should be managed efficiently and effectively.
- ☀ In using its resources, the Board should consider its duty to the public and other stakeholders.

Dignity

- ☀ Everyone needs to be served and treated with respect, compassion and human dignity in line with the Constitution.
- ☀ The staff of the Board and the Sheriffs' Profession need to recognise the effects of the apartheid past, and should be sensitive in responding to these.

Service Charter

This is a proposed *Service Charter of the Sheriffs' Profession*.

All Sheriffs pledge at all times to:

- ? ? Maintain the highest standards of honesty and integrity.
- ? ? Provide the public with access to, and full and correct information about, the services they have a right to receive.
- ? ? Treat the public with fairness and courtesy.
- ? ? Give the public the best possible value for money by providing efficient and effective services.
- ? ? Account for trust money honestly, accurately and punctually.
- ? ? Maintain confidentiality about the affairs of the public.
- ? ? Honour any undertaking we make as part of our practice.
- ? ? Maintain the independence necessary to give the public unbiased advice.
- ? ? Charge reasonable fees according to the legislated tariff.
- ? ? Carry out work competently and punctually.
- ? ? Report comprehensively to our clients.
- ? ? Take pride in ourselves, the Sheriff's Profession and the people we serve.
- ? ? Not do anything that may bring the Sheriff's Profession into disrepute.
- ? ? Change to meet the challenges of the present and future.
- ? ? Dedicate our work towards a better civil justice system.

The Board for Sheriffs

Provincial Training Learning Material

Module 1

Sheriff & Constitution

October / November 2002

The Board for Sheriffs

Provincial Training Learning Material

Module 2

Office Administration And Management

October / November 2002

Image of the Personnel

- ✍ Personnel must at all times be well groomed and neatly clothed.
- ✍ We must strive to give a professional service – appearances can contribute greatly towards establishing a culture of professionalism.
- ✍ Remember, the office personnel, are ambassadors of the profession.
- ✍ First impressions are lasting impressions

Communication - General

- ✍ Treat everyone with the necessary respect and dignity.
- ✍ Endeavour to be of assistance at all times whether speaking to an attorney, debtor or colleague.

Communication - General

- ✍ Always keep in mind:
 - if a person is in financial difficulty, it does not imply that he/she is a criminal
 - the debtor is not angry at us but at the circumstances in which he finds himself.
- ✍ Consequently we find ourselves between the bottle and the label – rather gluey, but must nevertheless maintain our dignity

Communication - Telephone

- ✍ When answering an incoming call:
 - identify the office
 - greet the caller
 - ask how you may assist
 - e.g. "Cape Town Sheriff, good-day, how may I be of assistance"

Communication - Telephone

- ✍ Do not keep calls holding indefinitely
 - periodically ask the caller if he/she still wishes to hold or
 - take a message.
- ✍ When taking a call, do not just put it through to his/her extension, make sure the person is in
- ✍ Do not put calls through to extensions if the relevant person is not available, take a message
- ✍ Ensure that messages are passed on

Summary

- ✍ Always give your very best at work, it may be the best investment you will ever make
- ✍ Keep your cool in all situations and you will be a winner

OFFICE ADMINISTRATION AND MANAGEMENT

INTRODUCTION:

The most claims lodged against Sheriffs are not for assault or attaching goods wrongfully, but they are for:

- Non-Participation in the proceeds of sales by concurrent creditors;
- Not serving all parties prior to the sale; and
- Not serving summonses before prescription.

This could indicate that the work done by Deputies is of a good standard, but that the administration done by the office staff is not on standard.

OFFICE ADMINISTRATION:

THE FOLLOWING REGARDING FLOW CHARTS COULD BE DISCUSSED:

- Office Administration
- Document Validation
- Document Registration
- Returns
- Splitting - Magistrates Court
- Splitting - High Court

CHECKING VALIDITY OF DOCUMENT:

- Has the document been issued by the Clerk of Court?
- Is there a Case Number?
- Is there a R20 Revenue Stamp on the document?
(State Attorney, Receiver of Revenue, State Hospitals exempted)
- Service address must be complete and within specific jurisdiction?
- Sufficient days for service must be available – Ordinary 5 days, State 10 days
Small Claims Court 10 days?
- Full details of issuing party – Attorney or Plaintiff?
- Is it the original document? – required in Magistrates Court.
- Are there sufficient copies? One ordinarily or five for fixed property.
- Are the necessary annexures attached?
- Alterations must be signed by the Clerk of Court.
- Particulars of Claim?
- Does information appear on reverse of Summons?

OTHER RELEVANT INFORMATION:

Is an Inventory required (Sec31)? Instruction must be in writing.
Check for special requests regarding service.
Is the summons going to prescribe?

RECEIVING OF LETTERS OF COMPLAINT:

If letters are not opened by the Sheriff personally, it should be opened by two members of the staff;

All letters received must be date stamped;

All letters received must be recorded in a register reflecting date of receipt, and the employee who is to attend to the reply;

Date reply is sent off must be recorded in this book as well as how it was posted/delivered;

RECEIVING OF PAYMENTS BY POST:

Envelopes should be opened in the presence of two members of staff in a private office;

Any amount received in an envelope must be recorded on the accompanying letter;

Amounts received in this manner must be recorded in a register distinguishing between Business and Trust Funds, and signed for by the person who issues the receipts;

All moneys received by 14:00 must be banked on that same day;
The register of moneys received must be verified with the amount banked, on a daily basis.

A Procedure Manual must be in place for the handling of payments/cash.

LOST DOCUMENTS:

Happens in every office. Try to pinpoint weak spot and rectify.

MANAGEMENT:

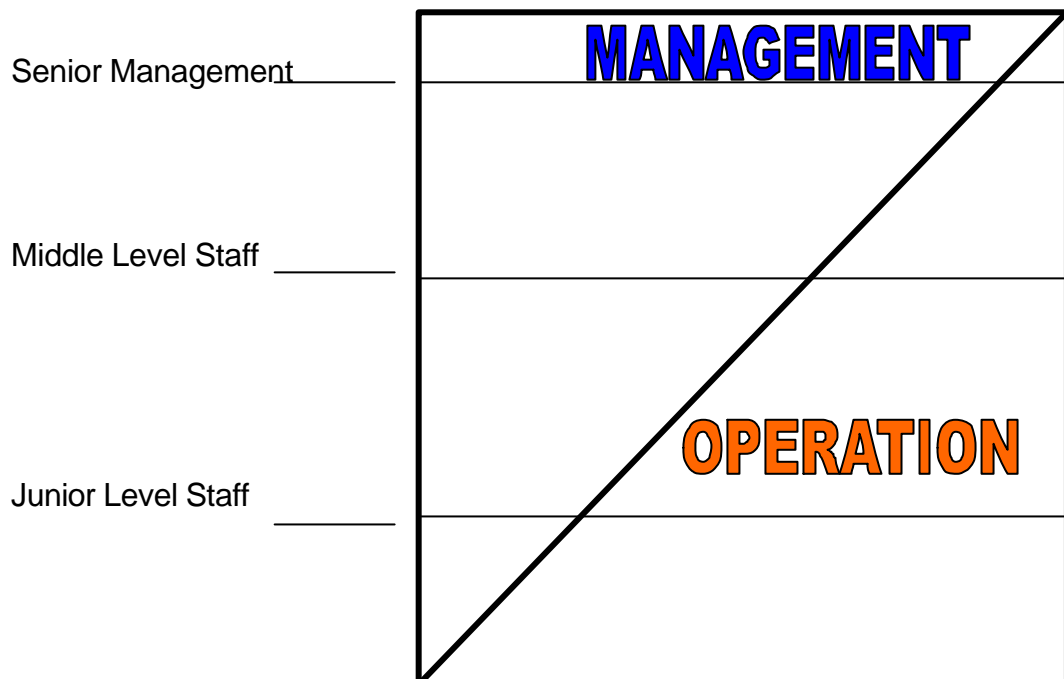
WHAT IS MANAGEMENT?

Management is the co-ordination of functions and tasks to ensure objectives, as contained in the Mission Statement of the company, are met, by the application of resources available to the tasks required to be performed.

THE ELEMENTS OF MANAGEMENT:

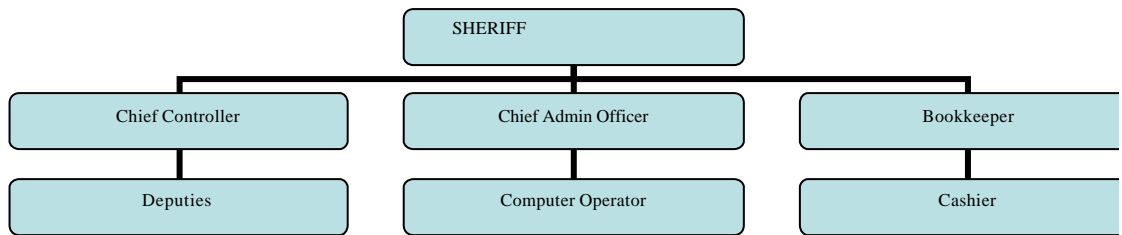
Plan
Co-ordinate
Lead
Control
Evaluate

Every member of staff has a management function. It becomes a bigger part of your job as you progress to higher levels.



EMPLOYMENT OF STAFF:

Prepare a **Staff Organogram**



Compile **Conditions of Employment** within the provisions of the Act.

The SA Institute's Training Committee has a draft set.

MISSION:

Draw up a Mission statement for your office. Each member of the staff must sign it with the Conditions of Employment. Put it up in your reception office and at other strategic places so that the staff is constantly reminded of it.

EXAMPLE:

It is the objective of this office to deal with all the process, orders and documents of the Court, strictly in accordance with the relevant Act and Rules of the Court;
To deal with all the documents as expediently as possible and as objective will always attempt to render a return within five working days;

To execute every process to the full and without fear;

To be impartial between the plaintiff and the defendant, always ensuring that the rights of both parties are protected and the one is not favoured beyond the requirement of the process of the court;

To conduct myself in a professional manner in the execution of my tasks with due regard to the Code of Conduct of the Board for Sheriffs, which I support;

Signed

JOB DESCRIPTION:

Every position must have a Job Description setting out the following:

Job Title:

Name of Present Incumbent:

Responsible to:

Overall Purpose:

Delegated Authority:

Main Tasks:

Priorities and Deadlines:

Person Specifications (For recruitment purposes):

Qualifications:

Essential:

Ideal:

Work-based Competences:

Essential in:

Desirable in:

Behaviour competences:

DRESS CODE:

Office should have a dress code;

Deputies should perhaps have a 'uniform' dress with identification.

PROCEDURE MANUALS:

The Procedure Manual says who does what when and how;

It should incorporate automatic checks by other staff;

It should have built in safety mechanisms;

Procedure Manuals should be drawn up for every major task e.g.:

Receipting, Handling and Banking of Money

Documents for Urgent Service

Stores Receiving and Releasing of Goods

Attachments – Movable

Attachments – Immovable

Control checks must be made to ensure Procedure Manuals are adhered to and followed. It must also be updated regularly with the approval of the Sheriff.

STAFF SELECTION:

Define the Person Specifications for selection purposes;

Shortlist the applications by eliminating those who does not meet your requirements;

Applicants interviewed for vacant positions should be tested and Previous employers should be contacted and requested for a reference;

Use an Evaluation Form where you score applicants objectively and give weights for the different criteria.

Don't be satisfied with applicants who do not meet your criteria.

STAFF TRAINING:

Have regular training sessions (an hour a week – people like routines);

Encourage staff to come forward with suggestions to work smarter;

Get rid of the “if it works, don't change it” syndrome.

EVALUATION:

Is it necessary to check the ‘condition’ of your office on a systematic and regular basis?

Evaluation is an element in Management.

Evaluation could be done by a Performance Management Program or a Control System, checking certain areas, for example:

General Business Condition:

Sales for the month to date (first thing every morning, this figure also tells me whether I have lost any data overnight);

Number of documents received – month to date;

Number of registrations done – month to date;

Deputies:

Deputy's outstanding work report – Twice a Week –

No document is to be with a Deputy for longer than FOUR working days after it was registered;

How many documents is the Deputy handling per day?

In urban areas, he/she should not do less than 25 documents a day and not more than 40 to 50 documents per day;

Administration:

Number of Enquiries received;

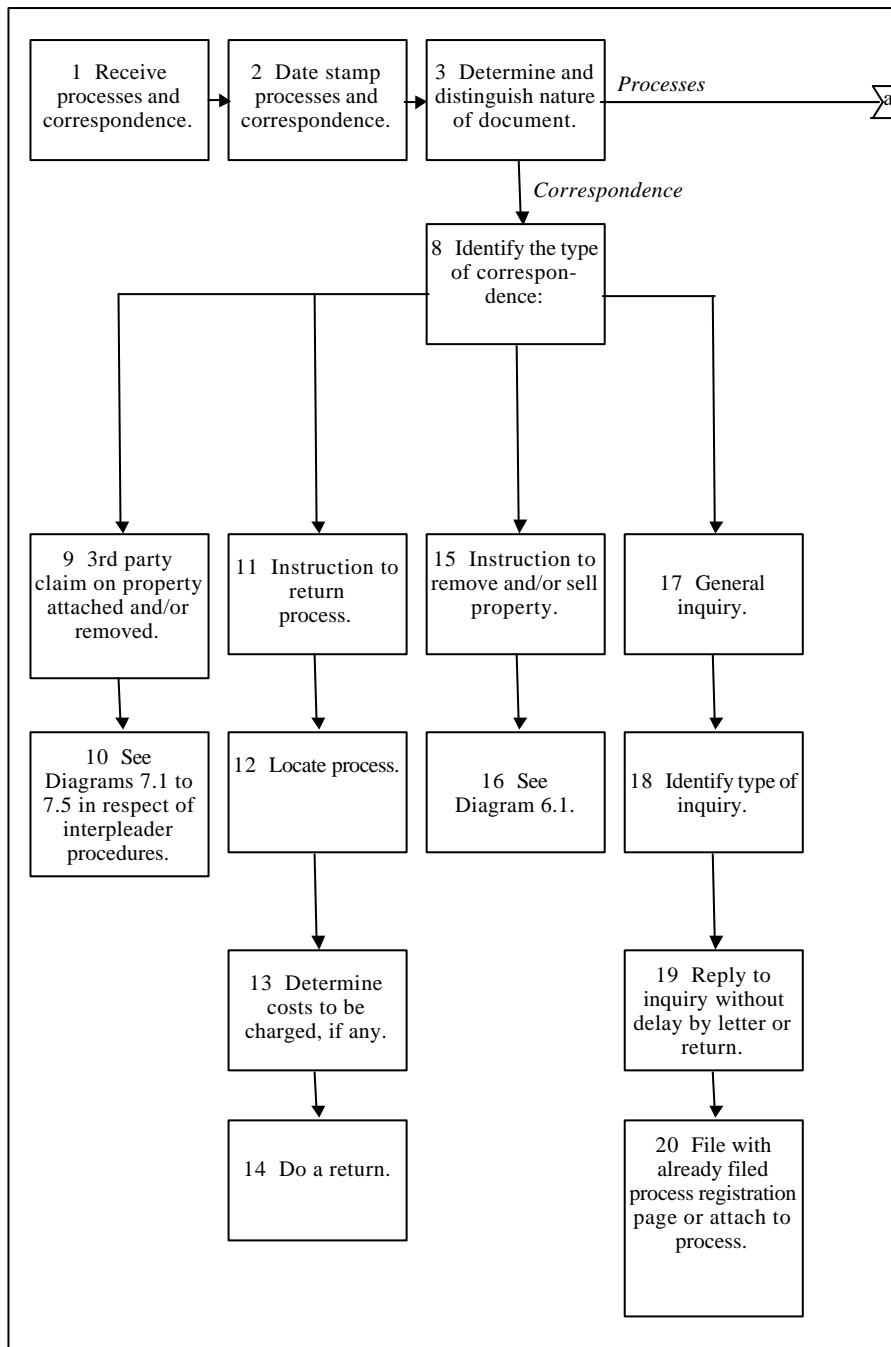
Debtors Age Analyses – Monthly – Target ratio to previous month's sales is 1:1.5 maximum allowed is 1:1.7

Daily Sales Figures;

Value of Credit Notes passed;

Mistakes made.

Diagram 1.1 – Receipt of documents



(continued)

Diagram 1.2 – Receipt of documents

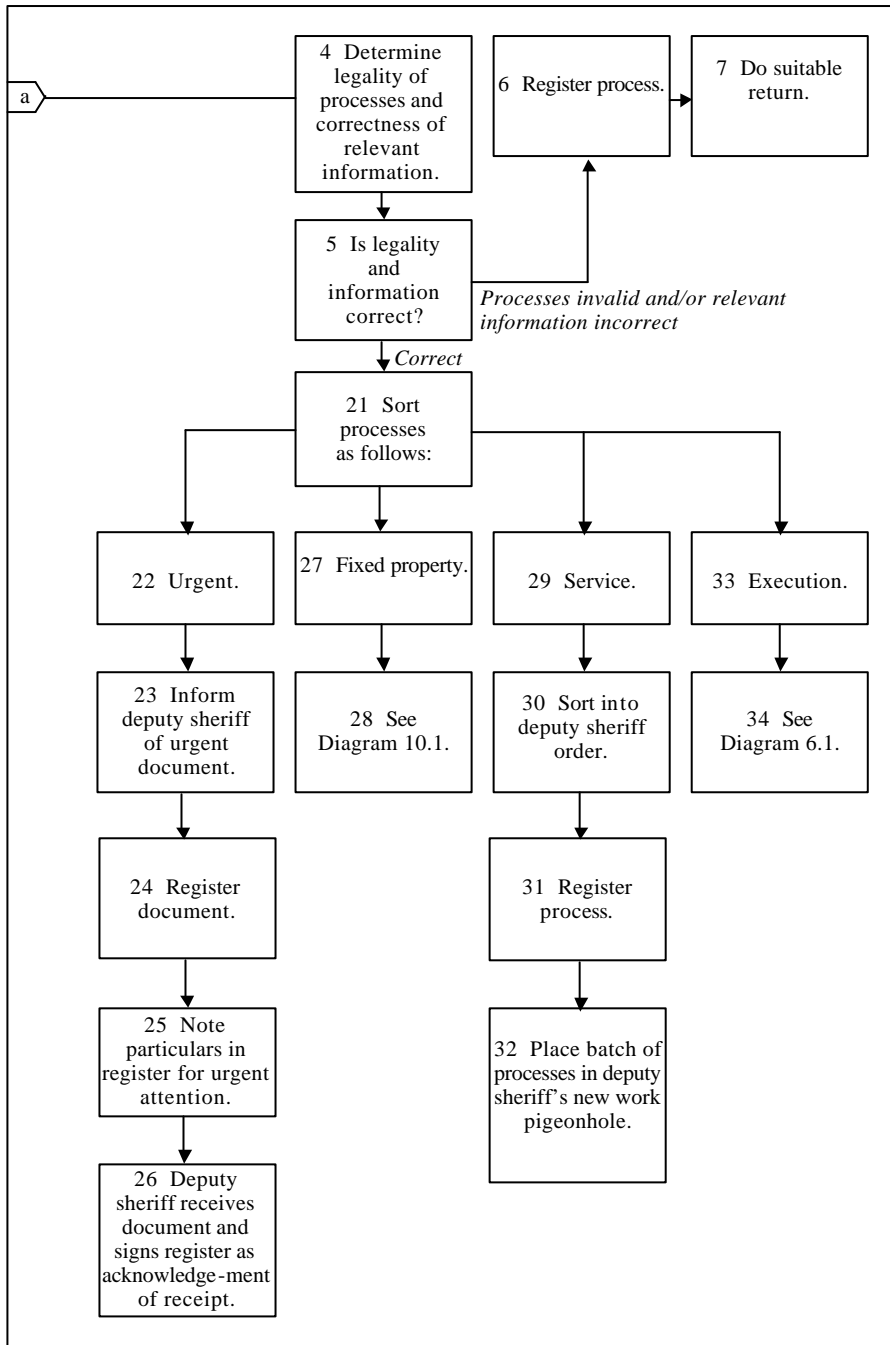
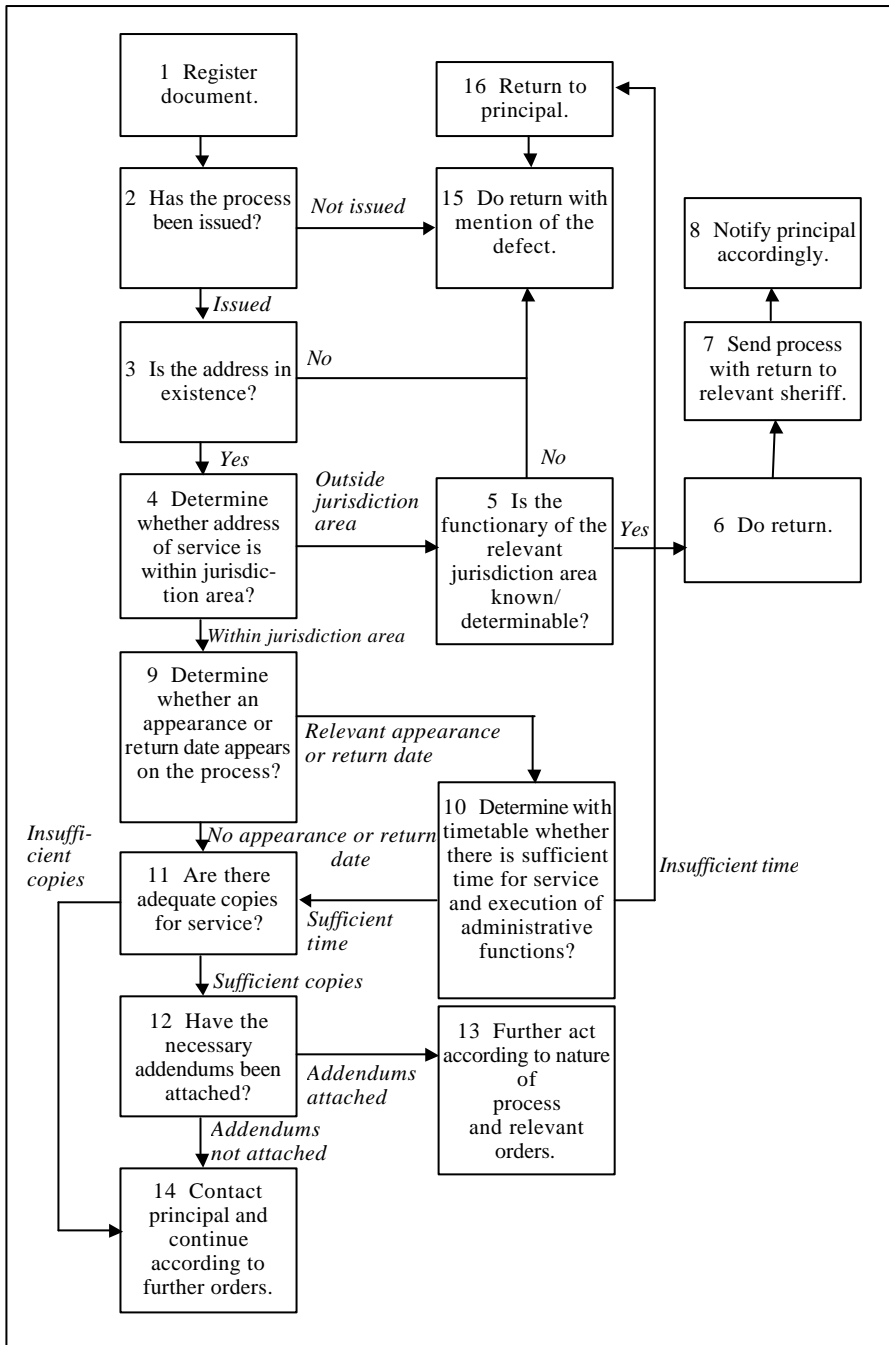


Diagram 2 – Confirmation of legality of processes

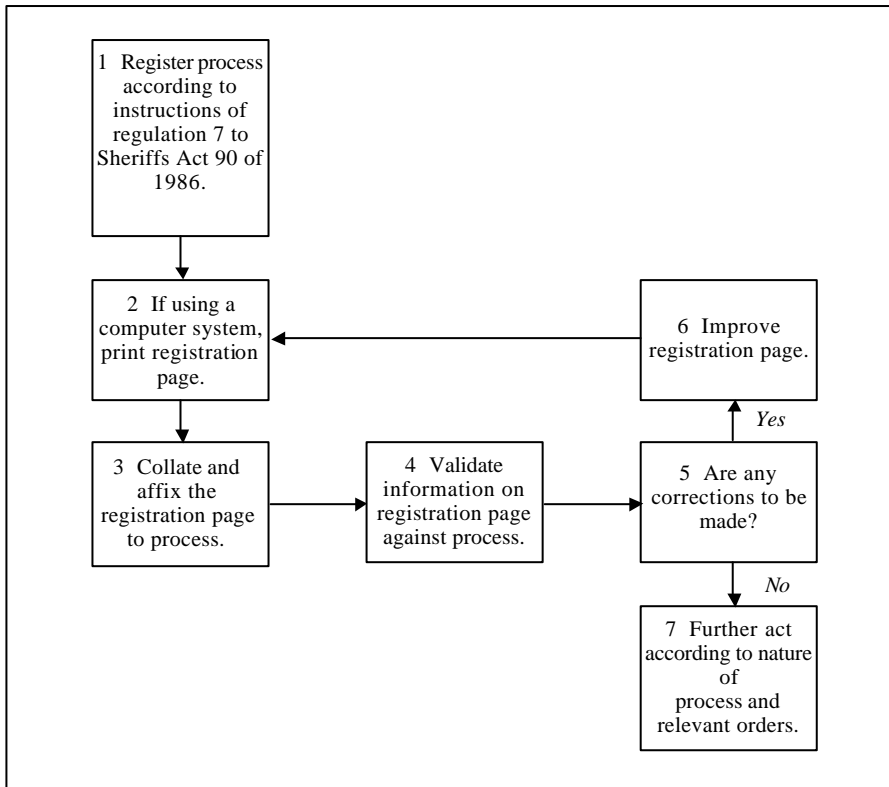


DOCUMENT VALIDATION

Validate the document to establish

- That the document has been issued
- That the address of service execution is within your jurisdiction.
- Is there any time limit specified on the document?
- Does that attorney have an account in good standing with your office?

Diagram 3 – Registration of processes



DOCUMENT REGISTRATION

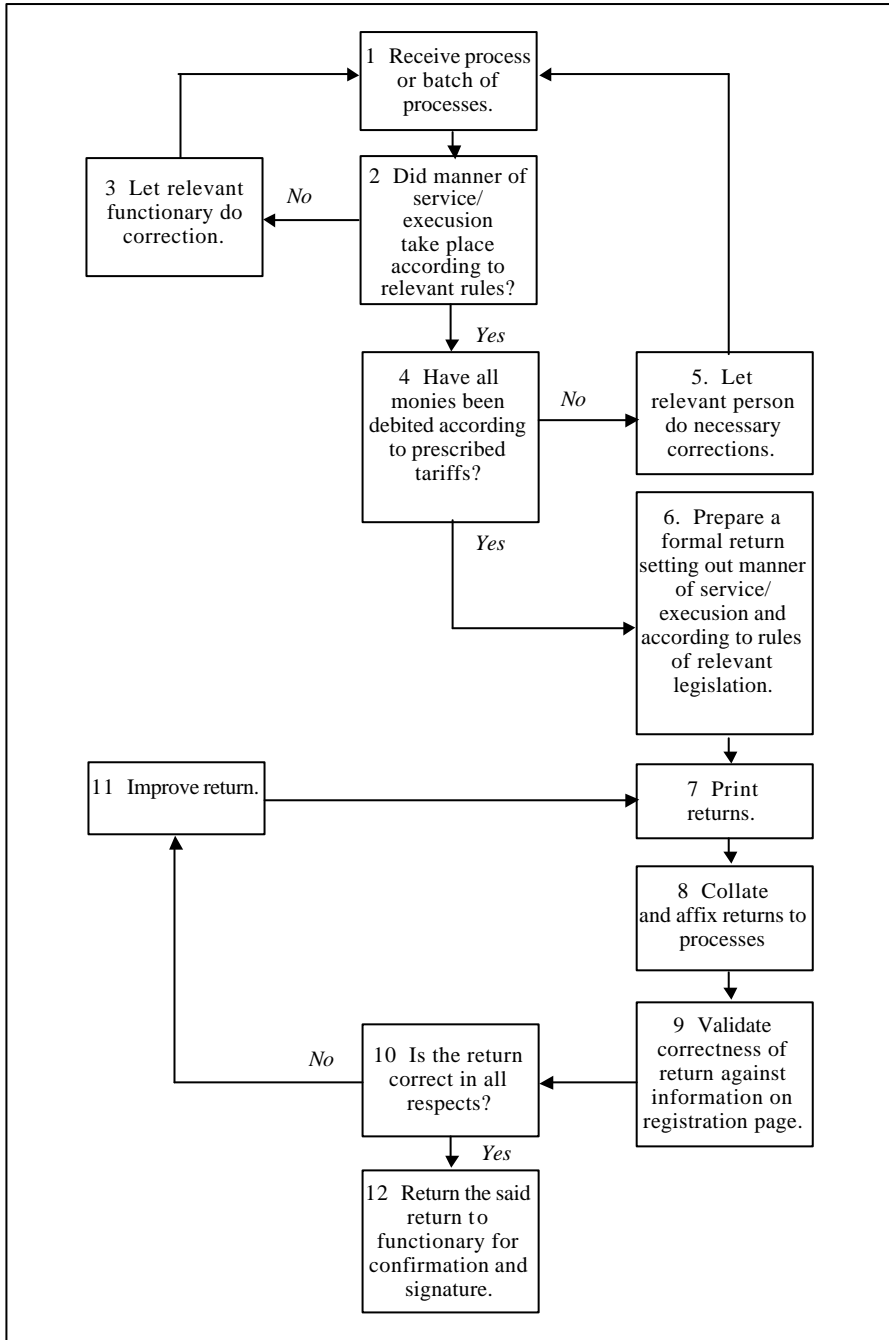
Ensure that the document is registered correctly with regard to:

- Attorney account number
- Courts jurisdiction
- Case number
- Plaintiff
- Defendant
- Address of Service
- Type of Document

Incorrect registration causes problems at a later stage e.g.

- Incorrect account debited
- Document is sent to wrong courts and/or attorney
- Unnecessary inquiry from attorneys
- Delays the whole judicial system

Diagram 4 – Furnishing of return in respect of service/non-service of processes



RETURNS MANNER OF SERVICE/EXECUTION

- Is the return of service/execution or non-service/execution of the process possible e.g. a return stating the defendant left, at a domicile address?
- Grammar and spelling
- Has the Ex Cr’s request (within the four corners of the law) been adhered to?

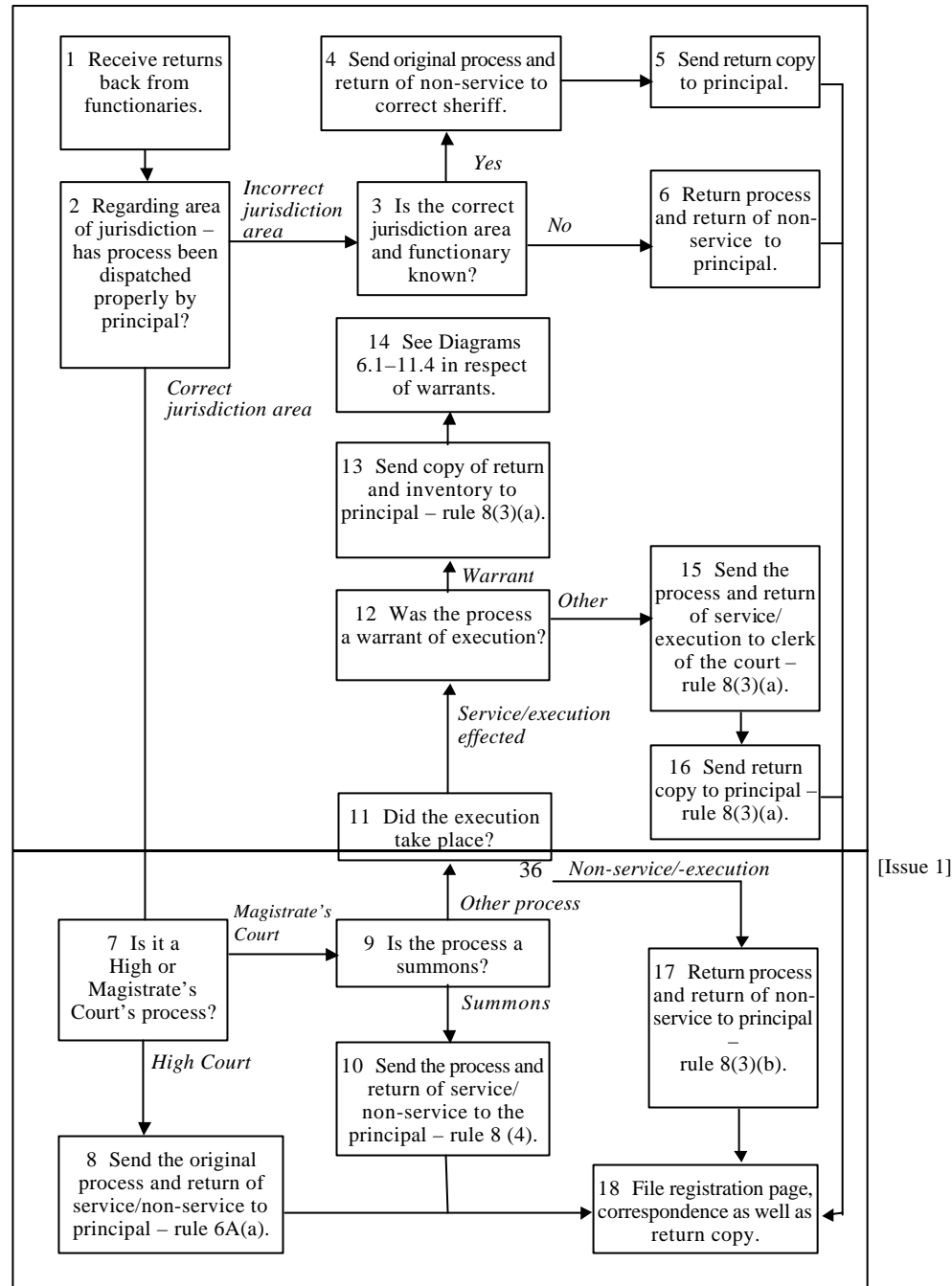
READ THE ATTORNEYS INSTRUCTIONS

- Does the wording describe the manner of service adequately in terms of the relevant rule?

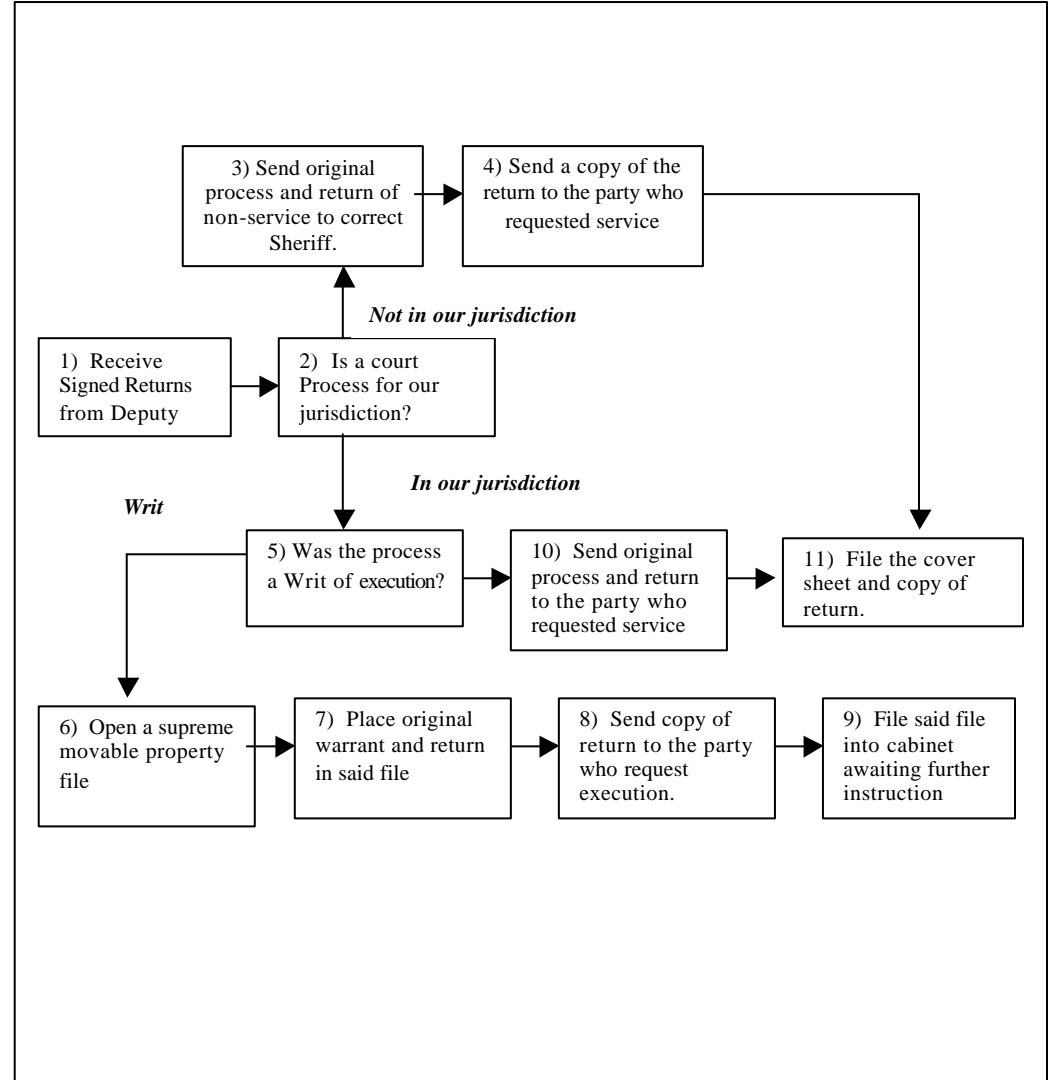
FEES CHARGE

- Have the fees been endorsed on the document.
- Have all charges been debited on the return as per following:
 - Magistrate Court Act 32 of 1944.
 - Supreme Court Act 59 of 1959 –Rule 68

Diagram 5 – Separation of process registration pages, correspondence and processes – Magistrate Court



Separation of process registration, correspondence and process – High Court



The Board for Sheriffs

Provincial Training Learning Material

Module 3

Manner of Service

October / November 2002

SERVICE

THIS SECTION DEALS WITH THE SERVICE OF PROCESS, NOTICES
AND OTHER DOCUMENTS

WE DEAL WITH SERVICE, AS FAR AS POSSIBLE, IN RESPECT TO
ALL STATUTES.

WHAT IS MEANT BY SERVICE?

How is the word Service used?

In the definitions of the rules of the Magistrates' Court the word 'deliver' is listed as (except when a summons is served on the opposite party only, and in terms of rule 9) to file with the clerk of the court and serve a copy on the opposite party and 'delivery', 'delivered' and 'delivering' have corresponding meanings.

In terms of rule 9(3) of the Magistrates' Court Rules all process shall be served by delivery of a copy of the process in one or other manners prescribed by this subrule (3).

'Delivery' -to carry to a destination (goods or mail), (to hand over) Collins English dictionary,

'Serve' -to be of service to, to perform an official duty.

The Afrikaans word is 'betekening' which means 'bestel' or 'oorhandig'

According to J & B @ page 37,. in this rule (rule 9 of the magistrates' court) the word 'deliver' bears its ordinary meaning, which in the present context is simply 'to hand over' ; it does not bear the special meaning attributed to it in rule 2(1) of the Magistrates' Court Rules

In the Supreme Court a process must be brought to the notice of the opposite party by serving a copy of it and by explaining the nature and contents thereof to the person upon whom service is effected. (Botha NO v Botha 1965 (3) SA 128 (E) at 130).

The service of any legal process must surely mean more than just to hand over the process to the opposite party. There are sub rules in the Magistrates' Court Rules and the Supreme Court Rules, which provide for a process to be placed on the main door of the defendant's premises, but these are instances, which are extra normal. The sheriff or his deputy has an obligation to explain the nature and exigencies of the document to the defendant or any one receiving service in his stead. In the Supreme Court rule 4(1)(a)(iv) provides for the process to be placed on the main door of the premises (domicilium)

What must be served?

Process, notice or other document

Process:

(a) A summon to appear in court.

(b) An action at law. (Collins English Dictionary 2nd Edition.)

In terms of sub-rule 9(3) of the Magistrates' Court Rules only service of court process must be served in the manner of service listed in sub-rule (3). Sub-rule 9(11) of the Magistrates' Court Rules states that any notice, request, statement or other document which is not a process may be effected by delivery by hand at the address for service or by sending it by registered post.

In terms of the Constitutional Court rules all process of the Constitutional Court shall be served by the sheriff.

In terms of rule 9(3) of the Magistrates' Court Rules a copy of the process must be served on the opposite party. The copy does not have to be a true copy. In terms of rule

9(4) of the Magistrates' Court Rules the original must be exhibited to the person against whom such process is served if he demands so. Failure to exhibit the original because an original was not available does not entitle the sheriff to withhold the service as required. The party on whom the service was affected can take an exception in terms of rule 17 (2) of the Magistrates' Court Rules.

When can service be affected?

In terms of rule 9(2) of the Magistrates' Court Rules no process, notices or other documents shall be served on Sunday or public holidays.

However an interdict, a warrant of arrest, a warrant of committal and a warrant of attachment of person or property under section 30 bis of the Act may be executed on any day at any hour and at any place.

In the Magistrates' Court any process, notice or documents may be served at any hour of the day or night. The Supreme Court limits the hours to as near as possible to 7h00 and 19h00. I believe that in order to expedite the legal process service of any process, notice or document may be effected at any time. This is in line with our modern life style where business does not stop on Saturday at 13h00.

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Manner of service.

- i) To the said person personally.

[MC9 (3)(a), SC4 (1)(a)(I)]

To my understanding personal service is the best form of service. However where a statute provides for another manner of service (e.g. service of a notice of attachment of immovable property in the supreme court), such service will take precedent over other manner of services.

Gamble v Sauer (1890) 7SC323 is authority that personal service is 'such service as would satisfy the court that the process has reached the hands of the person intended to be served.'

In Meyer v Du Plessis (1896) 17 NLR 157, in which there was an order allowing edictal citation which directed personal service, service was held good where the deputy sheriff not finding the defendant at his home, which was locked, fastened a copy on the door and on his way back met the defendant and explained the citation to him.

Jones and Buckle also explain that where the sheriff explain the document to the respondent and then hands them to the respondent's wife in the presence of the respondent, such service will probably comply with the rule.

It appears then that the actual handing over of the process to the defendant personally is not required. The problem will arise where the defendant will not accept service. It might be necessary to leave the process at the premises on such occasion.

In the Colonial Government v Southern Lands Ltd 12 CTR 3 it was held that if the defendant or respondent refuses to take the process, the sheriff can serve it by touching him on the arm with a copy of it and dropping it at his feet.

The Supreme court rule 4(1)(a)(l) has a provision which reads as follows: "Provided that where such person is a minor or a person under legal disability, service shall be effected on the guardian, tutor, curator, or the like of such minor or person under legal disability.

Persons under legal disability will include a married woman where the marital power has been excluded. Although this subrule is peremptorily worded, it would seem that in the light of our modern lifestyle service on a married woman will be good if good reasons can be shown, e.g. Where the husband lives apart from his wife or where the husband whereabouts is not known.

The subrule does not make it clear whether service must be effected upon a minor or other person under legal disability and upon the guardian, tutor, curator or the like as well. It could be argued that the guardian, tutor, curator or the like as well as the minor or person under legal disability must be served with the process.

- ii) Or to his duly authorized agent.

[MC9 (3)(a), SC4 (1)(a)(vi)]

An agent is the person who is duly authorized to accept service on behalf of the person intended to be served. Whether or not a person has been authorized to accept service is a question of fact. This information will almost always be supplied by the person seeking service. This subsection does not require that the authority to be in writing. Rule 4(1)(a)(vi) of the Supreme Court Act requires that the authorization be in writing but the authorisation does not have to be in a formal document nor in express terms if it can be implied from the agents written authority

In Colonial Government v Hall (1909) 19 CTR 941 it was held that an agent is not obliged to accept service and service on an agent who has full power to accept service but declines to do so is insufficient.

In the Magistrates' Court it may be possible that even where there is no authority at the time of service the defendant may by his subsequent action ratify the act of the person in accepting service on his behalf. The Supreme Court Rule will require that such ratification be in writing.

Service on the defendant nearest neighbour whom is not an agent will be bad even if he is willing to accept service.

- b) At the residence or place of business to some person apparently not less than 16 years of age and apparently residing or employed there.

[MC9 (3)(b), SC4 (1)(a)(ii)]

Residence:

Take note that the Magistrates Court Rule as well as the Supreme Court Rule extends

the definition of residence to include that portion of the building that the defendant occupies if the building is occupied by more than one person.

It appears that that the residence must be the defendant's present *residence, therefore service upon the defendant's mother in the absence of* evidence that he resides with her, or upon the brother of the defendant at the railway station near the defendant's residence, or upon the defendant's wife elsewhere than at his residence, will clearly be bad service.

Place of business:

Place of business is not same as place of employment.

To some person apparently ...

All that is needed is that the person must seemed to be not less than 16 years old and it must seemed that he is employed or residing there.

c) At his place of employment to some person apparently not less than 16 years of age and apparently in authority over him or, in the absence of such person in authority, to a person apparently not less than 16 years of age and apparently in charged at his place of employment.

[MC9 (3)(c), SC4 (1)(a)(iii)]

The place of employment must be where he is employed at the time of service, even though he might be on leave at the time of service. However I do not believe that service wills good if the person is employed at a branch office and the service be effected at the head office or visa versa

In *Solomon v Arkin Motors (Pty) Ltd* 1960(4) SA 329 T 330-1 it was held that the subrule cannot be interpreted to mean that service can be effected upon a defendant by

delivering a copy of the summons to the secretary of the company by whom he is employed irrespective of the address at which he is employed.

d) If the person to be served has chosen a domicilium citandi at the domicilium so chosen;

[MC9(3)(d), SC4(1)(a)(iv)]

A domicilium citandi is a place chosen by a person where process in judicial proceeding may be served upon him.

J & B states that in terms of sub-rule (6) a search must be made by the sheriff at the premises and that only after diligent search can he leave the process at the domicilium. This might apply to sub-rule (6) but there is no requirement that a search be made under sub-rule 3(d). This sub-rule adopts the well established practice whereby, if the defendant has chosen a place as domicilium citandi, service at such place will be good, even though it is a vacant piece of ground, or the defendant is known to be resident aboard, or has abandoned the property, or cannot be found, nor can his household or any person who can be regarded as representing him.

e) In the case of a body corporate at its local office or principal place of business within the area of jurisdiction of the court concerned to a responsible employee thereof or in any other manner specially provided by law.

[MC9(3)(e), SC4(1)(a)(v)]

The words principal 'Place of Business' means the main place of business.

Section 170(1) of the Companies Act provides that every company shall have a registered office in the Republic at which all process may be served. This section is permissive and does not purport to make service at the registered office obligatory. It will therefore be a good service if a company is served either at its registered office or

local office, or the principal place of business with the jurisdiction of the court. The three places are offered as an alternative. As long as the company has not formally, changed their registered address at the Registrar of Companies, service will be good even though the process is left at the registered office which the company has ceased to occupy, or by fixing it to the door, or by serving it upon a partner or employee of the firm of accountant for the company, which firm now occupies the registered office.

f) If the plaintiff or his authorised agent has given written instruction to the sheriff to serve by registered post, the process shall be so served.

[MC9(3)(f)]

Although the sub-rule requires that instructions to serve by post must be made in writing it will be sufficient instruction to post a process if the address on the process only has a postal address on it. In *Geregsbode, Meyerton v KGK (Edms) Bpk 1978 (1)* (e) it was held that where a sheriff serves process by registered post in terms of this sub-rule and sub-rule (15), he performs the duties and exercises the powers required entirely within the jurisdiction where the letter is posted, and that he is therefore entitled to serve by registered post a letter addressed to a person outside his jurisdiction.

In terms of *Geregsbode, Meyereton v KGK (Edm)s Bpk (opcite)* it appears that once the sheriff has performed the functions set out in this sub-rule, he has served the process as envisaged in subrule (3)(f). Service is accordingly effected at the time the letter is posted, and the “*dies induciae*” starts to run, however in terms of 12(3) of the Magistrates’ Court Rules judgement will not be granted by the clerk of the court unless the acknowledgement of receipt of the registered letter has been filed by the sheriff with his return of service.

The procedure for posting a process by registered post is that the sheriff will place a copy of the process in an envelop and address and post it by pre paid registered post to the address of the party to be served and also making application at the time of registration for an acknowledgement by the addressee of the receipt thereof.

The Supreme Court makes no provision for service by mail except for the servicing of the notice of attachment of immovable property in the Supreme Court.

g) Where the person to be served keeps his residence or place of business closed and thus prevents the sheriff from serving the process, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

[MC9(3)(5)]

In terms of this rule service must be affected at the current residence or place of business of the person to be served. Service can only be effected in terms of this subrule if it is clear that the person keeps his residence or place of business close to prevent the sheriff from serving the process.

h) Where the sheriff is unable after a diligent search to find at the residence or the domicilium citandi of the person to be served either that person or the person referred to in subrule (3)(b) or, in the case of a body corporate referred to in subrule(3)(e), a responsible employee, it shall be sufficient service to affix a copy of the process to the outer or principal door of such residence, local office or principal place of business or to leave a copy of the process at such domicilium.

[MC9 (6)]

A diligent search is a serious attempt to find the defendant but in Richards v Meyers1909 TS 159 it was held that the search need only be made at the place mentioned in the process, and not another place where the defendant may be.

i) Where the relief claimed in any action is limited to an order for ejectment from certain premises or land or a judgement for the rent thereof and for the costs of such proceedings and it is not possible to effect service in the manner prescribed in

subrule (3), service of process may be effected by affixing a copy thereof to the outer or principal door of such premises or on some other conspicuous part of the premises or land in question.

[MC9(7)]

i) Where two or more persons are to be served with the same process, service shall be effected upon each, except:

1. *In the case of a partnership, when service may be effected by delivery at the office or place of business of such partnership, or if there be none such, then by service on any member of such partnership in any manner herein prescribed;*
2. *In the case of two or more persons sued in their capacity as trustees of an insolvent estate, liquidator of a company, executor, curators or guardians, when service may be effected by delivery to any one of them in the manner herein prescribed;*
3. *In the case of a syndicate, unincorporated company, club, society, church, public institution or public body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairman or secretary or similar officer thereof in any manner herein prescribe.*

[MC9(9)(a)(b)(c)]

In terms of subrule (3) all process must be served 'upon the person affected thereby'. Where more than one person is affected by the process, service must be effected upon all such persons. (Salisbury Municipality v Le Roux 1974(2) SA 185 (R))

LIST OF VARIOUS STATUTES AND PROVINCIAL ORDINANCE THAT PROVIDE FOR THE SERVICE OF PROCESS, NOTICES AND DOCUMENTS.

ADMIRALTY JURISDICTION REGULATION ACT 105 of 1983

Section 4 of the above act deals with the procedure and rules of the admiralty court and states the following: -

- (1) Subject to the provisions of this Act the provisions of the Supreme Court Act 59 of 1959, and the rules made under section 43 of that Act shall mutatis mutandis apply in relation to proceedings in terms of this Act except in so far as those rules are inconsistent with the rules referred to in subsection (2).

THE CLOSE CORPORATION ACT 69 of 1984

In terms of section 25 (1) of the above act, every corporation shall have in the republic a postal address and an office to which, subject to subsection (2) all communication and notices to the corporation should be addressed.

- (2) (a) Any notice order communication or other document which is in terms of this Act required or permitted to be served upon any corporation or member thereof, shall be deemed to have been served if it has been delivered at the registered office, or has been sent by certified or registered post to the registered office, or postal address, of the corporation: and
- (b) Process which is required to be served upon any corporation or member thereof shall, subject to applicable provisions in respect of such service in any law, be served by so delivering or sending it.

THE COMPANIES ACT 61 of 1973

In terms of section 71 of the above Act, any notice, order or other document, which by this Act may be required to be served upon any company, including any external company, may be served by delivering it at or sending it by registered post to the registered office or postal address of the company.

In terms section 170(1) of the above Act, every company including every external company shall have in the republic-

- (a) a postal address to which all communications and notices may be addressed: and
- (b) a registered office to which all communication and notices may be addressed and at which all process may be served.

In terms of section 326(1), every external company shall appoint and shall at all times have one or more persons resident in the Republic authorised by the company to accept on its behalf service of process and any notices required to be served on the company, notwithstanding the provisions of *section 71*.

THE INSOLVENCY ACT 24 of 1936

Section 11(1) states that if a court sequestrates the estate of a debtor provisionally it shall simultaneously grant a rule nisi calling upon the debtor to show cause why his estate should not be sequestrated finally. The order provisionally sequestrating the debtor's estate must be served on the debtor in terms of the provisions of the rules of the Supreme Court. (*Asmal Wholesalers (Pty) Ltd v Dawood 1963 1 SA 250 (N) 255*) however where the debtor has been absent for 21 days from usual place of residence and his business if any with the Republic, the court may direct that it shall be sufficient service of the rule if a copy thereof is affixed to or near the outer door of the building where the court sits and published in the Gazette, or may direct some other mode of service.

THE SMALL CLAIMS COURT ACT 61 of 1984

Section 29(b) 'And issue the summons and hand it to the plaintiff or his authorised representative, who shall personally serve it on the defendant, or deliver it to the messenger of the court for service on the defendant.'

Rule 12 Of the Rules Regulating Matters in Respect of Small Claims Courts No. R 1893 (30 August 1985) sets out the procedure for the service of a process by the sheriff. The procedure is the same as rule 9 of the Magistrates' Court Rules.

THE CONSTITUTIONAL COURT (Act 200 of 1993)

In terms of rule 6 of the Rules of The Constitutional Court, the provisions of rule 4 of the Uniform Rules of court shall apply mutatis mutandis to the service of any process of the Constitutional Court.

RETURN OF SERVICE

A Sheriff's return of service is regarded as prima facie evidence of the truth of its contents. It can be impeached, but the court requires clear and satisfactory proof that it is incorrect. In the Supreme Court a Sheriff must explain the nature and contents of the process or document that he is serving.

In terms of the Constitutional Court Rule 5(3) which reads as follows:

A sheriff who is entrusted with the service or execution of judicial process shall-

- (a) In writing notify the registrar and the party concerned who sued out the process that service or execution has been duly effected, stating the date and the manner of service or the result of the execution, and return that process to the registrar; or
- (b) In writing notify the party who sue out the judicial process concerned if he

or she has been unable to effect service or execution, and the reasons for such inability, and return that process to the party concerned, and to keep a record of any process so returned.

Rule 5(4) of the Constitutional Court Rules require that the sheriff specify the total amount of charges on the original document as well as each copy thereof, and the amount of each of his charges separately on the return of service.

The Board for Sheriffs

Provincial Training Learning Material

Module 4

Execution: Movables And Immovable Property

October / November 2002

EXECUTION

Any court, which has jurisdiction to try an action, shall have jurisdiction to issue against any party thereto any form of process in execution of its judgment in such action.

(SECTION 62(1) of the Magistrates' Court)

General

Process in execution.

Execution is the process whereby satisfaction of a judgement may be enforced. It is a continuing process and is not complete until the judgement creditor is placed in possession of that which the court has awarded him.

In this section we will consider the execution against property, which is resorted to when the debtor fails to satisfy a judgement ordering him to pay a debt.

Stage in execution.

Before it can be said that execution has been levied on the property of a judgement debtor or obtained against him, three essential requirements must have been complied with:

- (a) The issue of a valid warrant
- (b) The attachment of the debtor's property and
- (c) The sale by public auction by the sheriff of the property attached.

A mere attachment puts nothing in the judgement creditor's pocket and does not make available to him the fruits of his judgement. The process of execution is, therefore not

completed until the judgement creditor is placed in possession of that which the court has awarded him. Thus in a judgement sounding in money, execution is not completed until the goods of the judgement debtor have been attached, removed, the sale in execution duly advertised, the goods sold and the proceeds, if sufficient, paid over to the judgement creditor.

Definition: The process of execution takes the form of a warrant or writ of execution. The words warrant and writ are used indiscriminately but warrant usually connotes a warrant of arrest while a writ is used for the attachment of goods. The word writ is commonly used in the Supreme Court. In lectures we will use the word warrant throughout for process of execution.

A warrant of execution is a document under the hand of the clerk of the Magistrates' Court or the registrar of the Supreme Court and addressed to the sheriff authorising and requiring him to raise on the property of the judgement debtor an amount sufficient to satisfy the judgement debt, cost, and the sheriff's fees.

Prerequisites for the issue of a warrant: There must be a judgement liability in which is specifically set out and described the debt or other obligation of the judgement debtor which is to be enforced by the sheriff. A valid judgement is a prerequisite. Neither the Magistrate Court Act nor the Rules authorise or even contemplate the sale of property in satisfaction of any debt, which is not due by virtue of a judgement of a court.

Who may sue out a warrant: the judgement creditor may sue a warrant of execution out, if the judgement is not satisfied. In terms of section 64 of the Magistrates' Court a cessionary or other person who has by operation of law obtained the benefits of the execution creditor. A judgement creditor will then lose his right to issue a warrant.

Against whom may a warrant be issued: A warrant of execution may only be issued against the judgement debtor. Where the judgement has acted in a representative capacity warrants can be issued against him in his representative capacity.

When may a warrant be issued: Except where judgement has been entered by consent or default, a warrant may not be issued without the leave of the court at the time of granting of the judgement, before the day on that on which the judgement was granted. In the Supreme Court there is also no obligation on the judgement creditor to wait for a reasonable time but in *Perelson v Druain*, Solomon J appeared to regard a period of 5 hours as being a reasonable time to allow the judgement debtor to pay.

Number of warrants: As a rule only one warrant of execution may be issued in respect of one judgement.

Form of the warrant: A warrant is issued in accordance with the provisions of rule 36 and form 32 in the Magistrates' Court and in the Supreme Court in terms rule 45(1) and form 18.

MANNER OF EXECUTION

SECTION 66 (MAGISTRATES' COURT)

(1)(a) Whenever a court gives judgement for the payment of money or makes an order for the payment of money in instalments, such judgement , in case of failure to pay such amount of money forthwith, or such order in case of any failure to pay instalments at the time or manner ordered by the court, shall enforceable by execution of the movable property...

RULE 45(1)(SUPREME COURT)

The party in whose favour any judgement of the court has been pronounced may, at his own risk, sue out of the office of the registrar one or more writs for execution thereof.

PROPERTY EXEMPTED FROM EXECUTION

SECTION 67 (MAGISTRATES' COURT)

SECTION 39 (SUPREME COURT)

In respect of any process of execution issued out of any court the following property shall be protected from seizure and shall not be attached or sold, namely

- (a) The necessary beds, bedding and wearing apparels of the execution debtor or his family;
- (b) The necessary furniture (other than beds) and the household utensils in so far as they do not exceed in value the sum of R2000;
- (c) Stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the sum of R2000;
- (d) The supply of food and drink in the house sufficient for the needs of such debtor and his family during the month;
- (e) Tools and implements of trade, in so far as they do not exceed in value the sum of R2000
- (f) Professional books, documents or instruments necessary used by such debtor and his profession, in so far as they do not exceed in value the sum of R2000;
- (g) Such arms and ammunition as such debtor is required by law, regulation or disciplinary order to have in his possession as part of his equipment:

Provided that the court shall have a discretion in exceptional circumstances and on such conditions as it may determine to increase the sums referred to in paragraphs (b), (c), (d), (e) and (f), to the extend of not more than twice such sums.

Other property exempted from execution

- (i) In term of section 3 of the State Liability Act 20 of 1957 no execution, attachment or like process shall be issued against the State in any action or proceedings against the State or against any property of the State. The amount which may be required to satisfy any judgement or order given or made against a nominal defendant or respondent in any such action or proceedings may be paid out of the Consolidated Revenue Fund or the Railway and Harbours Fund as the case may be.
- (ii) The General Pensions Act 29 of 1979 provides in section 2(1) that no annuity or benefit or rights in respect of an annuity or benefit payable under a pension law shall be liable of attachment or subjected to any form of execution under a judgement or order of a court of law. Similar provisions are contained in a number of other Acts: section 37A of the Pension Funds Act 24 of 1956; section 2(1) of the Statutory Pensions Protection Act 21 of 1962; section 14 of the Aged Persons Act 8 of 1967; section 11 of the Blind Persons Act 26 of 1968; section 9 of the War Veteran's Pension Act 25 of 1968; section 9 of the Disability Grants Act 27 of 1968.
- (iii) A right to a benefit or gratuity to which any person is entitled under the Occupational Diseases in Mines and Works Act 78 of 1973 is not subject to execution of a judgement or order of court, except at the instance of the Compensation Commissioner for Occupational Diseases in proceedings to recover an amount to which the payee is not entitled.
- (iv) Section 2(3)(a) of the Matrimonial Affairs Act 37 of 1953 provides that no remuneration, compensation, deposit, share, dividend, proceeds, amount, right, tool, or implement belonging to the wife shall be attached or sold in execution for any liability incurred by the husband for or in connection with the supply of intoxicating liquor. In terms of section 2(3)(b) property which the wife acquired after her husband has deserted her and is shown not to be residing with her is also exempted from attachment

PROPERTY EXECUTABLE

The Supreme Court has inherited jurisdiction, which means that it can authorise the attachment of any thing.

RULE 42 (1) (Magistrates' Court)

Where the property attached in execution is a lease or a bill of exchange, promissory note, bond or other security for the payment of money.

Attachment shall not be complete until after notice to the lessor, lessee or person liable on the bill, or other security, as the case may be.

The attachment shall not be valid unless and until the instrument in question is taken possession of by the sheriff and notice has, in the case of a registered lease or bond, been given to the registrar of deeds concerned.

Section 68(1) distinguishes between a bill of exchange and a cheque. Rule 42(1) does not refer to a cheque. It is therefore not necessary, when cheques are attached that notice in this subrule be given to the drawer of the cheque.

The sheriff may also under any process of execution against movable property attach and sell in execution the interest of the execution debtor in any movable property belonging to him and pledge or sold under a suspensive condition to a third person, and may also sell the interest of the execution debtor in property movable or immovable leased to the execution debtor or sold to him under any hire purchase contract or under a suspensive condition.

The Magistrates' Court is a creature of statute and as such does not have any inherent powers such as the Supreme Court. It has therefore been held that the only incorporeal capable of being executed is those enumerated in section 68 and 72 of the Magistrates' Court.

Rule 42(2) of the Magistrates' Court:

Where the moveable sought to be attached is the interest in the execution debtor in property pledged leased or sold under a suspensive condition to or by a third person or is under the supervision or control of a third person-

Attachment shall be effected by service by the sheriff on the execution debtor and on such third person of notice of the attachment with a copy of the warrant of execution, which service may be effected as if such notice were a summons: Provided that where service cannot be effected in any manner prescribed the court may make an order allowing service to be effected in a manner stated in the order;

The sheriff may, upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser, seller or other third person, enter upon the premises where such property is and make an inventory and valuation of the said property.

RULE 45(8) of the Supreme Court

If incorporeal property, whether moveable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner herein after provided:

(a) Where the property or right to be attached is a lease or bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be completed only when-

Notice has been given by the sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security as the case may be, and

The sheriff shall have taken possession of the writing (if any) evidencing the lease, or of the bill of exchange or promissory note bond or other security as the case may be and in the case of a registered lease or registered right, notice has been given to the registrar of deeds.

Where movable property sought to be attached, is the interest of the execution debtor in property pledge, lease or sold under a suspensive condition, to or by a third person, the attachment shall be complete only when the sheriff has served on the execution debtor and the third person notice of the attachment with a copy of the warrant of execution. The sheriff may upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller enter upon the premises where such property is and make an inventory and valuation of the said interest.

In the case the attachment of all other incorporeal property or incorporeal rights in property aforesaid, the attachment shall only be complete when notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property right is registered, and the sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search to obtain possession of the writing or document;

(ii) The sheriff may upon exhibiting the original of the warrant of execution the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

Property Pledged

In terms of this section only the interest of an execution debtor may be attached and not the actual property which has been pledged. However in order that the pledge property to be exempted from attachment there has to be a valid pledge perfected by delivery. Where there has been no delivery or the property has been returned to the possession of the debtor then the property is capable of attachment. In the absence of delivery the holder of a registered notarial bond over the pledge moveable does not acquire a real right in the movable property sufficient to prevent an attachment.

Interest in Moveable or Immovable Property

An interest in immovable property amounts to a mere personal right to receive transfer thereof, it is not one of the incorporeal immovable enumerated, and cannot be attached.

Incorporeal Property

What is incorporeal property?

Section 68(1) authorises the attachment of moveable property and also the other items listed in this section, but nowhere does the act use the words “incorporeal property, incorporeal rights or incorporeal moveable.” The Magistrates’ Court Act also does not mention the phrase “right title and interest.”

What must be determined is what is incorporeal property. The word incorporeal is a Latin term that simply means ‘without a body.’ So an incorporeal is a thing that cannot be touched. Property on the other hand is something that is capable of being touched and attached.

Sold to him under any hire purchase contract or under a suspensive condition.

This section makes express mention of a hire- purchase agreement only where the execution debtor is a buyer. Where the execution debtor is a buyer under a hire-purchase agreement or under a term suspending ownership, his interest may be attached and sold in execution. The purchaser in execution does not acquire ownership in the goods, but the execution debtor’s interest in the goods, i.e. the rights to possess and use the goods and to become the owner when he paid the instalments due.

Procedure in respect of a warrant:

Rule 41(Magistrates' Court)

(1)Attachment

- (a) The sheriff shall upon receiving a warrant directing him to levy execution on moveable property:
- Repair to the residence, place of employment or business of the execution debtor or to another place pointed out by the execution creditor where moveable property is to be attached as soon as circumstances permit, and there demand payment of the judgement debt and cost
 - Or else require that so much moveable property be pointed out as the said sheriff may deem sufficient to satisfy the warrant,
 - And if such last mentioned request be complied with the sheriff shall make an inventory and valuation of such property,
 - If the property pointed out is insufficient to satisfy the warrant, the sheriff shall nevertheless proceed to make an inventory of so much moveable property as may be point out in part execution of the warrant.

The word 'shall' make the adherence to the provision of the rules imperative and unless there is strict compliance to the rules, there will be no valid attachment.

An attachment can be made at any other place where the execution creditor points out goods that are to be attached. Jones and Buckle say that a failure to demand payment if a demand would clearly be nugatory, will not render an attachment invalid. However in the light of the case of Reichenberg v Deputy Sheriff Johannesburg 1992(2) 381, it is believed that a demand must also be made in the Magistrates' Court. J & B again state that because the words 'point out' is used the goods must be something that can be physically pointed out. It is further suggested that the goods may also be of an incorporeal nature and may not be in a physical state. However care must be taken with instruction from attorneys who insist on attachment of goods, which the debtor may have but is not immediately present.

(b) If the execution debtor does not point out such property, the sheriff shall immediately make an inventory and valuation of so much of the moveable property belonging to the execution debtor as he may deem sufficient to satisfy the warrant or of so much of the moveable property as may be found in part execution of the warrant.

(c) If on demand the execution debtor pays the judgement debt and cost (or part thereof) the sheriff shall forth with endorse the amount paid and the date of payment on the original and copy of the warrant, which endorsement shall be signed by him and counter signed by the execution debtor or his representative.

- (2) So far as may be necessary to the execution of any such warrant, the sheriff may open any door on any premises of any piece of furniture, if opening be refuse or if there be no person there who represents the person against whom such warrant is to be executed and the sheriff may, if necessary, use force to that end.

This subsection allows the sheriff to use force where necessary to execute a warrant however the force use must always be reasonable in the circumstances.

- (3) The sheriff shall exhibit the original warrant of execution and shall hand to the execution debtor or leave on the premises a copy thereof.

This section makes it compulsory for the sheriff to exhibit the original warrant. Failure to exhibit the warrant will make the attachment invalid.

As soon as the sheriff has complied with the foregoing requirements of this rule, the goods so inventoried by him shall be deemed to be judicially attached.

The sheriff shall hand a copy of the said inventory signed by himself to the execution debtor or the same on the premises which copy shall have subjoined thereto a notice of the attachment.

- (1) Where specie and documents are found and attached the number and kinds thereof shall be specified in the inventory and in any such specie or documents shall there upon be sealed and forth with be removed to the office of the sheriff where it shall be safely stored.

- (2) **Removal**

The execution creditor or his attorney shall, where moveable property, other than specie or documents has attached,

- After notification of such attachment, instruct the sheriff in writing whether the property shall be removed to a place of security or left on the premises in the charge and custody of the execution debtor or in the charge and custody of some other person acting on behalf of the sheriff.
- Unless so instructed, the sheriff shall leave the moveable property, other than specie or document on the premises or in the possession of the person in whose possession the said moveable property is attached.
- Provided that the execution creditor or his attorney may, upon satisfying the clerk of the court, who shall grant his approval on the document containing the instruction, of the desirability of immediate removal of the warrant of execution, instruct the sheriff in writing to remove from the possession of the execution debtor all or any of the articles reasonably believed by the execution creditor to in the possession of the execution debtor.
- Where a sheriff is instructed as fore said to remove the moveable property, he shall do so with out any avoidable delay, and he shall in the mean time leave the same in the charge or custody of some person who shall have the charge or custody in respect of the goods on his behalf.
- Any person in whose charge or custody moveable property which has been

attached, has been left, shall not use, let or lend such property, or permit it to be used let or lend, nor shall he any way do any thing which will decrease it value, and if the property attached shall have produced any profit or increase the custodian shall be responsible for any such profit or increase in like manner as he is responsible for the property originally attached.

- If such a custodian, other than the execution debtor makes a default in his duty he shall not be entitled to recover any remuneration for his charge and custody Unless an order of the court is produced to the sheriff requiring him to detain any moveable property under the attachment for such further period as may be stipulated in such order the sheriff shall, if a sale in respect of such property is not pending release from attachment in terms of rule 41 (7)(e) any such property which has been detained for a period exceeding four (4) months. If such order was made on application made ex- party such order shall not be subject to confirmation.

Sale

Any movable property sold in execution of process of the court shall be sold publicly and for cash by the sheriff, or with the approval of the magistrate by an auctioneer or other person appointed by the sheriff to the highest bidder at or near to the place where the same was attached or to which the same has been removed as afore said as may be advantageous for the sale thereof.

The execution creditor shall after consultation with the sheriff prepare an notice of the sale and furnish two copies thereof to the sheriff in sufficient time to enable one copy to be affixed not later than 10 days before the sale on the notice board or door of the court house or other public place where the said court is held and the other as near as may be to the place where the said sale is to take place.

In the opinion of the sheriff the value of the goods exceeds R3000=00 he shall indicate some local or other newspaper circulating in the district and require the execution creditor to publish the notice of sale in that newspaper no less than 10 days before the date appointed for the sale in addition to complying with paragraph and to

furnish him with a copy of the edition of the newspaper in which the publication appeared not later than the day preceding the date of the sale.

- (9) The day appointed for the sale shall be not less than 14 days after attachment, provided that where the goods attached are of perishable nature or with the consent of the execution debtor the court may upon application reduce any period referred to in this sub rule or subrule (8) to such extent and on such conditions as it may think fit.
- (10) A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the said warrant and any warrant referred to in rule 39(2) and the cost of the sale.
- (11) Should the sheriff have a balance in hand after satisfaction of the claim of the execution creditor and of all warrants of execution lodged with him on or before the day immediately preceding the date of the sale and of all costs he shall pay the same to the execution debtor if he can be found otherwise he shall pay such balance into court and the provision of rule 18(10) shall mutatis mutandis apply to any balance paid into court.

SEE FLOW CHARTS FOR FURTHER DETAILS ON THE STEPS TO BE TAKEN.

Diagrams

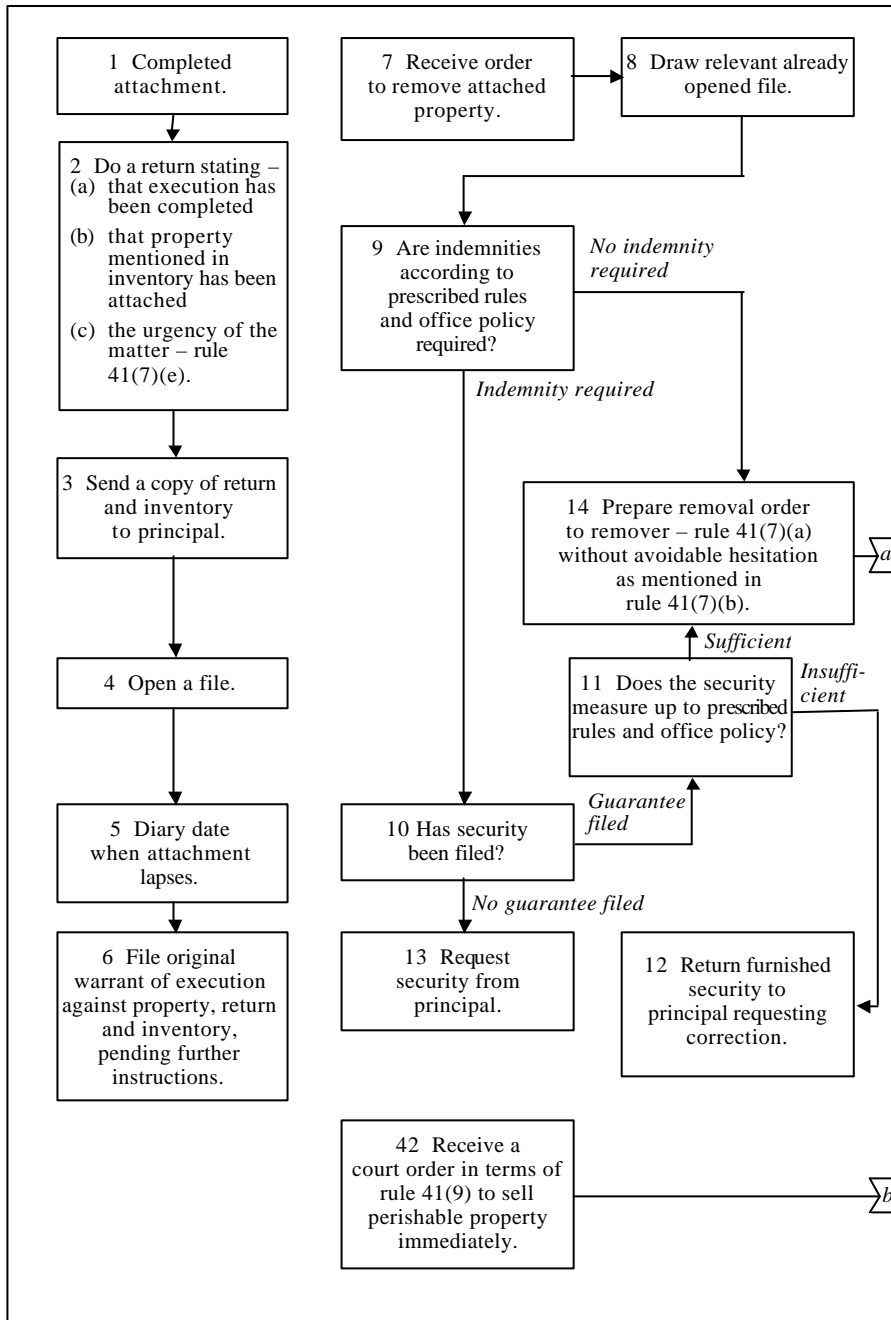
6.1 – 6.3

7.1 – 7.5

8.1 – 8.2

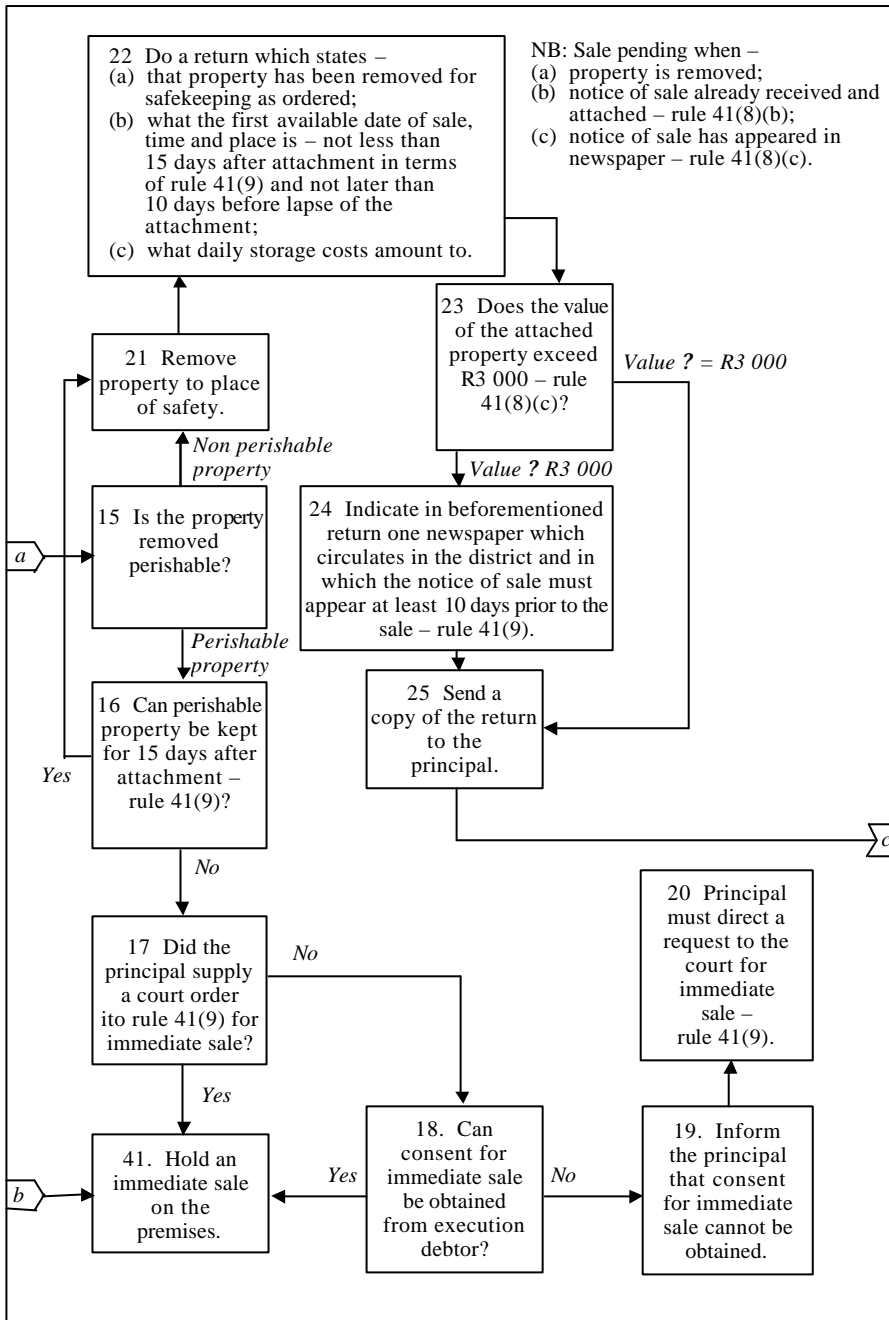
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Diagram 6.1 – Warrant of execution against property – movable property – Magistrate’s Court – attachment



(continued)

Diagram 6.2 – Warrant of execution against property – movable property – Magistrate’s Court – attachment



(continued)

Diagram 6.3 – Warrant of execution against property – movable property – Magistrate’s Court – attachment

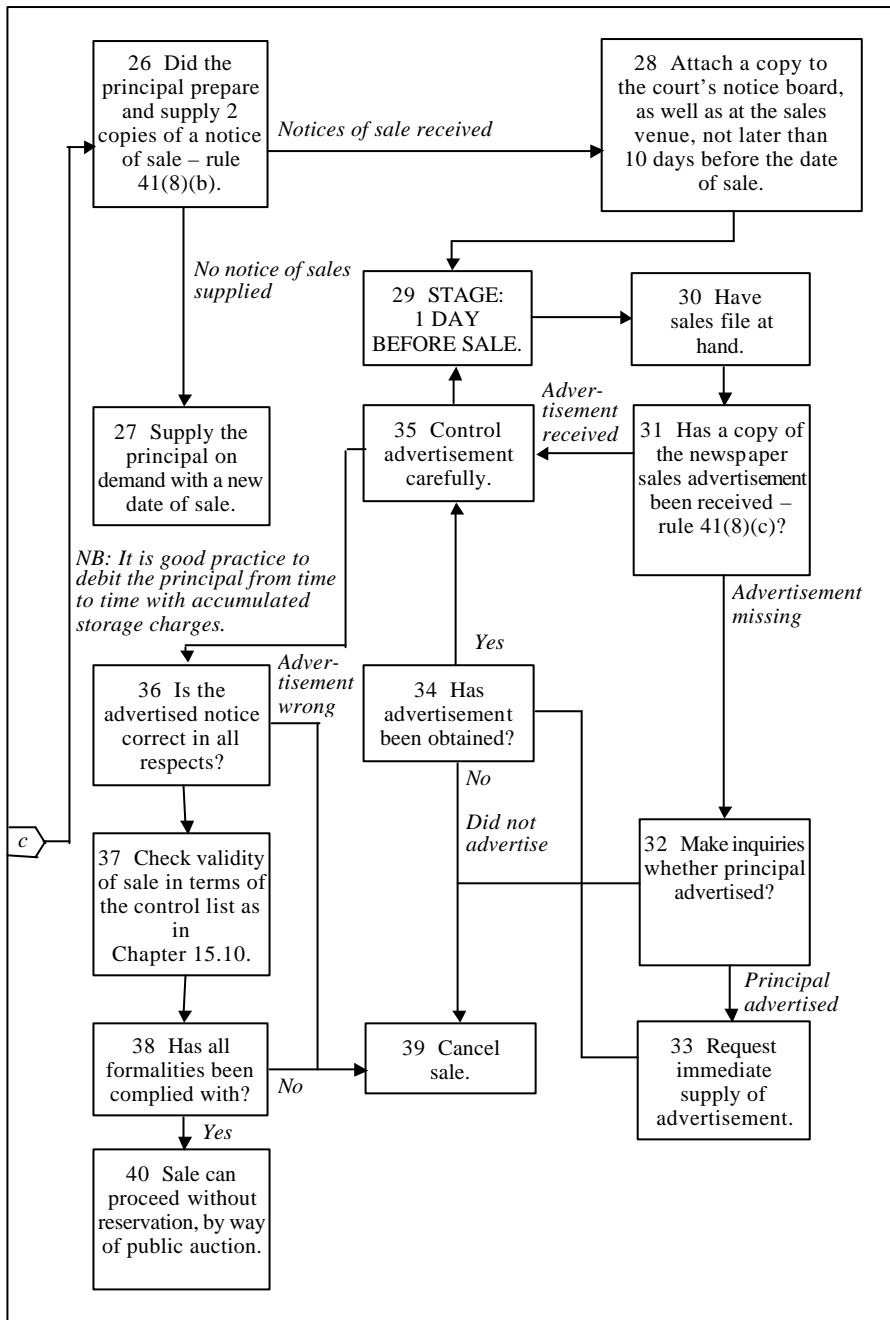
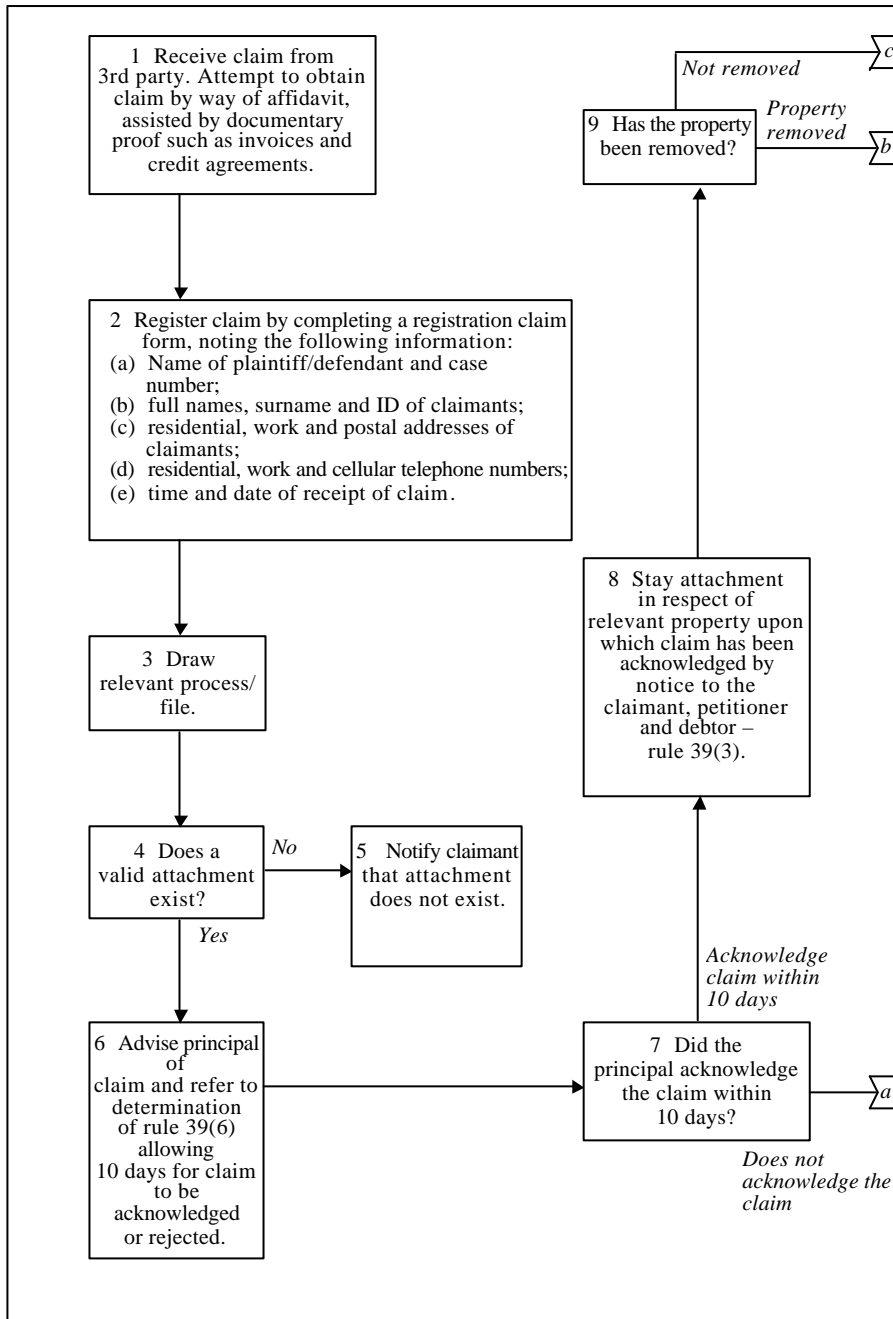
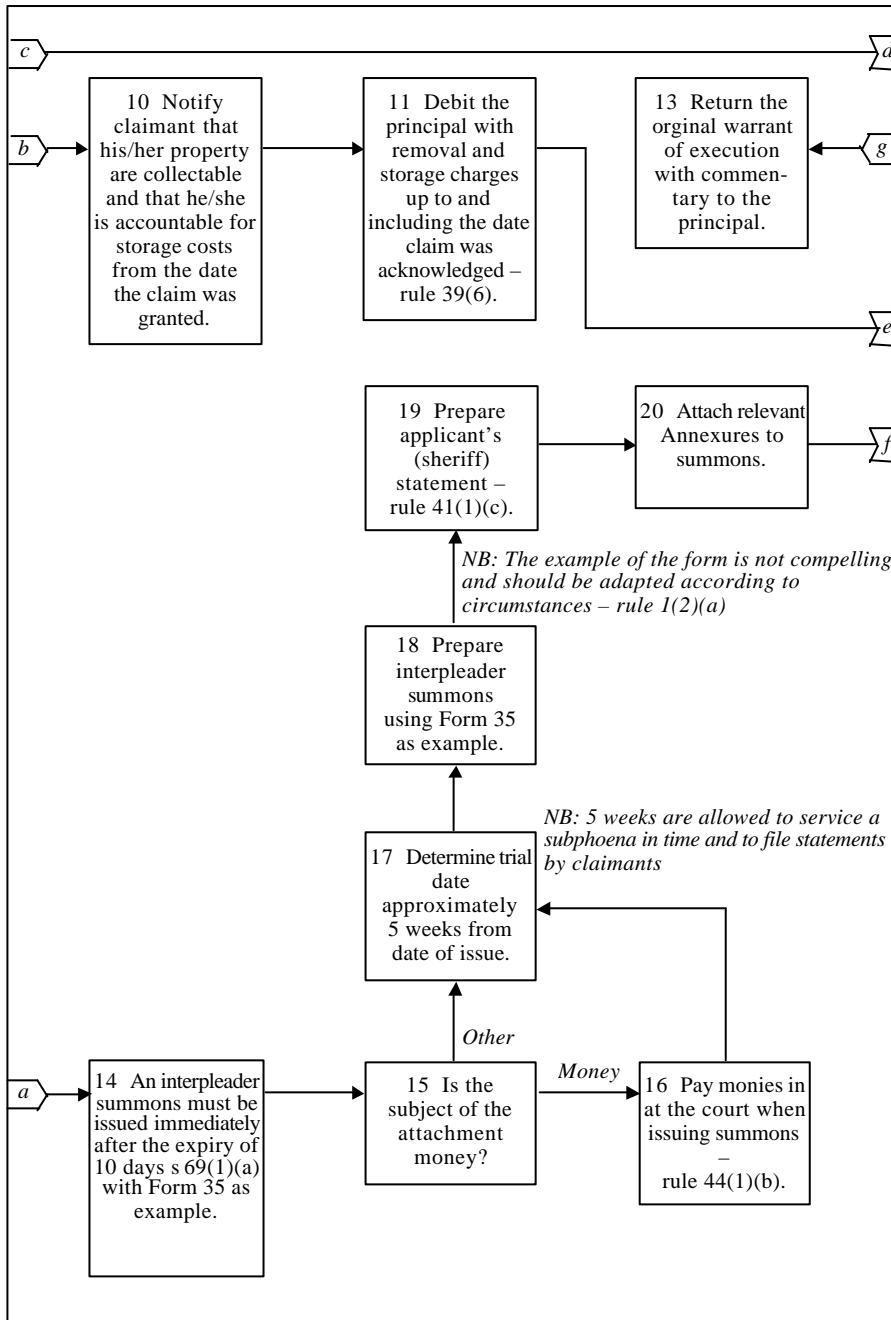


Diagram 7.1 – Warrant of execution against property – moveable property – Magistrate’s Court – interpleader action



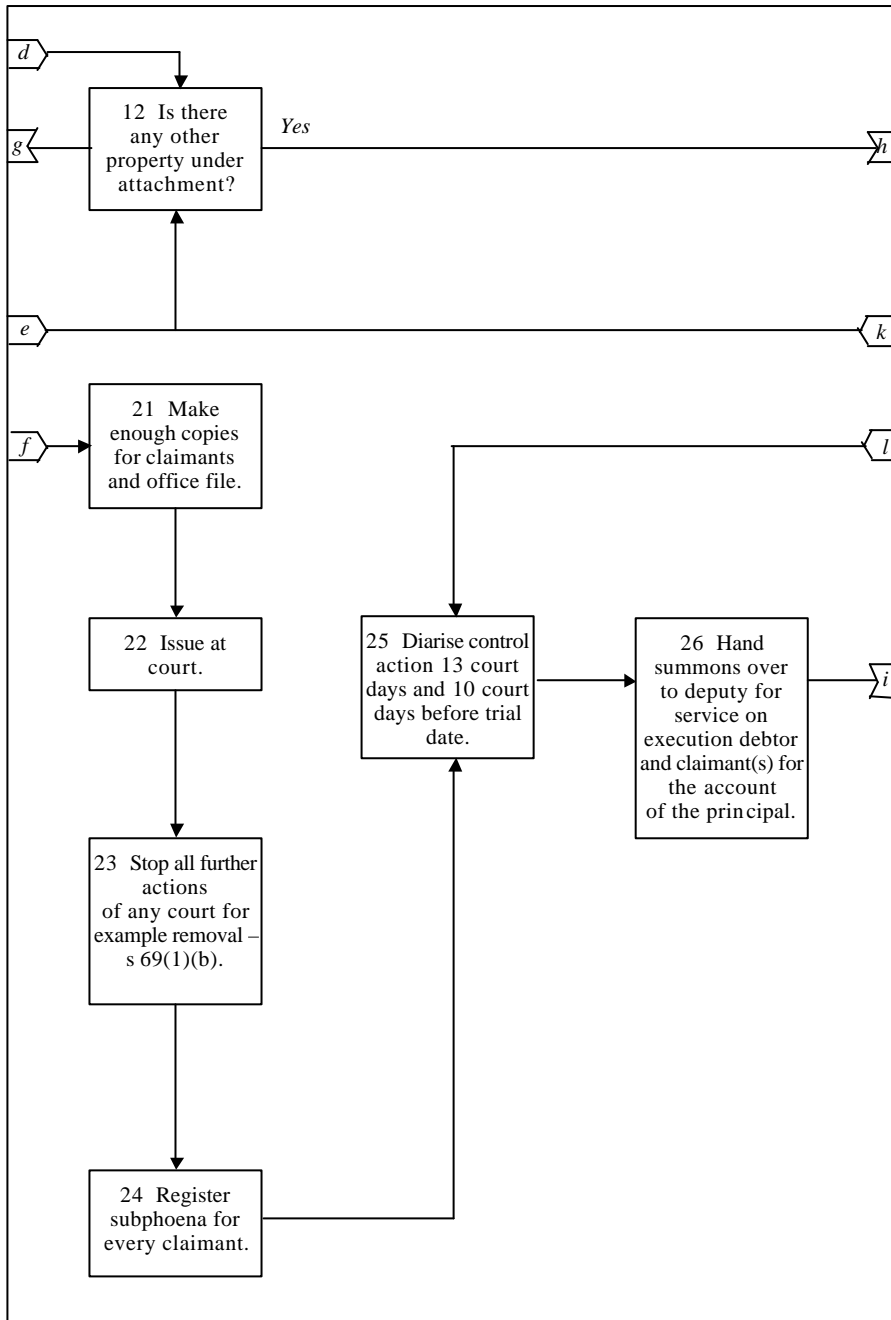
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Diagram 7.2 – Warrant of execution against property – movable property – Magistrate’s Court – interpleader action



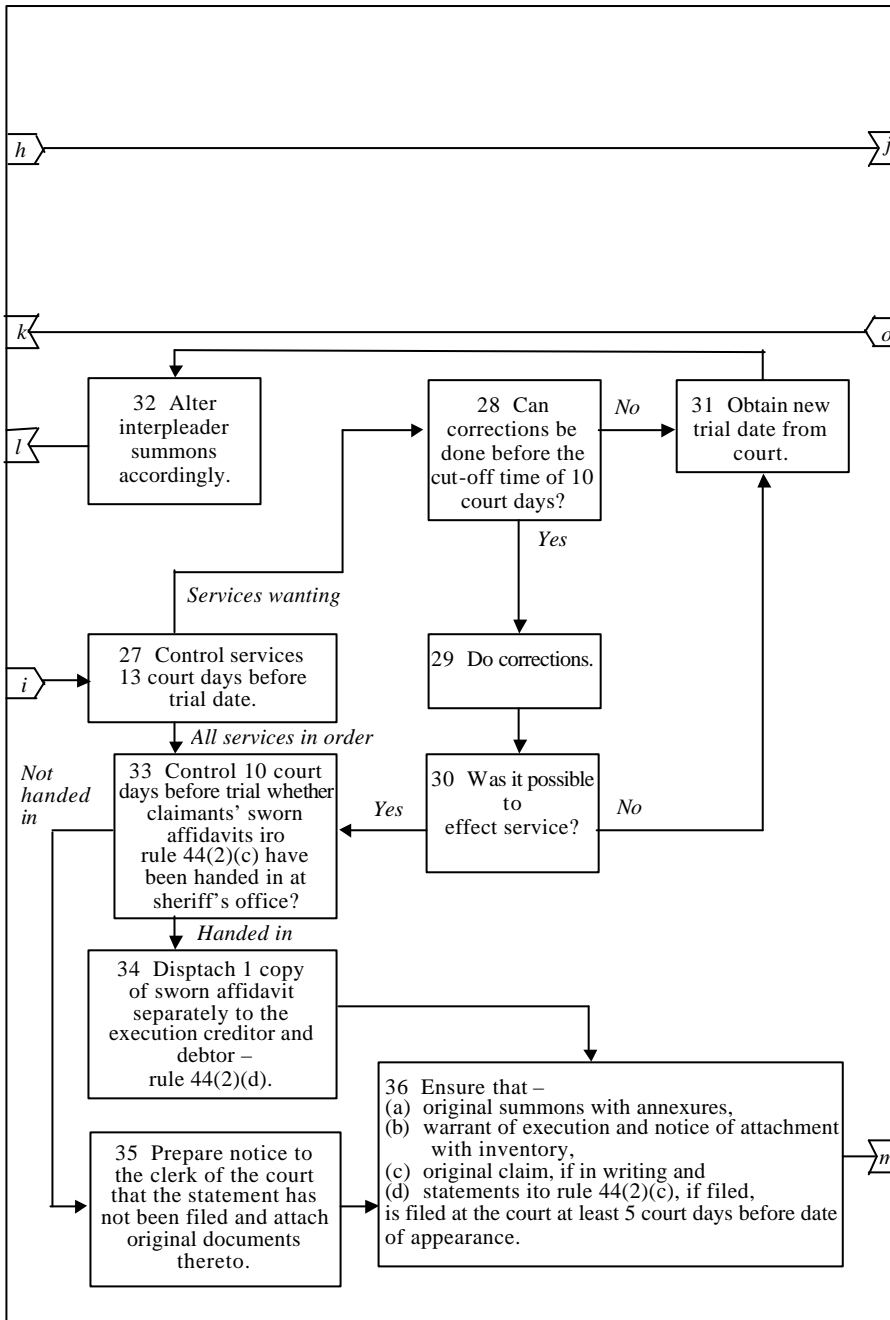
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Diagram 7.3 – Warrant of execution against property – movable property – Magistrate’s Court – interpleader action



(continued)

Diagram 7.4 – Warrant of execution against property – movable property – Magistrate’s Court – interpleader action



(continued)

Diagram 7.5 – Warrant of execution against property – movable property – Magistrate’s Court – interpleader action

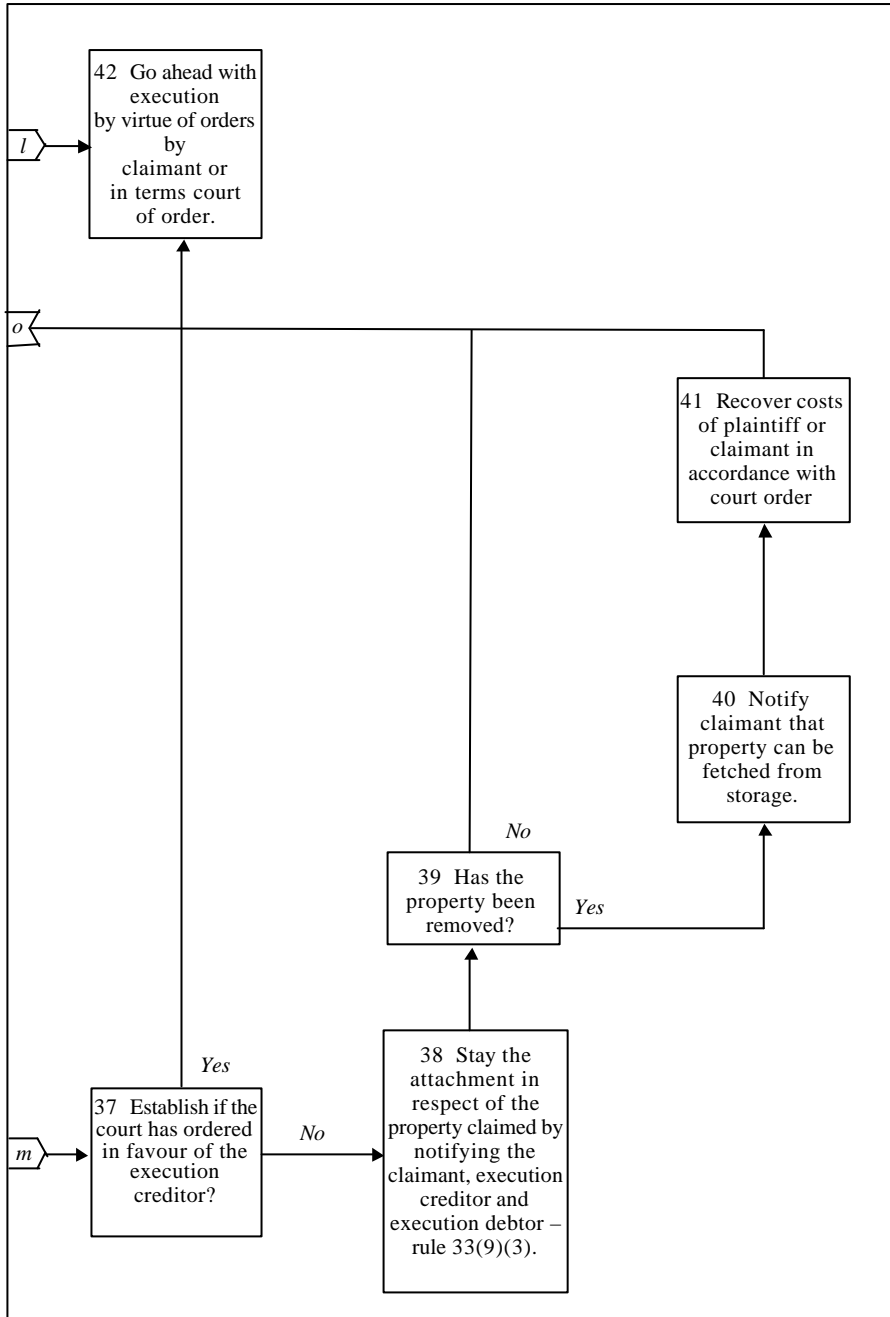
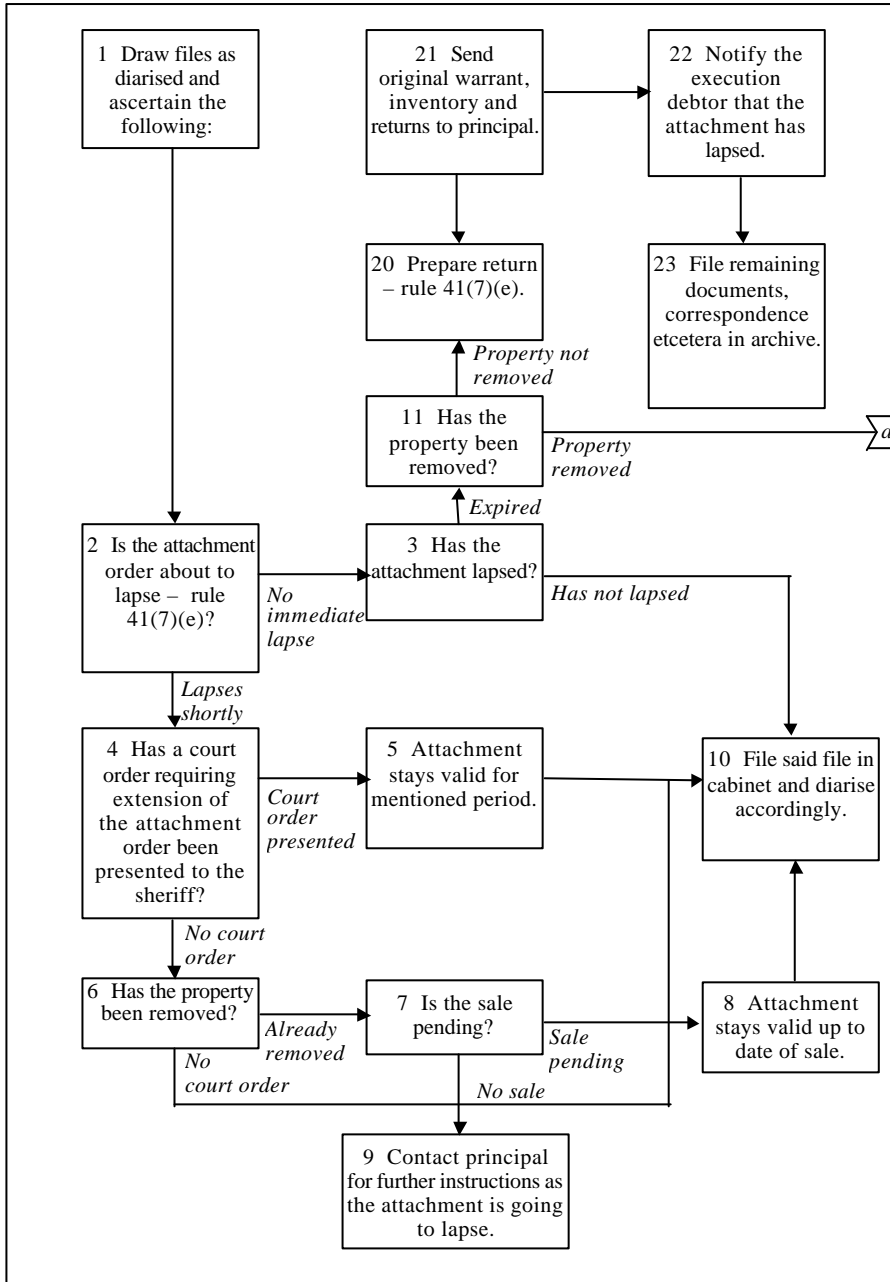


Diagram 8.1 – Warrant of execution against property – movable property – Magistrate’s Court – attachment lapses



(continued)

Diagram 8.2 – Warrant of execution against property – movable property – Magistrate’s Court – attachment lapses

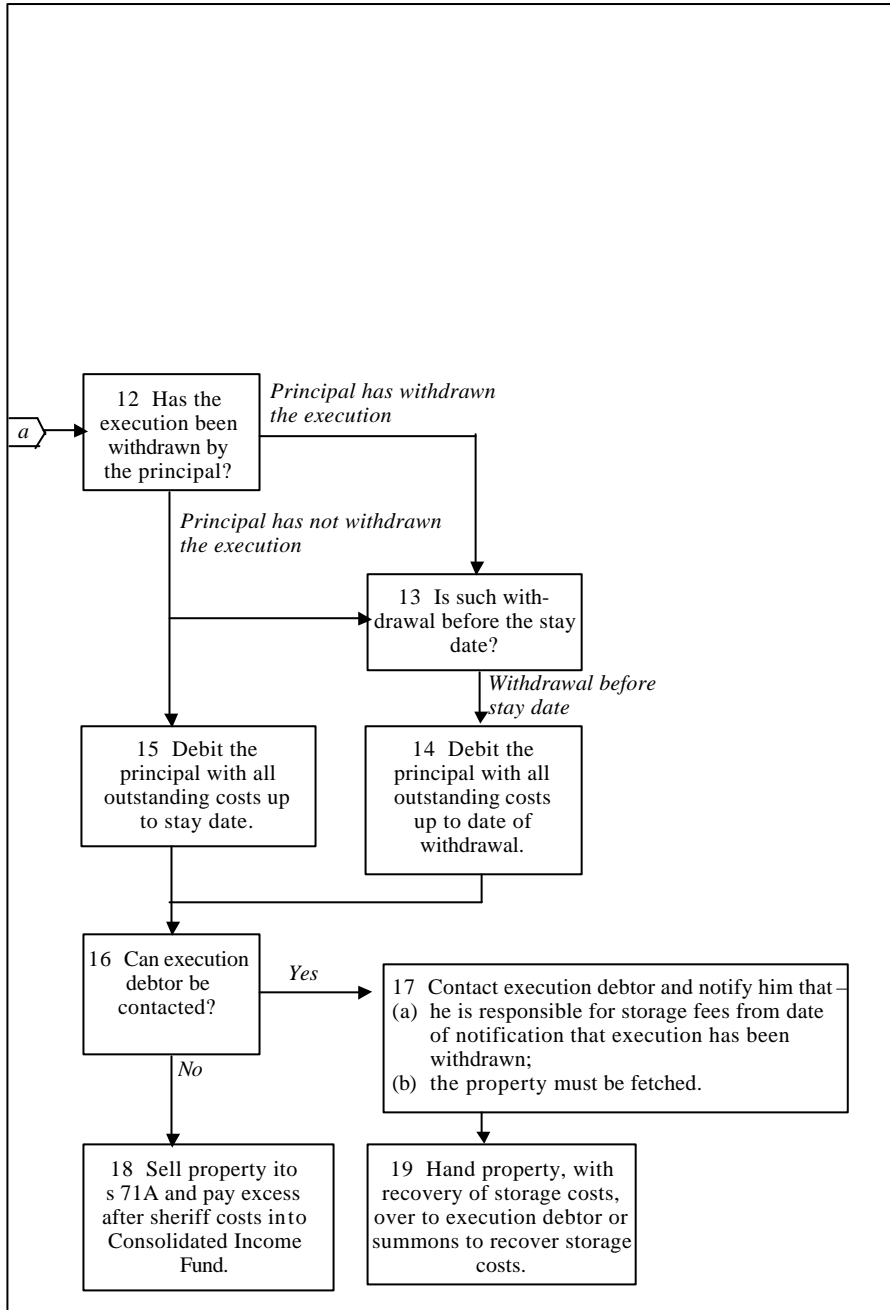
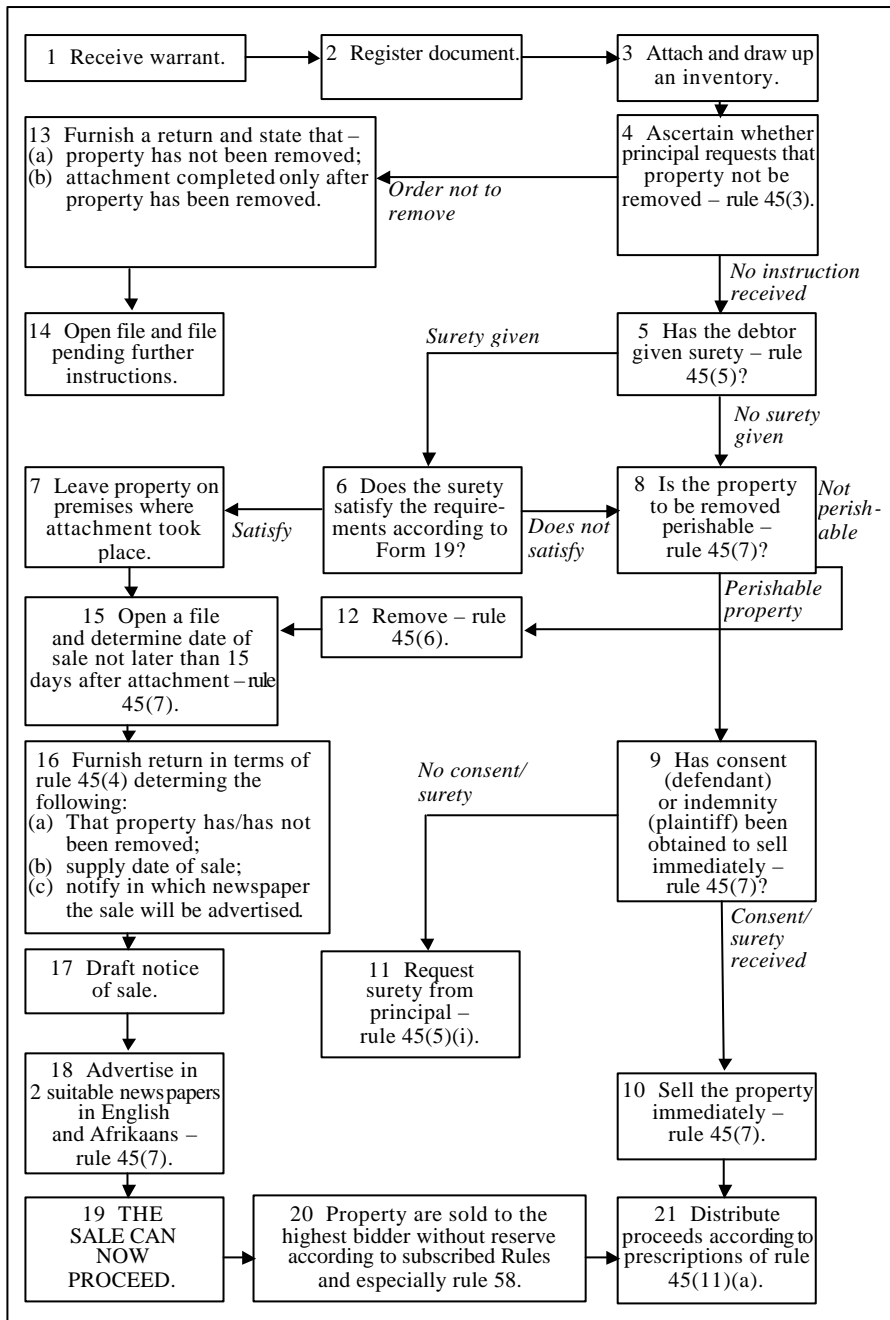


Diagram 9 – Warrant of execution against property – movable property – High Court – attachment



IMMOVABLE PROPERTY ATTACHMENT IN THE MAGISTRATES COURT

The following procedures are essential in the execution against fixed property in terms of the Magistrates Courts Act. 32 of 1944 as amended.

IT IS ALWAYS IMPORTANT TO CHECK ANY DOCUMENT FOR PROPER ISSUE BY THE CLERK OF THE COURT

1. RULE 43 REGULATES THESE PROCEDURES

43 [1] DETERMINES THAT THE WARRANT OF EXECUTION SHALL:

- ~~///~~ Have a full description and address of the property to be attached
- ~~///~~ Contain sufficient information to identify
- ~~///~~ And to give effect to subrule [2]
- ~~///~~ At this stage it is important to determine that the property to be attached is situated in your area of jurisdiction. If not in your area you must dispatch to the relevant sheriff
- ~~///~~ If the execution creditor is not the First Bondholder it is important to determine whether the property was declared executable by the court

When you are convinced that the writ is against immovable property open a cover /file for the immovable property attachment.

DEED CERTIFICATE

Rule 43(3) states that: 'After attachment the sheriff shall ascertain and record whether the said property is subject to any claim preferent to that of the execution creditor and, if that be the case, he shall thereupon notify the execution creditor of the existence of such claim to enable the latter to give notice in terms of section 66(2) of the Act'.

Rule43 [2] determines the initial actions to be take after identification

2. MODE OF ATTACHMENT

By notice issued by the sheriff and served in terms of rules of court

This Notice Of Attachment must be served together with a copy of the Warrant of Execution on:

- ~~/~~~~/~~The execution debtor as owner thereof
- ~~/~~~~/~~The registrar of deeds
- ~~/~~~~/~~All registered holders of bonds registered against the property
- ~~/~~~~/~~All occupants other than the debtor
- ~~/~~~~/~~The local authority where property is situated

3. QUESTIONS:

DO YOU HAVE ENOUGH COPIES TO SERVE?

IF ALL THESE REQUIREMENTS ARE MET PROCEED AS FOLLOWS:

Complete a Notice of Attachment and make enough copies to serve on all relevant parties.

- ~~/~~~~/~~Serve a copy on all relevant parties and the debtor

Where the Registrar of deeds is located outside of your service area:

- ~~/~~~~/~~Send a copy to the relevant sheriff for service

OR

- ~~/~~~~/~~Send a copy by pre-paid registered post to the Registrar of Deeds

4. RETURN OF SERVICE:

- ~~/~~~~/~~Provide the attorney with a full description of the property attached
- ~~/~~~~/~~It is important that a return of service be rendered for each of the determined services
- ~~/~~~~/~~When attachment is complete inform the Execution Creditors Attorney that attachment is now complete

ALL ACTIONS AND SERVICES MUST BE NOTED IN YOUR COVER/FILE AND FILED IN ALPHABETICAL ORDER IN THE DEBTOR'S NAME IN YOUR FILING SYSTEM FOR IMMOVABLE PROPERTIES

5. IMPORTANT ISSUES TO RESEARCH

IF ACTING ON BEHALF OF A PARTY [EXECUTION CREDITOR] NOT BEING A BONDHOLDER OR THE LOCAL AUTHORITY:

~~/~~~~/~~ Have you served on all bondholders?

~~/~~~~/~~ Have the Bondholders and the local authority provided you with the balance of moneys owed in terms of their registered bond?

If the above is not complied with:

IMMEDIATELY REQUIRE BY LETTER [REG/POST] THE INFORMATION REQUIRED. [KEEP COPIES OF ALL CORRESPONDENCE IN FILE]

ATTACHEMENT IS NOW COMPLETE

This file will now stay in your filing system until further action is required. [Note: attachment will lapse in one year's time from date of attachment. [See instructions under 10]

6. WHEN FURTHER ACTION IS REQUIRED BY EXECUTION CREDITORS ATTORNEY

SALE IN EXECUTION

Rule 43 [6] [a] stipulates:

The sheriff shall appoint a day and place for the sale of such property which day shall not be less than 1 month after the service of the notice of attachment

In other words the sheriff will not allow the attorney to fix a date as sometimes is done!

7. ACTIONS TO BE TAKEN BY THE EXECUTION CREDITORS ATTORNEY

Rule 43 [6] [b]

~~/~~~~/~~ Prepare a notice of sale as required in this rule

~~/~~~~/~~ Furnish the sheriff with sufficient copies as required

~~/~~~~/~~ Publish the notice of sale once in a newspaper circulating in the district in which

the property is situated and in the Government Gazette not less than 5 [five] days and not more than 15 days before the sale date

~~///~~ Provide the sheriff by hand or fax with a photocopy of each of the advertisements and in the case of the G/Gazette the number of the gazette in which published.

To effectively control these actions it is suggested that the letter be faxed or dispatched to the Attorney upon request of the date for sale

Rule 43 [7] [a]

The Execution Creditor shall prepare conditions of sale

Provide the sheriff with 2 copies and one copy thereof to all parties entitled thereto [this should be controlled by the sheriff by delivery to the sheriff of proof of delivery as required by this section]

Rule 43 [7] [b]

8. OBJECTION TO THE CONTENTS OF THE CONDITIONS

Any interested party may upon 24 hours notice apply to a judicial officer for amendment thereof

Rule 43 [9] [a]

9. APPOINTMENT OF AN AUCTIONEER IN THE ORDINARY COURSE OF BUSINESS

Within 15 days from date of attachment an auctioneer can be appointed by the Execution Creditor or any party who has interest. Rule 43 [9] [b] regulates this notification.

10. ACTIONS TO BE TAKEN BY THE SHERIFF

~~///~~ Control dates given with a diary of sales in execution.

Enter date in Diary

Not less than 10 days prior to the sale date

~~///~~ Forward notice of sale by registered post to:

~~///~~ Every Execution Creditor who lodged warrant of execution with the sheriff

~~///~~ Every registered mortgagee and

~~///~~ The local authority

Affix a copy of the notice of sale:

~~///~~To the notice at the court house

~~///~~As near as possible to the place where the sale takes place [address of property or sheriff's office]

11. THE SALE IN EXECUTION SHALL BE BY PUBLIC AUCTION TO THE HIGHEST BIDDER WITHOUT RESERVIE SUBJECT TO THE PROVISIONS OF Section 66 [2] OF THIS ACT

The sale shall be in front of the courthouse of the district

Or

For Good cause shown at such other place as the magistrate may determine [by way of written application]

12. SECTION 66

IMPORTANT ISSUES TO NOTE FROM THIS SECTION IN REGARD TO PREFERENTIAL CLAIMS

When execution creditor is:

The Local authority:

This claim is preferential to all other claims or Registered Bonds

THE 1st BONDHOLDER

This claims ranks above the 2nd bondholder and any other writ but the amount owed to the local authority is a secured preferential claim

THE 2ND BONDHOLDER

This claim ranks preferential to any other further registered bonds but bonds but the claim of the 1st Bondholder and the Local Authority is secured. This applies to any further registered bonds as explained here

ANOTHER PARTY THAN REGISTERED BONDHOLDERS

This claim will participate with any writ in the possession of the sheriff [day before the sale] on a pro-rata basis provided that all other secured [preferential claims are covered as stated above].

13. AUCTION

PLANNING THE AUCTION

☞☞ The sheriff should approach the sale in a professional way by making other sale notices and putting them up at the site prior to the sale to attract buyers

AT THE AUCTION

☞☞ The sheriff shall at the sale disclose to the buyers/bidders the outstanding rates and or any other servitude's that may exist before selling if he/she has the information

☞☞ It is also necessary to disclose whether transfer duties or V A T will be payable by the purchaser

☞☞ All other relevant information pertaining to percentage of Interest payable and on what amount [balance of purchase price or balance of claim]

☞☞ The sheriff shall read out the conditions of sale to those present.

☞☞ The bidders should be allowed to ask questions if anything seems unclear.

ATTACHEMENT OF IMMOVABLE PROPERTY IN THE HIGH COURT

VALIDATING THE WARRANT

All the necessary steps in validating the document and preparing the Notice of attachment as stipulated in the Magistrates Court previously apply.

ATTACHMENT

In attaching immovable property in the High Court the sheriff will only send by registered post a copy of the Warrant of Execution together with the Notice of Attachment to:

- ?? The Defendant at the address of the property as stipulated in the Warrant provided
- ?? The Registrar of Deeds by pre-paid Registered post
- ?? The occupier [Rule 46(3)] if not the Execution Debtor

Once the Execution Creditor or its Attorney instructs the Sheriff to proceed with the Sale in Execution the sheriff shall

- ?? Fix a date and time for the Sale in execution not less than one month after completion of attachment [Rule 46(7)(a)]
- ?? Rule 46(8)(a) requires that conditions of sale be prepared by the Execution Creditor not less than 20 days prior to the date of sale.

- ?? Require with proof that a copy of the Conditions of sale was sent by the Creditors Attorney to the preferent creditors in terms of Rule 46(5)(a)
- ?? Arrange for the publication of the Sale in a local paper and the Government gazette at least 5 days before but not more than 15 days prior
- ?? Furnish the sheriff with proof of advertisement before the sale

Then proceed to serve the Notice of Sale on every judgement creditor and preferably a copy of the warrant of Execution and Notice of Attachment on all the interested parties.

Rule 46(7)(d) states that: 'Not less than ten days prior to the date of sale, the sheriff shall forward by registered post a copy of the notice of the sale referred to in paragraph (b) to every judgement creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known.

Paragraph (b) states that ' The execution creditor shall, after consultation with the sheriff, prepare a notice of sale containing a short description of the property, its situation and street number, if any, the time and place for holding of the sale and the fact that the conditions may be inspected at the office of the sheriff, and he shall furnish the sheriff with as many copies of the notice as the latter may require'.

A return of service shall be compiled and handed to the Execution Creditors Attorney for each service so affected.

A copy of the notice of sale must be affixed to the property to be sold, on the Notice Board at the Magistrates Court and the sheriff's office.

AUCTION

It is suggested at this point that the facilitator set up a mock auction by acting as the Auctioneer and that the learners act as possible buyers.

Request that the bidding start and take the process through to knocking down the sale to the highest bidder

The facilitator is requested to use this opportunity to explain all the important elements to the bidders [learners]

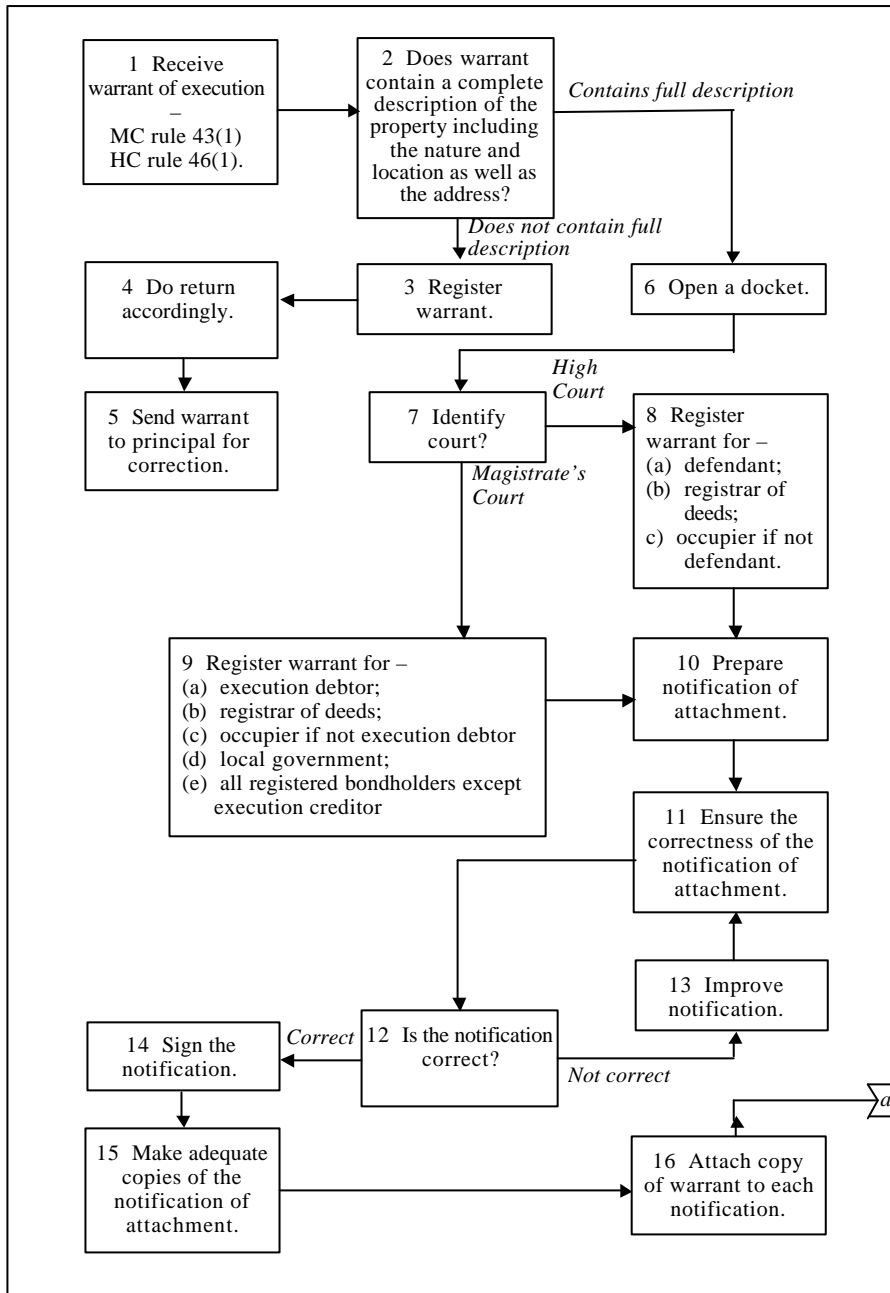
Make it a fun affair!

SEE FLOW CHARTS FOR FURTHER DETAILS ON THE STEPS TO BE TAKEN

Diagrams

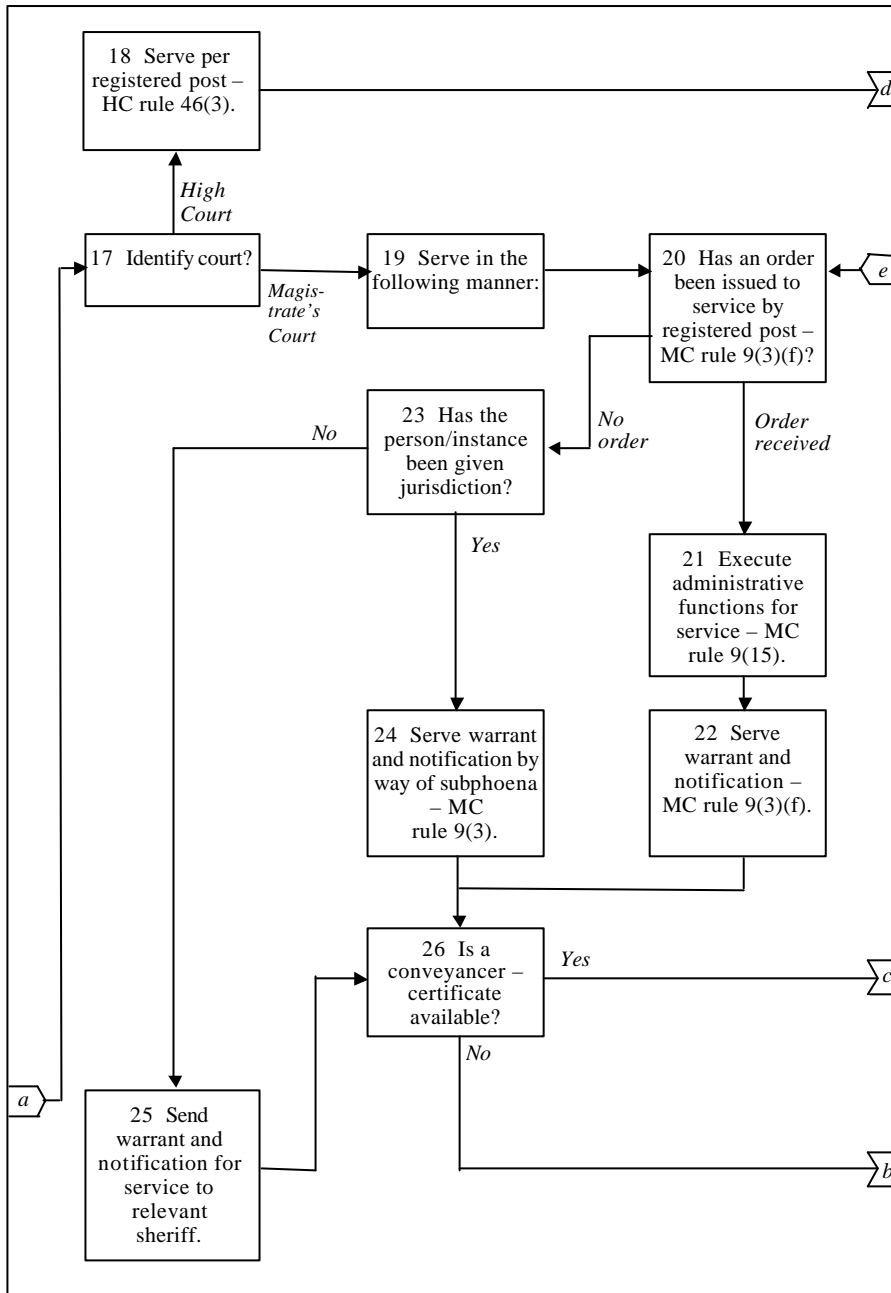
10.1 – 10.3	Immovable property High Court and Magistrates Court
11.1 –11.4	Immovable property Sale High Court and Magistrates Court

Diagram 10.1 – Warrant of execution against property – immovable property – Magistrate’s Court, as well as warrant for attachment – immovable property – High Court – attachment



(continued)

Diagram 10.2 – Warrant of execution against property – immovable property – Magistrate’s Court, as well as warrant for attachment – immovable property – High Court – attachment



(continued)

Diagram 10.3 – Warrant of execution against property – immovable property – Magistrate’s Court, as well as warrant for attachment – immovable property – High Court – attachment

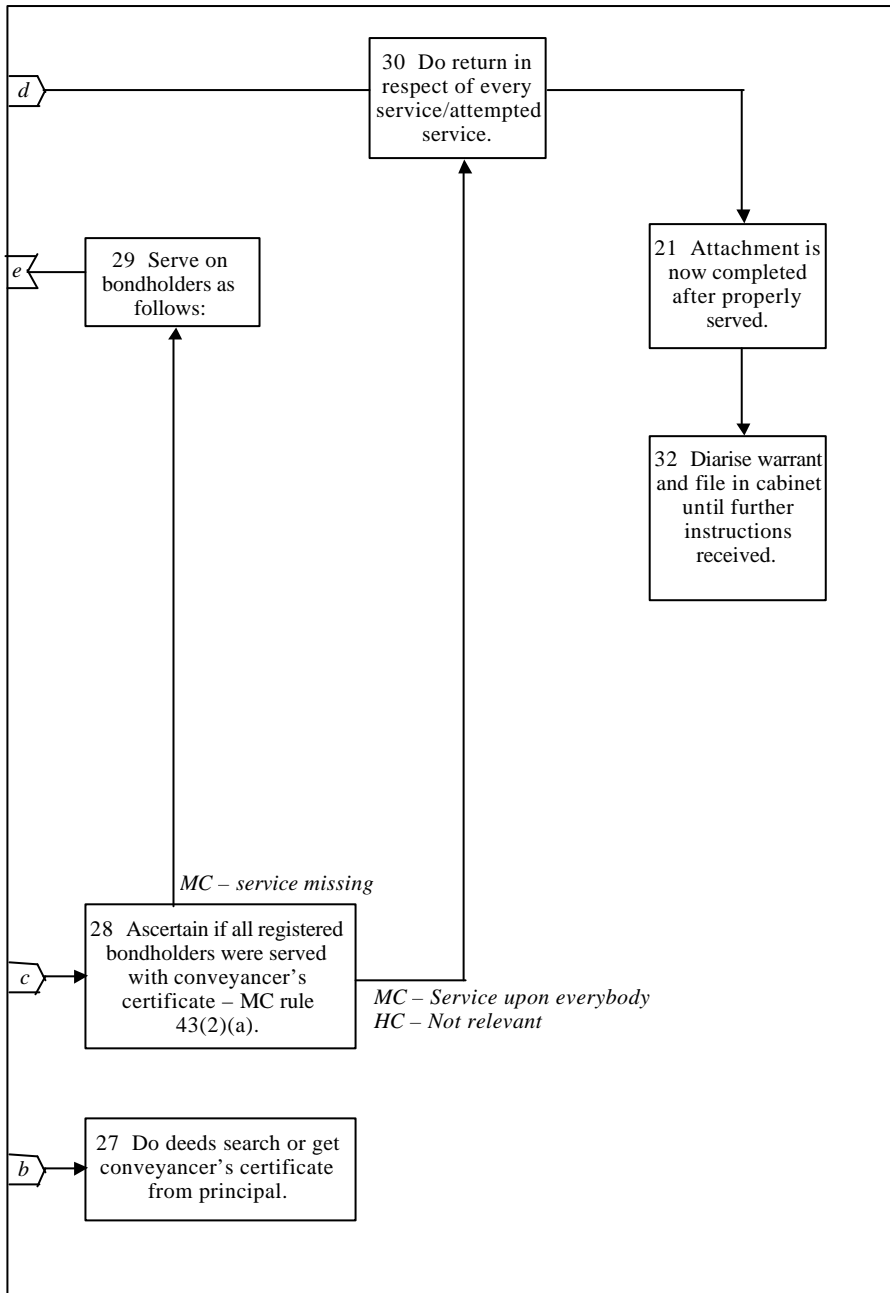
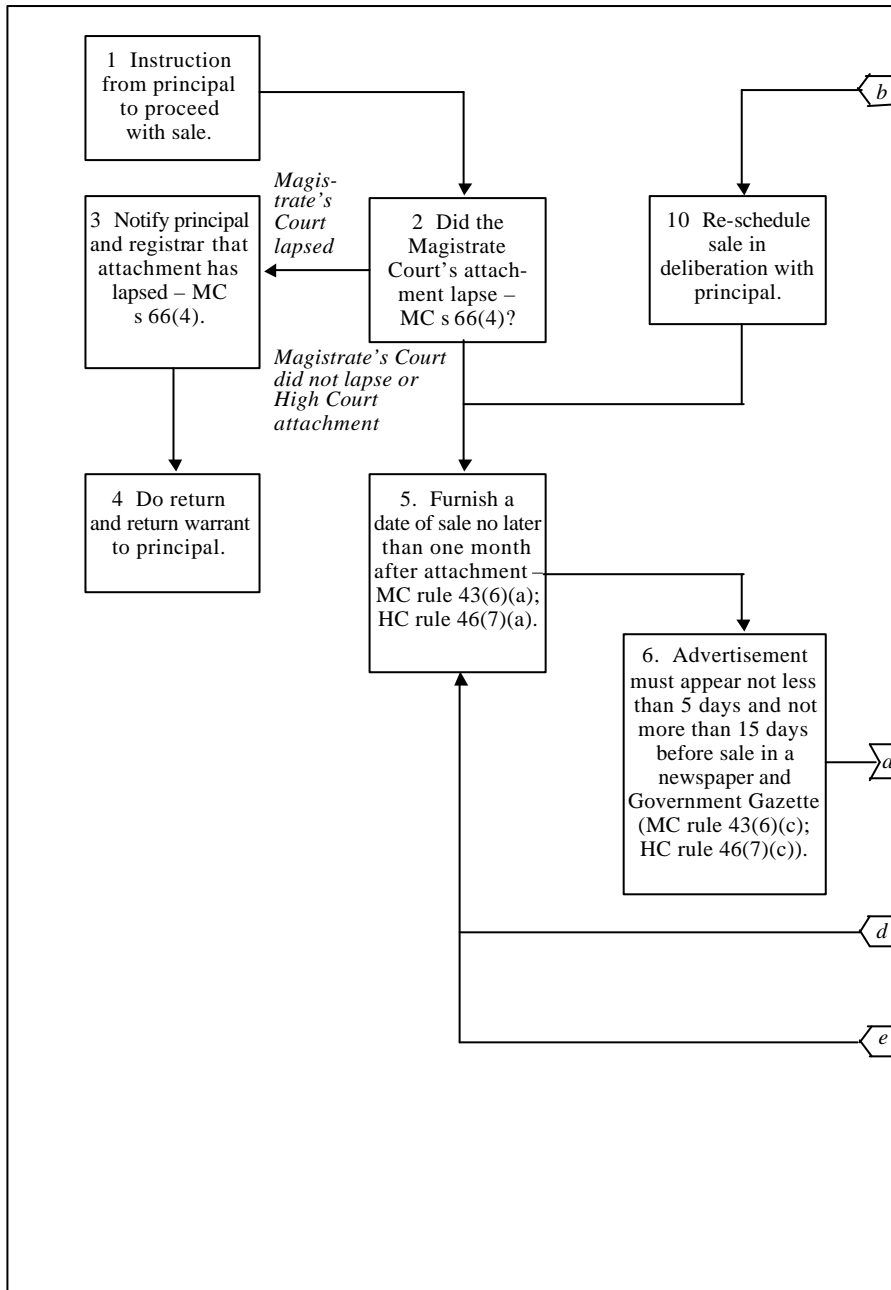
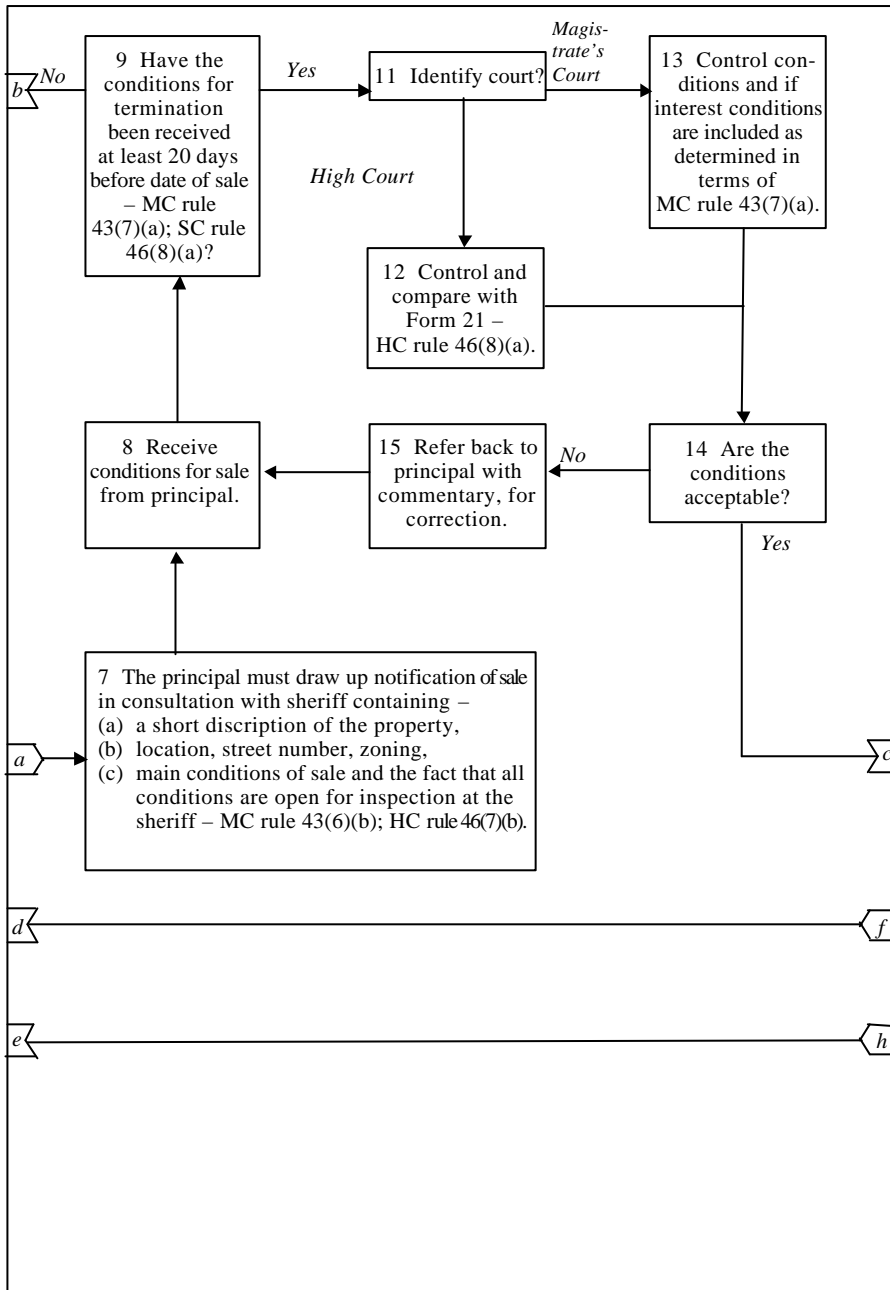


Diagram 11.1 – Warrant of execution against property – immovable property – Magistrate’s Court, as well as warrant for attachment – immovable property – High Court – sale



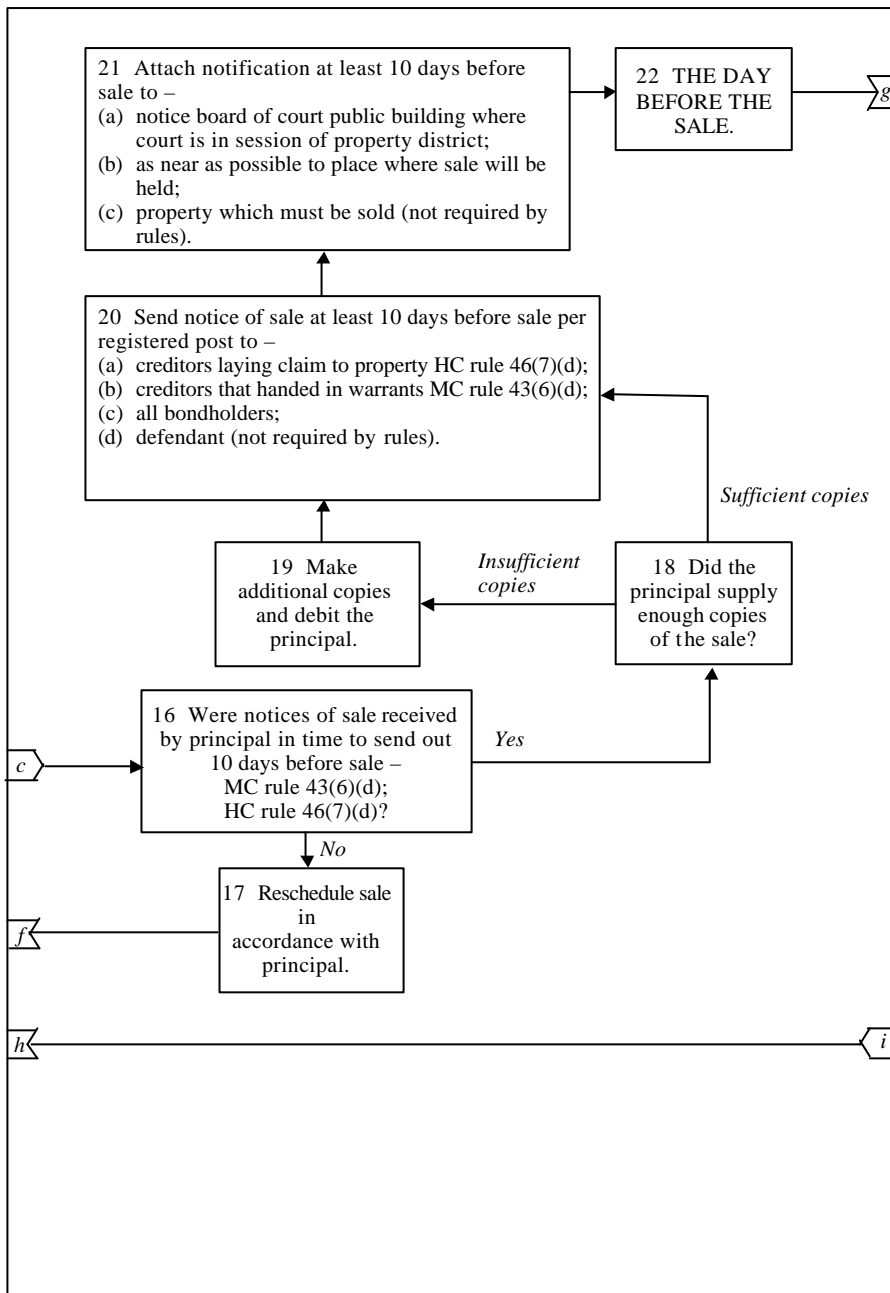
(continued)

Diagram 11.2 – Warrant of execution against property – immovable property – Magistrate’s Court, as well as warrant for attachment – immovable property – High Court – sale



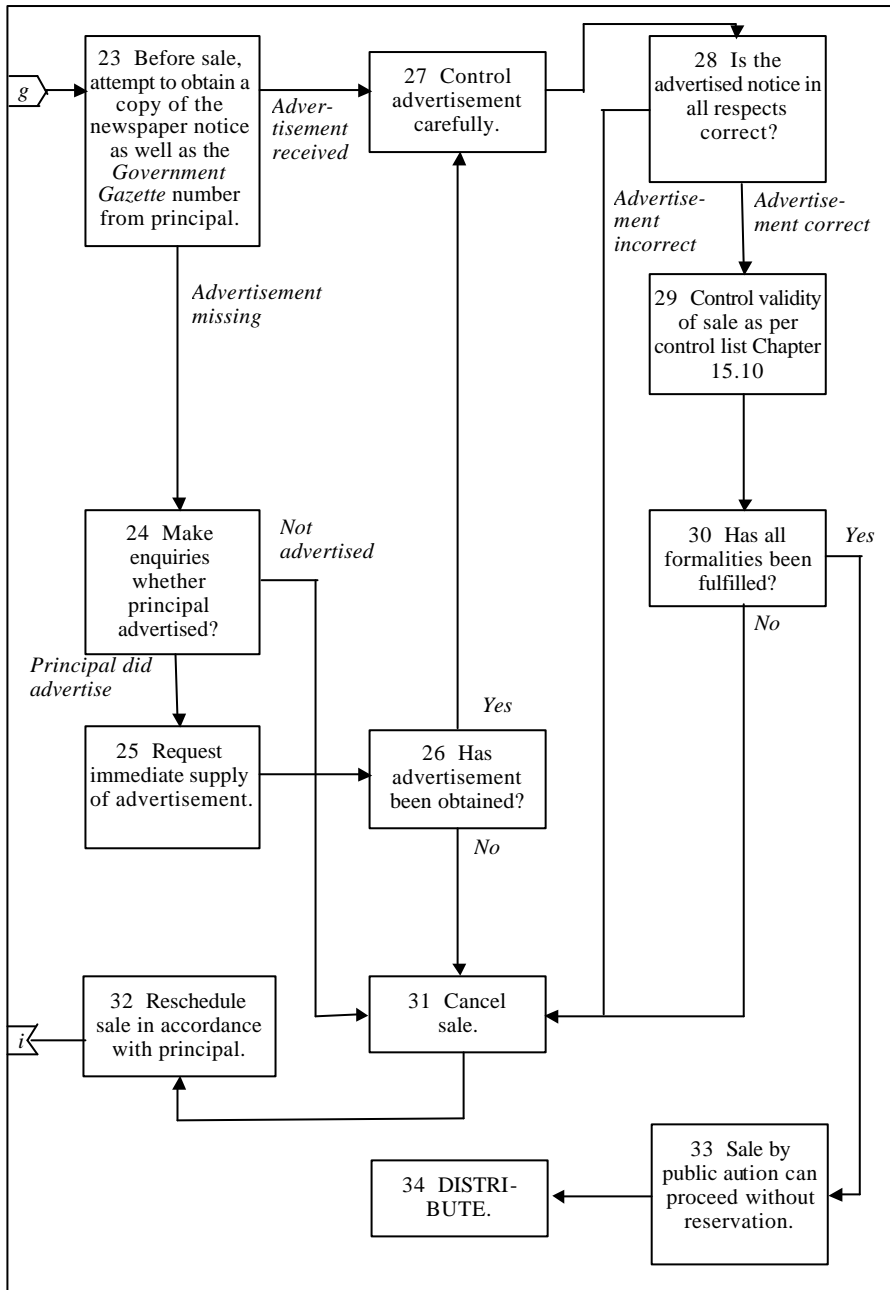
(continued)

Diagram 11.3 – Warrant of execution against property – immovable property – Magistrate’s Court, as well as warrant for attachment – immovable property – High Court – sale



(continued)

Diagram 11.4 – Warrant of execution against property – immovable property – Magistrate’s Court, as well as warrant for attachment – immovable property – High Court – sale



The Board for Sheriffs

Provincial Training Learning Material

Module 5

The Sheriff / Board Relationship (Including Financial Issues)

October / November 2002

CONSTITUTION OF THE BOARD FOR SHERIFFS

(Section 9 of the Act)

The Board consists of 12 member appointed as follows:

Not fewer than six and not more than nine sheriffs each from a different province chosen by the Minister from among at least 12 sheriffs whose names have been submitted by the Sheriffs profession.

Not fewer than three and not more than six other persons, one of whom must be nominated by the attorneys' profession, who are fit and proper and broadly representatives of the South African community.

The current Board is made up of the following members:

Mrs. N Nduna: Chairperson	Chief Magistrate Kimberley
Mr A Makwetu: Deputy Chairperson	Sheriff & Institute Chair
Mr P Maluleke	South African Banking Council
Mr J Fourie	Sheriff , Simonstown
Mr S Ismail	Sheriff, Pretoria North West
Mr C de Wet	Sheriff, Bloemfontein Wes
Mr A Mali	S.A.N.C.O
Mr P Phiri	Sheriff, Nebo
Mr N Govender	Sheriff, Durban South
Ms C Duval	Consumer Council
Ms C Fortuin	Legal Resource Centre
Ms R Allie	Cape Law Society

Annual Levies

(Section 19) Every sheriff shall annually on or before the prescribe date pay the prescribed levy to the Board.

(Regulation 6) for the purpose of section 19 (1) of the Act every sheriff shall annually on or before July pay to the Board a levy of 0.60 per cent of his net income of the preceding financial year, ending on the last day of February.

Position of Trust of Sheriffs

Section 22(1) Every sheriff shall open and keep a separate trust account, which shall contain a reference to this section, with a banking institute or building society, and shall forthwith deposit therein the moneys held or received by him on account of any person.

If you do not cause your record to be audited the Board shall not issue a fidelity fund certificate to you. Sect. 33(1)

- (2) An auditor who has performed an audit in terms of subsection (1) (b) shall as soon as possible after completion of the audit furnish the Board with report on his findings on the prescribed form. (Form 7) reg.9)

Regulation 7

Every sheriff shall keep or cause to be kept a register of all process received for service or execution by his office, in which shall be entered the following particulars:

- (a) The date on which a process is received
- (b) The case number in question.
- (c) The nature of the process
- (d) The parties involved
- (e) The fees or expenses charged in respect of the service or execution of the process.
- (f) The fees or expenses paid in respect of such service or execution; and
- (g) Any amount outstanding in respect of such service or execution.

Guidelines for an appointed sheriff

If you should be appointed as Sheriff you must:

- ~~✍~~ Apply to the board for Sheriff for your fidelity fund certificate. (*Without this you may not practice as a sheriff*)
- ~~✍~~ Register with the Receiver of Revenue as an employer, provincial tax payer, vat on execution of sales, if your yearly income will exceed R 150 000.00 as a vat vendor.
- ~~✍~~ Appoint the necessary employees.
- ~~✍~~ Register the deputies with the Board For Sheriffs.
- ~~✍~~ Register with the Unemployment Insurance Fund as an employer.
- ~~✍~~ Register as an employer with the workmen's compensation.
- ~~✍~~ Register with the regional services council.
- ~~✍~~ Find suitable offices as well as storage facilities within your jurisdiction.
- ~~✍~~ Arrange with telkom for the necessary telephone lines.
- ~~✍~~ Arrange for the necessary office furniture, computer as well as software.
- ~~✍~~ Arrange for insurance cover and security at the premises.
- ~~✍~~ Open two banks accounts;
 - ?? Business cheque account
 - ?? Trust cheque account.
- ~~✍~~ The name of your trust account must be sheriff trust account into section 90 of the sheriffs' act 1986.
- ~~✍~~ Order the necessary law books from Juta or Butterworths and arrange for the updating thereof.
- ~~✍~~ Arrange for the necessary receipt books, vat invoice books for the execution of sales, vedurol invoices, and notice of attachment forms etc.

Application for a Fidelity Fund Certificate.

Sec. 31(1) a sheriff may apply on the prescribed form to the Board for a fidelity fund certificate. (Reg. 3(1) form 4)

Sec. 31(2) an application referred to in subsection (1) shall be accompanied by the prescribed contribution.

Reg. 3(2) an application for a fidelity fund certificate shall be accompanied by a contribution of R50-00 as well as a further contribution of R100-00 in respect of each deputy sheriff that is in the employ on 30 September of the year preceding the calendar year regard to which the fidelity fund certificate is to be issued.

Reg.3 (7) every application for the renewal of a fidelity fund certificate shall be made on or before 31 October of the preceding the year for which the certificate is required.

Performance of remunerative work outside office of sheriff.

Section 53

No sheriff shall without the approval of the minister perform or engage himself to perform remunerative work outside his office as sheriff.

Prohibition of performance of function of sheriff in certain circumstances.

31(1) a sheriff or his deputy shall not perform any function assigned to a sheriff by or under any law unless-

- (a) The sheriff is a holder of a fidelity fund certificate; and
- (b) The sheriff obtains professional indemnity insurance to the satisfaction of the performance of his or her function in terms of this Act.
 - (2) The Board may prescribe the minimum cover requirements to be complied with the contingencies to be covered by such insurance.

E.g. S. Ismail Sheriff Pretoria North West Trust Account in terms of section 22(1) of Act 90 of 1986'

Sect.22 (2) a sheriff may invest in a separate saving or other interest bearing account opened by him with a banking institute or building society any money deposited in his trust account and not immediately required for any particular purpose. A saving or other interest bearing account referred to in paragraph

(a) shall contain a reference to this subsection.

Sec. 22(3) The amount standing to the credit of an account opened by the sheriff in terms of subsection (1) or (2) shall not form part of the assets of that sheriff or, if he dies or become insolvent, or his deceased or insolvent estates. (The Fidelity Fund will cover this money)

Payment of Interest to the Fund

Sec. 22(4) Interest on moneys in an account mentioned in subsection (1) or (2) shall unless the person on whose behalf the sheriff is holding or has received those moneys, in writing indicates otherwise, be paid in prescribed manner to the Fund by the sheriff concerned.

Reg. 8(1) interest on moneys in an n account shall be paid annually to the fund within a period of 150 days after the last day of February (31 July) by the sheriff concerned.

Provided that, before a sheriff pay the interest to the fund, he may deduct his or hers expenses incurred in respect of his or her trust account from he interest accrued on the trust account in accordance with a tariff and procedure prescribed by the Board.

Reg.8 (2) such payment of interest shall be accompanied by a certificate in which an auditor shall specify the amount of interest which has accrued to the account of the sheriff during the year ending on the last day of February.

The Fidelity Fund will not cover any money, which is not in the sheriff's trust account or which the sheriff has dealt with in terms of the instructions of he person on whose behalf the sheriff is holding or has received money.

Bookkeeping and auditing of accounts

Section 23(1) a sheriff shall

- (b) Keep separate records of money deposited or invested by him in and payments made by him out of an account mentioned in section 22(1) and (2).
- (c) Cause the record referred to in paragraph (a) to be audited by an auditor at least once annually.

A B C OF TRUST MONEY

A- ENDORSE THE WARRANT OF EXECUTION

RECEIVED THE AMOUNT OF R457.98 FROM: MR. M N MTOMBIWA

SIGN: A MAKWETU
SHERIFF LADY FRERE

MR. M N MTOMBIWA

NO EXCEPTION MUST BE MADE: THE RULES PROVIDE FOR THIS ACTION

B- ALWAYS ISSUE A RECEIPT FOR MONEY RECEIVED:

RECEIPT BOOK: TRUST ACCOUNT: SHERIFF FOR _____		
CASE NR: _____ / _____ DATE : _____/_____/_____		
IN THE MATTER : _____ V/S _____		
ATTORNEYS: _____		
THE AMOUNT OF:		
FEES		
TRUST		
TOTAL		
RECEIVED BY: SIGN: _____		

C-
 ENTER AMOUNT OF RECEIPT INTO BANK DEPOSIT PAGE AND BANK IN TRUST ACCOUNT AT
 LEAST THE DAY AFTER RECEIPT

ABSA BANK LADY FRERE			
1	CASH	RECEIPT NR 1	457 98
		TOTAL	457 98

ENTER RECEIPT NUMBER AND DEPOSIT ONTO YOUR TRUST
 RECONCILIATION SHEET / BOOK
 [CROSS REFERENCE]

D-
 NOW RENDER A RETURN OF SERVICE TO THE COURT AND PREPARE A CHEQUE FOR
 PAYMENT OF THE TRUST MONEY RECEIVED

CONTENTS OF YOUR RETURN:

*THE DEBTOR PAID THE FULL AMOUNT OF R 303.11 TOGETHER WITH
 THE SHERIFF'S CHARGES OF R 154.87. MY TRUST CHEQUE FOR R
 R303.11 ENCLOSED*

SHERIFF'S FEES OF R 154.87 PAID

CHEQUE ONE: ABSA BANK LADY FRERE

PAY TO THE ORDER OF: *M N NOBANKULU AND SONS*

THE AMOUNT OF:

THREE HUNDRED AN THREE RAND AND ELEVEN CENT R 303.11

A MAKWETU SHERIFF FOR LADY FRERE TRUST ACCOUNT IN
TERMS OF SECTION 22 OF THE SHERIFFS ACT

SIGN _____

CHEQUE TWO: ABSA BANK LADY FRERE

PAY TO THE ORDER OF: *A MAKWETU*

THE AMOUNT OF *ONE HUNDRED AND FIFTY FOUR RAND AND
EIGHTY SEVEN CENTS* ***R 154: 87***

A MAKWETU SHERIFF LADY FRERE TRUST ACCOUNT

SIGN _____

Cross reference: On the counterfoil of the cheque book enter the receipt number issued for this amount

E-
CROSS OUT THE PAYMENT ON THE RECEIPT BOOK WITH A RED PEN QUOTING CHEQUE NUMBERS AND AMOUNTS PAID OUT [CROSS REFERENCE]

F-
NOW ENTER PAYMENT INTO YOUR RECONCILIATION SHEET/BOOK

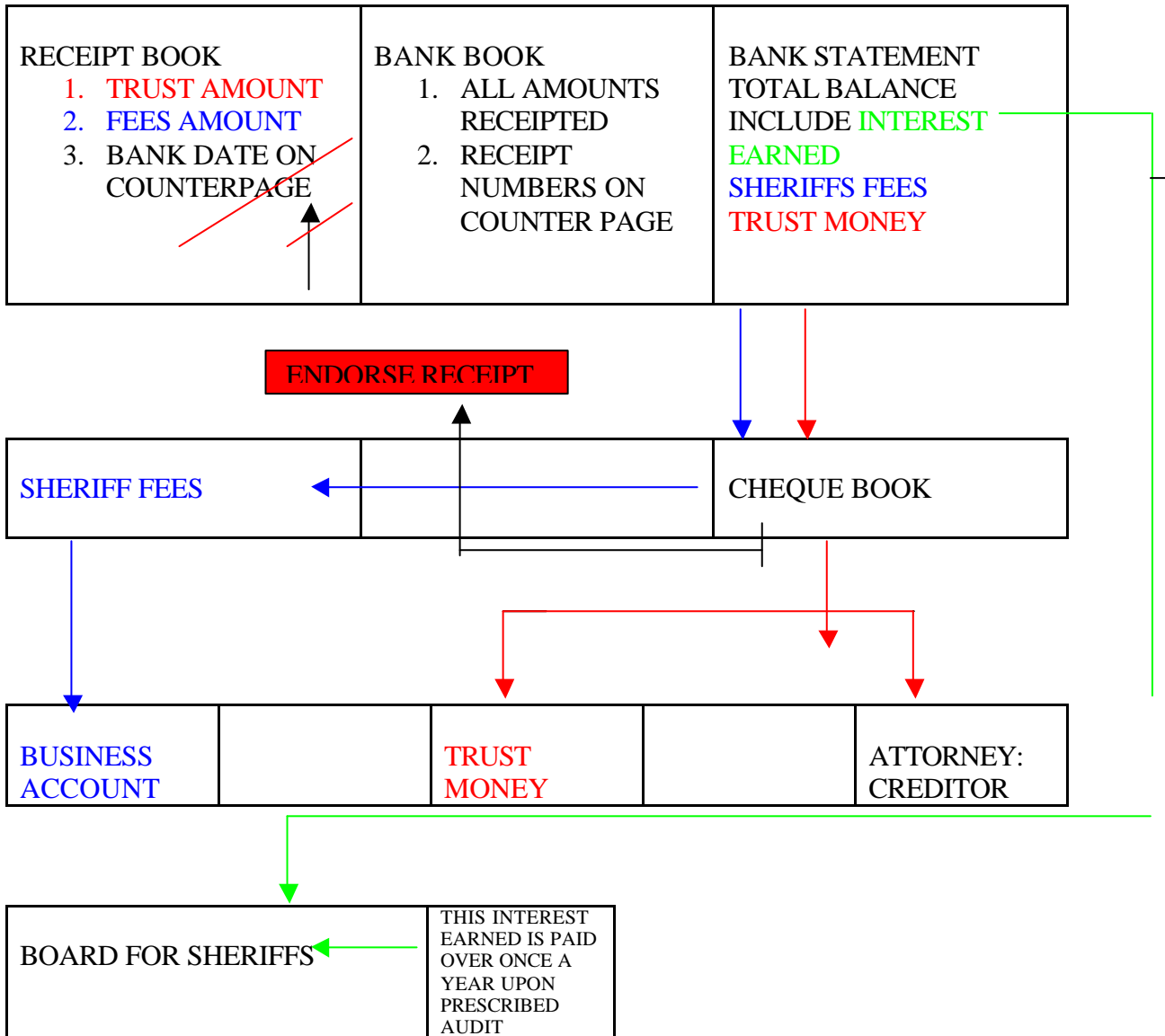
THE ABOVE SYSTEM WILL ALLOW A FULL CROSS REFERENCE OF ALL PAYMENTS RECEIVED, CHEQUES ISSUED AND ENABLE YOU TO BALANCE/RECONCILE YOUR TRUST ACCOUNT ON A REGULAR BASIS

G-
REQUIRE THAT YOUR BANK RENDER YOU WITH A MONTHLY STATEMENT OF YOUR TRUST CHEQUE ACCOUNT.

UPON RECEIPT OF THE MONTHLY STATEMENT ENTER ALL INTEREST RECEIVED ONTO YOUR RECONCILIATION SHEET/BOOK THIS WILL THEN ENABLE YOU TO SHOW INTEREST EARNED AT A GLANCE

TRUST ACCOUNT: GUIDELINE PROCEDURES

FLOW CHART FOR EASY CROSS REFERENCE



EASY CHECK METHOD [AT LEAST ON A WEEKLY BASIS]

1. CALCULATE THE TOTAL AMOUNT OF THE RECEIPTS **NOT CROSSED OUT**
2. CROSS CHECK CHEQUES ALREADY ISSUED WITH THE LAST BANK STATEMENT FOR PAYMENT AND TOTAL **THOSE NOT REFLECTED ON THE STATEMENT**

THE TOTAL AMOUNT OF THE OUTSTANDING [NOT CROSSED OUT] RECEIPTS ISSUED TOGETHER WITH THE INTEREST EARNED AND ADDED TO THE STATEMENT IN THAT **PERIOD SHOULD EQUAL** THE STATEMENT BALANCE LESS THE UNPAID CHEQUES **NOT REFLECTED** ON THE BANK STATEMENT

NOTICE 954 OF 1990

DEPARTMENT OF JUSTICE

NOTICE.-CODE OF CONDUCT FOR SHERIFFS

The subjoined Code is hereby made known for general information.

CODE OF CONDUCT FOR SHERIFFS

The Board for Sheriff's has, with the approval of the Minister of Justice , in terms of section 16 (k) of the Sheriffs' Act, 1986 (Act No.90 of 1986), framed the Code of Conduct for Sheriffs set out in the Schedule hereto.

SCHEDULE

1. A Sheriff may serve or execute process only within the area of jurisdiction or the portion of an area of jurisdiction for which he has been appointed.
2. A Sheriff entrusted with the service or execution of a process shall act without avoidable delay in accordance with the provisions of rule 8(4) of the Magistrate's Court Rules of rule 4 (6)(a) of the Supreme Court Rules: Provided that any process requiring urgent attention shall be dealt with forthwith.
3. The return made on a process shall be made on A4 size paper in the official language in which the process was sued out, and shall contain further the following minimum information:
 - 3.1.Case number;
 - 3.2.Court and district of issuing;
 - 3.3.Full names of the parties
 - 3.4.Address where service or execution took place
 - 3.5.Date and time of service or execution, and/or dates and times of attempted services or executions and reasons for the non-service or non-executions;
 - 3.6.Manner of service (strictly in accordance with the rules of service and supplying a full

description of the facts and circumstances);

3.7. Specified bill of costs; and

3.8. Signature of Sheriff or Deputy Sheriff

4. A Sheriff who undertakes other remunerative work or is associated with an organization or a business undertaking or who has a direct or indirect financial interest in an organization or a business undertaking shall perform any act or function pertaining thereto, and word any advertisement pertaining thereto in such a way that it cannot be associated with the office of sheriff.
5. All letters, except standard letters accompanying process, shall be answered in writing with the least possible delay.
6. The appointment of deputy sheriffs and other employees shall take place in the following manner and on the following conditions:
 - 6.1. No person who has been convicted of any offence involving dishonesty or of any other offence for which he has been sentenced to imprisonment without the option of a fine may be employed as a deputy sheriff or in any other capacity without the prior approval of the Board for Sheriffs.
 - 6.2. The application for the appointment of a deputy sheriff shall further-
 - 6.2.1. be made on the prescribed form, which is obtainable from the Board of Sheriffs, and be accompanied by two passport size photo's;
 - 6.2.2. be accompanied by a certified copy of the applicant's highest educational qualifications; and
 - 6.2.3. be accompanied by two recent certified testimonials
7. A sheriff who is requested by the Board for Sheriffs to furnish any information or to complete any form shall do so within the prescribed time and shall ensure that full and correct information is supplied.
8. Trust money shall be paid out to the person entitled thereto without avoidable delay.
9. A sheriff shall refrain from performing any act as sheriff in any matter in which he has a direct or indirect interest.
10. A sheriff shall at all times act in an impartial, unbiased and fair manner and with discretion towards all parties and shall ensure, as far as it is possible for him to do so, that deputy sheriffs in his employ act in like manner.
11. A Sheriff shall refrain from discussing with the press or other media policy matters relating to

his office and from making statements or commenting thereon save with the consent of the Board.

12. A sheriff shall serve members of the public in the official language in which he is addressed or otherwise communicated with and shall ensure that the deputy sheriffs in his employ serve the public in like manner.

13. A sheriff may not act in any way that will bring the good name and esteem of the office of sheriff in particular and the administration of justice in general into disrepute or cause it to appear in a bad light and shall, as far as it is possible for him to do so, ensure that deputy sheriffs in his employ do not so act.

14. A sheriff may not accept from or on behalf of any person any favour or gift (including excessive hospitality or receptions), whether in the form of service, a loan, thing or promise, which may influence him in the execution of his duties, or which in the opinion of any reasonable person, may so influence him and shall insure, as far as it is possible for him to do so, that deputy sheriffs in his employ do not so act.

15. A sheriff may not use for personal gain or for the personal gain of third parties any confidential information which he has obtained by virtue of his position and may also not divulge any such confidential information. He shall also ensure, as far as it is possible for him to do so, that deputy sheriffs in his employ do not so act.

STAATSKOERANT, 16 NOVEMBER 1996

NO. 12842 41