



RULE 43 IMMOVABLE PROPERTY AMENDMENTS

EFFECTIVE DATE -- 22 DECEMBER 2017

RULE 43 A – NOTICE OF APPLICATION TO DECLARE IMMOVABLE PROPERTY EXECUTABLE – FORM 1B

1. Rule 43 A is a new addition to Rule 46. This rule aims to regulate the manner in which a property is declared executable. It is basically the process an attorney needs to follow when applying to court to declare the defendant's primary residence executable.

Although, this process mostly involves the execution creditor and his attorney, sheriffs do play a very important role in ensuring that proper personal service of the notice of application (Form 1B) is obtained from the defendant.

Read- Rule 43 A (3) (d) – Served by the Sheriff on the judgment debtor personally provided that the court may order service in any other manner;

2. Sheriffs and deputy sheriffs must bring to the attention of the respondent the provisions of Rule 4 (a)
 - (i) ***State the date on which the application is to be heard.***
 - (ii) ***Inform every respondent cited therein that if the respondent intends to oppose the application or make submissions to the court the respondent must do so on affidavit within 10 days of service of the application and appear in court on the date on which the application is to be heard.***
 - (iii) ***Appoint a physical address within 15 kilometres of the office of the registrar at which the applicant will accept service of all documents of these proceedings and***
 - (iv) ***State the applicant's postal, facsimile or electronic mail address where available; The application shall not be set down for hearing on a date less than five days after expiry of the period referred to in subparagraph (ii) above.***

Further to the above the Sheriff or deputy sheriff must bring to the attention of the respondent the provisions of Rule 6 (a),(b),(c),(d) (i),(ii),(iii).

3. The application further makes provision for the court to set a reserve price that should be achieved at the sheriff's auction after taking a number of factors into account as listed under Rule 9 (a)(b).

4. Should the sheriff not achieve the reserve price at the auction then he/she is required in terms of Rule 43 A (9)(d) to report to court the outcome of the auction in the following manner:

Rule 43 A(9)(d) Where the reserve price is not achieved at the sale in execution, the sheriff must submit a report to the court, within 5 days of the date of the auction, which report shall contain;

(i) The date, time and place at which the auction sale was conducted

(ii) The names, identity numbers and contact details of the persons who participated in the auction; and

(iii) The highest bid or offer made

The following is recommend regarding the above requirements:

1. Upon conclusion of the auction the sheriff must request the highest bidder to sign the conditions of sale, pay the required deposit as per the bid price and pay the sheriff's commission.
2. Should your court not be within your jurisdiction then it is recommended that your report be forwarded to the instructing attorney to lodge same before the court for consideration.
3. A copy of the report must be served upon the purchaser and attorney
4. See template of the Report in terms of Rule 43A (9)(d) (Page 5).
5. We further recommend that sheriffs utilise the respective sheriffs' programmes to compile the report alternatively prepare a separate report on word document
6. The tariffs under Table C part ii do not provide for a fee for this report, therefore until such time that the profession formally addresses the Rules Board regarding the fee, we recommend that the fee of R47.00 be used.
7. If possible attach photos of the property and inform the court of any defects to the property that you have found upon completing the improvements. Also if there are any positive aspects that the court should be made aware of on the property.
8. In order to comply with this Rule 43A (9)(d), it is imperative that sheriffs strictly follow the Consumer Protection Act 28 of 2008 in regards to auction the process. Eg. registration of buyers, FICA compliance, collecting registration deposit, issuing of bidders cards, displaying auction rules etc.

No. 1B – NOTICE OF APPLICATION TO DECLARE IMMOVABLE PROPERTY EXECUTABLE IN TERMS OF RULE 43A

***For use in the District Court**

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

In the matter between:

..... Applicant

and

..... Respondent

To the above-mentioned respondent:

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

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

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

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

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

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

TAKE NOTICE FURTHER that—

(a) together with service and filing of the affidavit, you must give your physical address, postal address and where available, facsimile and electronic mail address;

(b) in your affidavit you must indicate the preferred address for service upon you of all documents in the application, and service thereof at the address so given shall be valid and effectual, except where personal service is required by an order or practice of the court; and

(c) a physical address given by you must, in places where there are three or more attorneys or firms of attorneys practicing independently of one another, be within 15 kilometres of the courthouse.

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

.....

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

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

.....

Applicant/Applicant's attorney

Physical address (within 15 kilometres of the courthouse):

.....

.....

Postal address:

Electronic mail address:

Facsimile:

To: The Clerk of the above Court

And to:

.....

Respondent

Address:

.....

Postal address:

Electronic mail address:

Facsimile:

SHERIFFS LETTERHEAD

CASE NO:.....

..... EXECUTION CREDITOR

..... EXECUTION DEBTOR

..... PURCHASER

REPORT IN TERMS OF RULE 43A(9)(d)

To the Registrar of the High Court

Insert division:.....

And to: Name of the purchaser:.....

Address of purchaser:.....

Contact cell number /telephone:.....

And to: Name of judgement debtor:.....

Address of Judgement debtor:.....

And to: Name of Execution Creditor:.....

c/o Name of Attorneys on record:.....

PLEASE TAKE NOTICE that the sheriff of
presents his report in terms of Rule 43A(9)(d) and request that a judge in chambers make an
order in terms of the said rule on a sale that took place on theday of
2018 atat the sheriffs' sales room at
.....on the immovable property described as:

TAKE NOTICE FURTHER that in support of the report I annexure herewith all documents as
listed under Rule 43A(9)(d)(i): The date, time and place at which the auction sale was
conducted: (ii) The names and identity numbers and contact details of the persons who
participated in the auction; and
(iii) The highest bid or offer made

I confirm that the highest bid made was:.....

By buyer number..... the name of the buyer is.....

contact no:.....

Dated atthisday of2018.

Sheriff of the High Court

Sheriffs details:

.....(Area)

.....(address)

.....(contact details)

.....(reference)

RULE 43 – ATTACHMENT OF IMMOVABLE PROPERTY –
FORM REQUIRED - FORM 33

1. Rule 43 (1) (b)(i) a writ of execution against immovable property shall contain
 - (i) A full description of the nature, **magisterial district** and **physical address** of the immovable property to enable it to be traced and identified by the sheriff;

Sheriffs are to ensure that the writ of execution complies with the above rule.

2. Rule 43 (2) the attachment of the immovable property shall be made by any Sheriff of the district in which the property is situated upon a writ corresponding substantially with Form 33 of the first schedule. ***(refer to page 8 for a precedent of Form 33)***
3. Rule 43 (3) (a) the notice of the attachment, corresponding substantially with Form 33 of the Annexure 1, shall be served by the sheriff upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is occupied by some person other than the owner, also upon such occupier.

Note in accordance to Rule 43(2) and (3) the attachment shall be made by the sheriff of the district in which the property is situated by serving upon the registrar of deeds, defendant and occupier.

4. Any notice referred to in sub rule 3(a) shall –
 - (i) Draw attention to the provisions of sub rule 8(a)(iii) and
 - (ii) Be served according to the provisions of rule 9, except that service upon the registrar of deeds or other officer charged with the registration of immovable property may also be effected by the sheriff by means of a registered letter, duly prepaid and posted, addressed to the officer intended to be served.

Sheriffs must note that service upon the defendant and occupier must be by hand in accordance with Rule 9 and upon the registrar of deeds by prepaid registered post by the sheriff of the district of where the property is situated.

5. Rule 43(4) (a) When effecting attachment, the sheriff may enter buildings or structures on the immovable property to ascertain the improvements made to the immovable property as well as the condition of such improvements. Provided that where the sheriff after reasonable attempts is unable to gain access onto the immovable property or into the building or structure on account of the property, building or structure being locked, the sheriff may use a locksmith to gain entry.

This very important new addition to the rules as it empowers to the sheriff to ensure that a proper description of the property is obtained. Sheriffs are encouraged to use this opportunity to assess the property properly as it will assist in the marketing of the property to potential buyers. It is advisable to take photos of the property and note down all the features and accessories that would enhance the value.

The rules make provision for the sheriff to make reasonable attempts before utilising the service of a locksmith to enter the property. We therefore recommend that three attempts be made before informing the attorney of the unsuccessful attempts. Morning, midday and after hours.

It is advisable to ensure that you get to see the defendant at the property as it will give you an opportunity to highlight the rights of the defendant in terms of the new rules regarding the sale in execution process.

Once the three attempts is made and you are required to gain entry with the use of a locksmith we recommend that the sheriff takes written instructions from the attorney and request the necessary indemnity. The improvements should be made on service of the notice of attachment upon the defendant or occupier.

(Kindly refer to page 9 for a precedent of the Improvement form)

6. Rule 43 (4)(b) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record the bonds or other encumbrances which are registered against the attached immovable property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

Sheriffs should ensure that the conveyancer certificate is received and inspected prior to allocating a sale date. The conveyancer certificate serves as a confirmation that the attachment over the immovable property is recorded by the deeds office.

In most cases one would allow the instructing attorney to furnish the conveyancer certificate but sheriffs should know that in terms of this rule you are allowed to appoint a conveyancer to furnish you with the certificate should you find any errors of doubt the certificate furnished by the execution creditors conveyancer.

Ensure that the names and addresses of the creditors are listed on the certificate as you are required to give notice to them of the intended sale.

7. Rule 43(5) Subject to rule 43A and any order made by the court, no immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless-

Refer to Form 34 notice to preferent creditor in terms of rule 43(5)(a) on page 10.

- (a) The execution creditor has caused notice of the intended sale to be served upon
- (i) Preferent creditors
 - (ii) The local authority, if the property is rated and
 - (iii) The Body Corporate, if the property is a sectional title unit;

Sheriffs should note that the provisions for service in terms of this rule by registered post have been removed and service will now be by hand in terms of Rule 9.

No. 33 — Notice of attachment in execution

***For use in the District Court**

In the Magistrate’s Court for the District of

held at Case No. of 20.....In the matter between

..... Execution Creditor

and

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

To:**[Execution]** Judgment Debtor

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

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

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

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

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

.....

Sheriff.

LIST OF IMPROVEMENTS

*Delete which is not applicable

CASE NO HIGH / MAG. COURT:

DEFENDANTS NAME:

STREET ADDRESS:

FORMAL DESCRIPTION:

SECTION NO:

DOOR NO:

MAIN BUILDING

Storey : Double / Single / Other.....
Freestanding / Attached / Semi-attached / Duplex / Simplex / Mini-Sub
Other.....
Walls : Brick / Block / Timber / Other.....
Roof : Corrugated Iron / Slate / Tile / Harvey Tile / Thatch / Other.....
Floors : Parquet / Carpets / Tiles / Other.....
Rooms : Lounge / Dining Room / Study /Bedrooms / Kitchen / Pantry / Scullery /
Laundry /Bathroom /Shower /Toilet / Other.....

OUT BUILDING

Storey : Double / Single / Other.....
Freestanding / Attached / Semi-attached / Duplex / Simplex / Mini-sub / Other.....
Walls : Brick / Block / Timber / Other.....
Roof : Corrugated Iron / Slate / Tile / Harvey Tile / Thatch / Other.....
Floors : Parquet / Carpets / Tiles / Other.....
Rooms : Lounge / Dining Room / Study /Bedrooms / Kitchen / Pantry / Scullery /
Laundry /Bathroom /Shower /Toilet /Garage/
.....Carport /Storeroom / Other.....

OTHER INFORMATION

Boundary : Fenced / Unfenced
If fenced, Wire Mesh / Brick / Concrete / Timber / Other.....
Zoning : Special / General Residential / Commercial / Industrial / Agricultural / Other.....
Other : Swimming pool / Pond / Jacuzzi / Paving / Other.....

Completed by:..... Date:.....

SHERIFF

CELL:

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

***For use in the District Court**

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

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

In the matter between

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

and

..... Judgment Debtor

To:.....

(Preferent Creditor/Local authority/Body Corporate)

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

Short description of property and its situation:

.....
.....

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

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

Execution creditor/Attorney for execution creditor

Address:

RULE 43 SALES PROCEDURE

Rule 43(7)(a)

The Sheriff shall appoint a day and place for the sale of the attached immovable property. **Not less than 45 days after service of the notice of attachments. The Sheriff shall inform all other sheriffs appointed in the district of such day and place.**

(b) **The execution creditor** shall after **consultation** with the sheriff prepare a notice of sale containing a short description:

- Improvements of property
- Magisterial District of property
- Physical address
- Time and place of sale

The execution creditor must furnish Sheriff with as many copies of the notice of sale as required by the sheriff.

(c) **The execution creditor shall;**

- Publish a notice in a newspaper circulating daily or weekly in the district of the attached property.
- In the Gazette not less than **5 days and not more than 15 days before the date of sale.**
- Provide the Sheriff with a copy of the notice by facsimile, electronic mail or by hand with a copy of the newspaper advert and the Gazette respectively:
NB: Make sure of the date of the newspaper and that the newspaper is the one circulating in this district.

(d) **Not less than 10 days of the sale the sheriff forward a copy of the Notice of sale;**

- Every execution creditor who had caused the immovable property to be attached.
- To every mortgagee whose address is known
- **To all other sheriffs appointed in that district.**

(e) Not less than 10 days prior to **the date of sale sheriff shall affix;**

- One copy on the notice board of the magistrate's court in the district of the attached property
- **Or if the property is situated in the district where the court out of which the writ was issued is situated then on the notice board of such court**
- One copy at or as near as may be to the place where the said sale is actually to take place.

THE CONDITIONS OF SALE RULE 43(8)

The Conditions of Sale must be in sheriff's office for inspection.

- The execution creditor shall prepare the condition of sale not less than **35 days prior to the date of sale**
- Conditions must correspond substantially with Form 33A of Annexure 1
- Conditions must be submitted to the Sheriff conducting the Sale for the purposes of settling them.
- **Any interested party may submit to the sheriff in writing further or amended conditions of sale not less than 25 days prior to sale.**
- Sheriff must *settle the conditions of sale not less than 20 days prior to sale.*
- The sale in execution and the conditions of sale shall comply with the provisions of any law relating to auctions in particular the Consumer Protection Act **(NB: Make sure that all bidders are registered, FICA and have paid the deposit)**
- The execution creditor must supply the sheriff with 3 sets of Conditions of sale, one must lie for inspection at the office of the sheriff for 15 days prior to the date of sale **(NB The 3 sets may not be enough its advisable to request 5 sets)**
- **The sheriff shall furnish a copy of the conditions of sale to other sheriffs appointed in that district.**
- **The sheriff must serve a copy of the conditions of sale not less than 15 days prior to the sale on the judgement debtor**
- **Subject to rule 43A any interested party may apply to court 10 days prior to the date of sale and upon 24 hours' notice to all known affected parties for the modification of the conditions of sale. The magistrate may make an order thereto, including an appropriate order of costs.**

Rule 43(9)

The execution creditor shall appoint a conveyancer to attend to the transfer of the property, should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer, **the sheriff shall be entitled to appoint a new conveyancer.**

Rule 43(10)

- (a) The immovable property shall be sold by the sheriff or a private auctioneer appointed i.t.o paragraph (b) to the highest bidder
- (b) The execution creditor may by proper notice given to the sheriff within 15 days after the attachment nominate that a private auctioneer be employed to sell the property.
- (c).
 - (i) Where notice i.t.o paragraph (b) is given other than by the execution creditor, such notice must accompany a deposit sufficient to cover the additional expense of sale by an auctioneer. In default of such a deposit such notice shall be void
 - (ii) A notice in terms paragraph (b) shall lapse if the services of an auctioneer are not obtainable.

(iii). If after satisfying the claim of the execution creditor and all warrants of execution lodged with the sheriff on or before the day immediately preceding the date of the sale and all costs there are surplus proceeds of the sale of the immovable property, *the deposit must be refunded to the depositor: Provided that if there is no surplus, such deposit must as far as may be necessary, be applied in payment of the auctioneer's fees and expenses.*

(d) If two or more notices i.t.o paragraph (b) is given, the first shall have preference.

FORM 33A

CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

CASE NUMBER.....

In the

Held at

Execution Creditor.....

And

Execution Debtor.....

The immovable property (*Address of the property*) which will be put for auction on theday of20.....

The sale shall be conducted on the following conditions;

1. The sale shall be conducted in accordance with the provisions of Rule 43 of the Magistrates' Rules of Court and all other applicable law.
 2. The property shall be sold by the sheriff of (***District of Sheriff's office***) /or (***Name of auctioneers***) at (***address where sale will take place***) to the highest bidder without reserve/subject to a reserve price of (***SET BY THE COURT***).....
 3. The sale shall be for rands, and no bid for less than one thousand rands shall be accepted
 4. If any dispute arise about any bid, the property may again be put up for auction
- 5(a) If the sheriff/auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified.
- (b) If the sheriff/auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 7 or the balance of the purchase price, the sheriff/auctioneer may refuse to accept the bid of such bidder, or accept it provisionally until the bidder satisfies the sheriff/auctioneer that such bidder is able to pay the deposit and the balance of the purchase price.
- (c) On the refusal of a bid under circumstances referred to paragraph (b) the property may immediately be put up for auction again.

- 6(a). The purchaser shall, as soon as possible after the sale and immediately on being requested by the sheriff/auctioneer to sign these conditions.
- (b) If the purchaser purchased in a representative capacity the purchaser shall disclose the name of the principal or person on whose behalf the property is being purchased.
7. (a) The purchaser shall pay to the sheriff a deposit of 10 per cent of the purchase price in cash or by bank guaranteed cheque on the day of the sale.
- (b). The balance shall be paid against transfer and shall be secured by guarantee issued by the financial institution approved by the execution creditor or his or her attorney, and shall be furnished to the sheriff within days after the date of sale.
8. (a) If the purchaser fails to carry out any obligation due by the purchaser under the conditions of sale, the sale may be cancelled by a magistrate summarily on the report of the sheriff after due notice to the purchaser, and the property may again be put up for sale.
- (b) In the event of the circumstances in paragraph (a) occurring, the purchaser shall be responsible for any loss sustained by reason of such default, which loss may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from the purchaser under judgement of a magistrate pronounced on a written report by the sheriff, after such purchaser has been given notice in writing that such report will be laid before the magistrate for such purpose.
- (c) If the purchaser is already in possession of the property, the sheriff may, on notice to affected parties, apply to a magistrate for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.
9. (a) The purchaser shall immediately on demand pay the sheriffs' commission calculated as follows: 6 % on the first R100 000,00 and then 3.5% on R100 001.00 to R400 000.00 and then 1.5% on the balance of the proceeds of the sale subject to maximum commission of R40 000.00 in total and a minimum of R3 000.00. If an auctioneer is employed as per rule 43(9). 3% on first R100 000 and then 2% on R100 001.00 to R400 000.00 and 1% on the balance of the proceeds of the sale subject to maximum commission or R22 850 and a minimum of R3000.00

- (b) The purchaser shall be liable for and pay, within 10 days of being requested to do so by the appointed conveyancer, the following:
 - (i) All amounts due to the municipality servicing the property, in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000). For municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that may be due to municipality; and where applicable.
 - (ii) All levies due to a body corporate in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986) or amounts due to a home owners or other association which renders services to the property.
 - (iii) The costs of transfer, including conveyance fees, transfer duty and any other amount necessary for the passing of transfer to the purchaser.

10.(a) The property may be taken possession of after signature of the conditions of sale, payment of the deposit, and upon the balance of the purchase price being secured in terms of condition 7(b). ***(NB: IT IS ADVISABLE TO INFORM THE DEBTOR ABOUT THIS CLAUSE UPON SERVICE OF THE COS)***

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

Sheriffs to note this clause. The profession is in the process of clarifying this clause with the banks. Who determines the amount that has to be paid? Who collects this amount? Where must the amount be paid into?

- (c) Upon the purchaser taking possession, the property shall be at the risk and profit of the purchaser.
- (d) The execution creditor and the sheriff/auctioneer give no warranty that the purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is not occupied.

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

- (b) If the transfer is delayed by the purchaser, the purchaser shall be liable for interest at the rate ofper cent per annum on the purchase price.
- 12.(a) The sheriff may demand that any improvements to the property sold shall be immediately insured by the purchaser for their full value. Proof of insurance given to the sheriff and such insurance policy kept in force until transfer is registered.
- (b) Should the purchaser fail to comply with the obligations in paragraph (a) the sheriff may effect the necessary insurance, the cost of which insurance shall be for the purchaser's account.
- 13.(a) The property is sold as represented by the title deeds and diagram or sectional plan, subject to all servitudes and conditions of establishment, whichever applies to the property.
- (b) The sheriff/auctioneer shall not be liable for any deficiency that may be found to exist in the property.
- 14. The execution creditor shall appoint the conveyancer to effect transfer of the property to the purchaser. Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.

Signed at.....this day of20.....

I certify hereby that today thein my presence the hereinbefore-mentioned property was sold forto

.....
SHERIFF/AUCTIONEER

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

.....
PURCHASER

CPA - Sale in Execution requirements

DAY OF SALE THE FOLLOWING REQUIREMENTS MUST BE COMPLIED WITH:

- 1) All sales in execution must comply with the CPA 68 OF 2008 and FICA.
- 2) Rules and Conditions of Sale must be displayed on a noticeable area.
- 3) Sheriff to register all potential buyers.
- 4) Sheriff to issue bidder's cards to registered buyers.
- 5) Copy of ID and three (3) months' old Utility Bill is required (FICA compliant).
- 6) Buyer to pay R15 000.00 refundable registration fee.
- 7) Issue receipt for all monies collected.
- 8) Sheriff to read conditions of sale.
- 9) Sheriff to announce rates and levies amount prior to the commencement of the sale.

CANCELLATION OF SALE I.T.O. RULE 43 (a) (11)

Rule 43 (11)(a)(i) If the purchaser fails to carry out any obligations due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the attached immovable property may be put up for sale again.

(iii) The report shall be accompanied by a notice corresponding substantially with Form 33B of the first schedule.

(iv) If the sale is cancelled, the sheriff shall inform the judgement debtor of the cancellation.

(REFER TO PAGE 20 FOR FORM 33B NOTICE TO CANCEL A SALE OF IMMOVABLE PROPERTY IN TERMS OF RULE 43(11) (A)

Note that the cancellation process now has a prescribed form (Form 33B) that the sheriff must use when compiling the notice.

Further note that the sheriff must give notice to the judgment debtor, purchaser and execution creditor of his intention to cancel the sale in terms of Rule 43(11)(a).

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

***For use in the District Court**

In the Magistrate’s Court for the District of

held at Case No. of 20

In the matter between:

The Sheriff of Applicant

and

..... Purchaser

In re:

..... Execution Creditor

and

..... Judgment Debtor

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

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

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

Sheriff of the Court

(Area).....

(Address).....

To: The Clerk of the Court

.....

And to:

.....

Purchaser

.....

(Address)

SALE IN EXECUTION DISTRIBUTION PROCEDURE

The sale shall be conducted upon conditions stipulated under sub-rule (8) and the immovable property shall be sold to the highest bidder. Rule 43(12)(a)(b).

All monies in respect of the purchase price of immovable property sold in execution shall be paid to the sheriff and the sheriff shall retain such moneys in his / her trust account until transfer has been given to the purchaser. Rule 43(13)(a).

Sheriffs should note that all monies collected must be held in his trust account .This includes the deposit, balance of purchase price together with the interest. Under no circumstances must these monies be paid out to the attorneys trust account. Further note that the guarantee must be made out to the sheriff and not the attorney.

The sheriff conducting the sale shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration or transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property. RULE 43(13)(b).

No amount of the purchase money shall be paid out until the provisions of sub-rule (14) have been complied with. RULE 43(13)(c).

After conclusion of the sale, but before preparation by the sheriff of a plan of distribution, the attorney shall provide sheriff with a certificate of all money paid by the judgment debtor or his / her attorney after the issue of warrant of execution (taxed bill of costs). Rule 43(14)(a).

The certificate must include all payments made by the debtor together with the balance outstanding. The profession is suggesting that if any occupational rental is collected on the property from the purchaser then same must be included in the certificate.

Within 10 days after the date of transfer, the sheriff shall have prepared a plan of distribution of the proceeds in order of preference, and must forward a copy of such plan to the registrar or clerk of the court and to all sheriffs appointed in that district. Rule 43(14)(b)(i).

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

NB: After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference. Rule 43(14)(b)(ii)(c).

The claims of preferent creditors ranking in priority in their legal order of preference; and thereafter the claims of other creditors whose warrants have been lodged with the sheriff in the order of preference appearing from sections 96 and 98A to 103 (inclusive) of the insolvency Act, 1936 (Act No.24 of 1936) as amended. Rule 43(14)(c)(i) & (ii).

Any interested person objecting to the plan must:

- (i) Before the expiry of the paragraph referred to in (b)(ii) of this sub-rule give notice in writing to the sheriff and all other interested persons of the particulars of the objection and
- (ii) Within 10 days after the expiry of the period referred to in paragraph (b)(ii) bring such objection before a magistrate to review upon 10 days notice to the sheriff and the said persons. Rule 43(14)(d)(i)(ii).
- (iii) The judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including and order as to costs as to him or her seems appropriate. RULE 43(14)(e).
- (iv) : If –
- (v) No objection is lodged to such plan RULE 43(14)(f)(i), or
- (vi) The interested parties signify their concurrence therein RULE 46(14)(f)(ii), or
- (vii) The plan is confirmed or amended on review RULE 43(14)(f)(iii),
- (viii) The sheriff shall, on production of a certificate from the conveyancer that transfer has been given to the purchaser, pay out in accordance with the plan of distribution.

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