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PREFACE

Module: THE SHERIFFS ACT 90 OF 1986

LEARNING OUTCOME

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REFLECTION

REFERENCES

LEARNING OUTCOME

After studying this module, you should be able to:

- Apply sections of the Sheriff's Act and understand its impact on the sheriff's office, to ensure compliance

1. WELCOME

Welcome to Module 3: The Sheriffs Act 90 of 1986. This guide covers your relationship with the South African Board for Sheriffs as stipulated in the Sheriffs Act 90 of 1986. We trust you will find working through the guide a learning experience that is very interesting and rewarding, and that it will add value not only to your studies but also to your personal life in general.

We believe in the importance of developing a culture of learning and are therefore committed to helping you develop your capacity to perform to the best of your potential and to become not only a successful sheriff, but also an independent life-long learner.

In terms of the Autonomy of your learning, the facilitator expects of you to:

- Take personal responsibility and initiative
- Learn within a structured environment
- Critically evaluate your own performance against set criteria
- Identify your own learning needs within defined contexts

2. PURPOSE

The information in this guide reflects the need of the sheriffing community for competencies that will enable the learner to take responsibility for the serving of documents and execution of judgements within the legal framework within which they operate. In addition, it will improve the quality with which sheriffs' duties are exercised and enhance the professional image of the sheriffing community while contributing towards greater confidence in the sheriffs' profession as a core part of the civil justice system.

This course provides learners with opportunities for professional development as a law enforcement officer or as a sheriff.

3. DESIGN OF THE MATERIAL

We followed an outcomes-based approach during the design of this module, which means that, after having worked systematically through the module — doing what is required — you will have achieved some very specific learning outcomes determined by the industry of the sheriff.

These learning outcomes have been broken down into smaller chunks that we call assessment criteria. They appear in the introduction of each module or unit. If you focus on achieving these criteria, you will achieve success.

4. SUBJECT CONTENT

The content is divided into various sections.

Once you have worked through all the sections you will be able to:

- Outline the main legislative duties of a sheriff
- Outline the main administrative duties of a sheriff

The sum of the above assessment criteria will be equal to the learning outcome.

The content of this module was put together specifically to guide you through the assessment activities. Do put in the extra effort to consult other sources. You will reap the benefits.

5. CRITICAL OUTCOMES

Other crucial outcomes, you also have to achieve, are those we refer to as critical outcomes. These are the outcomes that will help you develop as life-long learners in your studies, work and personal lives. The critical outcomes are summarised as follows:

- 5.1 Identifying and solving problems in which responses display that responsible decisions, using critical and creative thinking, have been made during the:
- performance of the duty of service
 - utilization of the various manners of service

- 5.2 Working effectively with others as a member of a team or group or organisation or community by:
 - liaising and establishing relationships with stakeholders and community members
- 5.3 Organising and managing oneself and one's activities responsibly and effectively by:
 - following processes, procedures and protocols
- 5.4 Collecting, analysing, organising and critically evaluating information to better understand and explain when:
 - gathering information and undertaking research
 - applying relevant laws
- 5.5 Communicating effectively using visual, mathematical and/or language skills in the modes of oral and/or written persuasion when:
 - Generating documents
 - Communicating with diverse clients
 - Performing administrative duties
- 5.6 Using science and technology effectively and critically, showing responsibility towards the environment and health of others when:
 - sourcing information on legislation, policies and procedures
 - using computers where available
 - distributing and administering reports
- 5.7 Demonstrating an understanding of the world as a set of related systems by recognising that problem-solving contexts do not exist in isolation when:
 - distributing and managing information and reports
 - solving complex problems with a number of actors and factors
 - explaining the relationship between stakeholders and sheriffing
 - demonstrating an understanding of cultural diversity in dealing with clients

6. MODULE LAYOUT

Each module comprises the following sections:

- **An introduction**

This serves as an orientation on the particular theme of the module.

- **Assessment activities**

A number of assessment activities appear in each module. These activities were designed for evaluation purposes and form part of the learning and teaching strategy. They will assist you to monitor your own progress in achieving the stated outcomes.

The assessment activities will help you to:

- focus on the subject matter
- measure whether and/or to what extent learning outcomes and objectives have been achieved
- measure whether and/or to what extent knowledge, skills, values and attitudes are understood and applied
- present ideas and information in an appropriate format
- stimulate your thinking
- summarise the content

- **Content**

Guides you through the prescribed and recommended material for the subject, and gives explanations of specific concepts and terms that are complex.

- **Reflection**

Here a summary or conclusion to each module is provided.

- **References**

A record of all material and sources that were used during the development of the module appears here. Feel free to consult these sources as well as other relevant sources.

You will be required to engage actively with the content of all material and to record the answers to activities.

Each module begins with the learning outcome and ends with a conclusion. Remember to also consider the assessment criteria as you work through the module and make sure that you reach these.

7. GRAPHIC ILLUSTRATIONS AND ICONS

Where possible, we have included graphic illustrations, mind maps, tables and diagrams to assist you in your learning. We have also highlighted the meaning of certain concepts through the use of specific symbols called icons. The purpose of these icons is to emphasise and draw your attention to important aspects of the work and to highlight activities. The various icons have the following meaning:



Example: This indicates that an example has been given in the text to help you understand the point made, solve similar problems or clear up uncertainties.



Activity: This icon indicates that you must perform an activity. This will help you to think about a particular aspect of the work and to apply or practice it. Performing the activities will help you monitor your own progress towards achieving the assessment criteria.



Reference: This icon refers to previous or other study material, cases or sources that relate to the content with which you are busy.



Reflection: This icon indicates an opportunity to reflect whether you have achieved the assessment criteria.



Definitions: This icon indicates that an important explanation or formula is being given. Study the definitions carefully and take care to interpret them correctly, as this will help to keep you on the right track.



Take note: Additional notes are given for further clarification.

NB! Please study these icons carefully and make sure you can apply them effectively.

**REFLECTION
POINT TO PONDER**

You might want to write a short essay about your understanding of the relationship between the South African board for Sheriffs and yourself.

Please do not hesitate to contact your facilitator if you have any problems regarding the content of the subject.

We hope that you will enjoy the challenge of taking an active part in acquiring new skills through this course. Remember one learns best when one enjoys what one is doing.

Most people, looking at a newly-ploughed field, simply see a barren landscape. To a farmer though, this is a sight full of promise. An artist feels the same way about a blank canvas. A musician gets inspired by the silence of an empty hall. What you've got, at the moment, is the perfect space in which to create something.

We wish you success in your studies.

References

1. *South African Board of Sheriffs Learning Guide*. First Edition. Unisa Print Production. Johannesburg. 2003

Module: THE SHERIFFS ACT 90 OF 1986

Learning Outcome

At the end of this module you should be able to:

- Apply sections of the Sheriff's Act and understand its impact on the sheriff's office to ensure compliance

Note that the information in this module is also broken into assessment criteria, which include the following:

- Outlining the main legislative duties of a sheriff
- Outlining the main administrative duties of a sheriff

What learning resources do you need?

- This guide
- Legislation: The Sheriffs Act 90 of 1986

INTRODUCTION

In this module, we will consider the sheriff / Board relationship and specifically deal with the following aspects of this important and significant relationship:

- Constitution of the Board
- Annual Levies
- Position of Trust of Sheriffs
- Guidelines for an Appointed Sheriff
- Application for a Fidelity Fund Certificate
- Payment of Interest to the Fund
- Bookkeeping and Auditing of Accounts
- Code of Conduct

CONSTITUTION OF THE SOUTH AFRICAN BOARD FOR SHERIFFS



Section 9 of the Sheriffs Act 90 of 1986

The South African Board for Sheriffs consists of 12 members who are 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 following members are currently serving on the Board for Sheriffs:

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



Note: Section 19 of the Sheriffs Act 90 of 1986 refers.

Every sheriff shall annually on or before the prescribed 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 percent of his net income of the preceding financial year, ending on the last day of February.

The position of the 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.

Section 33(1): If the sheriff does not cause his/her record to be audited, the Board shall not issue a fidelity fund certificate to such sheriff.

Section 33(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:

- i) The date on which a process is received
- ii) The case number in question
- iii) The nature of the process
- iv) The parties involved
- v) The fees or expenses charged in respect of the service or execution of the process
- vi) The fees of expenses paid in respect of such service or execution
- vii) Any amount outstanding in respect of such service or execution

Guidelines for an appointed sheriff

Should you be appointed as a 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 as an employer with the Unemployment Insurance Fund.
- 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 installment of the necessary office furniture, computer as well as software.
- Arrange for insurance cover and security at the premises.
- Open two banks accounts;
- A Business cheque account
- A Trust cheque account.
- Name your trust account 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 stationery, such as receipt books, vat invoice books for the execution of sales, vedurol invoices, and notice of attachment forms.

Application for a Fidelity Fund Certificate

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

Section 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 employed 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

According to section 53, no sheriff shall without the approval of the minister perform or engage himself to perform remunerative work outside his office as a sheriff.

Prohibition of performance of functions of a 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/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.



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

Section 22 (2) stipulates that a sheriff may invest in a separate saving or other interest bearing account opened by him/her with a banking institute or building society any money deposited in his/her 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.

Section 22(3) stated that 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/she dies or become insolvent, or his/her deceased or insolvent estates. (The Fidelity Fund will cover this money.)

Payment of Interest to the Fund

Section 22(4) states that 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.

Regulation 8(1) stipulates that interest on moneys in an 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/hers expenses incurred in respect of his/her trust account from the interest accrued on the trust account in accordance with a tariff and procedure prescribed by the Board.

Regulation 8 (2) suggests that 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 the person on whose behalf the sheriff is holding or has received money.

Bookkeeping and auditing of accounts

According to section 23(1), a sheriff shall

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

The Code of Conduct for Sheriffs



ACTIVITY

For further reading and self-study purposes, a copy of the Code of Conduct for Sheriffs follows. Please take the time and make the effort to familiarize yourself with the content thereof in order to ensure that you as a sheriff and employer of deputies ensure compliance thereof. Discuss and write brief notes on the Code of Conduct for Sheriff.

GOVERNMENT GAZETTE, 16 NOVEMBER 1990
41

NO. 12840

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.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
 - 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 the 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 of 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 it is possible for him to do so, that deputy sheriffs in his employ do not so act.

STAATSKOERANT, 16 NOVEMBER 1996
NR. 12842 41

CONCLUSION

Now that you have completed this module on specific sections in the Sheriff's Act 90 of 1986, you understand it better and are able to apply it in order to ensure compliance.

We wish you success in your studies.

REFERENCE

Sheriffs Act 90 of 1986,