

1. THE ROLE OF THE SHERIFF IN THE EVICTION PROCESS:

By Mr Allan Murugan, Sheriff, Durban North (HL)

Every sheriff must have an administrative process in place at his office so that upon receipt of the order he can immediately verify that the document is properly issued, stamped and signed by the Clerk of the court or Registrar. The process of verifying the order prior to proceeding with the eviction is of paramount importance, as any unlawful actions by the Sheriff or deputy sheriff, will result in unnecessary inconvenience to the parties and more especially could cause financial loss to the sheriff, he could further be burdened with huge claims for damages.

It is important to read and understand the instructions from the court to the sheriff.

- Note: the Order must state that the “Sheriff is directed....” or that the “Sheriff is hereby ordered..., instructed or authorised to....”
- Upon reading the order the Sheriff will understand what steps he/she can or can't take when executing.
- Recently we have been noticing that courts are issuing court orders that do not direct the sheriff to take any steps apart from merely serving the document. This is contrary to what the plaintiff expects to happen.

Evictions are classified in three categories:

- ▶ Residential and small evictions
- ▶ Business evictions
- ▶ Mass evictions of large communities

Residential and small evictions

- Residential evictions is as important as any other eviction and require proper planning.
- The sheriff is handed a warrant of ejection that is in line with Form 30 of the Magistrates' Court Act and Rules or a High Court order.
- In this instance the sheriff is called upon to evict the occupier and all those persons holding occupation through him/her.
- In practice the PIE application and order is served at least 30-days before the execution date.
- Depending on the instructions from the attorney and/or landlord, the sheriff will cut new keys and change all locks with new ones.
- The keys are then handed to the attorney or landlord.
- If a warrant of execution accompany the warrant of ejection, make sure the warrant of execution is executed prior to the eviction process taking place.
- Two signatures of the clerk of the court is a prerequisite. One signature for the issuing of the warrant and the second signature for the endorsement of the immediate removal. In these circumstances, the sheriff will first make an attachment and inventory of the most valuable goods to cover the capital amount, interest and costs, and load it onto the truck.
- All items removed to the sheriff store rooms must be clearly marked. Case number and surname of the evictee should appear on the labels.

- It is also important for the Sheriff to check if he has pending attachments for the assets of the same debtor, prior to evicting.
- Thereafter, the sheriff must physically remove all other household goods from the premises and place same on the pavement, but in such a manner that the goods do not obstruct the walkway.
- It is important for the sheriff to understand the bylaws of the town ,so as to be aware of certain restrictions and guide the debtor accordingly
- It is preferred that the defendant/respondent be present at all times. In other words the defendant/respondent is placed in possession of his own goods.
- It becomes his/her duty to secure the goods placed on the pavement.

What is important?

- The attorney must furnish the sheriff with contact details of the landlord, as well as the defendant/respondent, if possible
- If elderly or disabled persons or children are present, suitable arrangements must be made in advance to relocate them;
- Same apply to pets;
- It is important for the sheriff to have upfront knowledge of the premises and circumstances of the household.
- It is important for the Sheriff to ensure that he has the required indemnity in terms of Rule 38 prior to him executing the eviction/order.
- The sheriff or his deputy executing should stay focused and have his/her staff under control. Be alert for criminals who will try to take advantage of the circumstances.
- It is not advisable to execute a warrant of ejectment on the same day it is received. Unless there is a specific reason or urgency in the matter.
- In practice it is advisable to perform an investigation into the eviction prior to executing.
- It is very important to keep the attorney updated, especially the date of the eviction should be communicated in advance.
- Ensure that you have proper packaging material, so you can pack the debtors goods decently.

Business evictions

- The PIE and ESTA Act do not apply. Business evictions are more difficult to execute than residential evictions.
- In many instances expensive equipment is at stake.
- Usually third parties are employed by the sheriff to render assistance.
- E.g. electricians, breakdowns and security firms. In this regard ensure that these service providers are registered with the relevant authorities, for insurance purposes.
- If a warrant of execution accompany the warrant of ejectment, the attachment and inventory has preference, before the rest of the goods are evicted from the premises.
- All attached goods must be clearly marked for identification.
- Many warrants of ejectment are *silent* as to the disposal of the evicted goods, not under attachment.

- It is advisable to call on the respondent to secure and/or remove the non-attached goods from the pavement or property before the premises is locked.
- A practical problem: the evicted items or goods are usually of such a nature, it is impossible to place same on the pavement and not obstruct the walkway.
- It is advisable to request the attorney to make provision in the order for a prayer, containing specific instructions to the sheriff as to the evicted goods.
- If the attached goods are expensive items, or vehicles, immediately consult and notify your short term insurance broker and make provision for an increased insured amount, in case of theft or fire at your stores.

Mass evictions

- Mass evictions take place where a community or persons invaded an open piece of land or premises such as a building or newly built houses.
 - These evictions take extensive planning, consultations and meetings with all role players.
 - The wording of the court order is of utmost importance.
 - If the sheriff is obliged or ordered to relocate the community, necessary additional transport services are required. Request upfront removal quotations.
 - Who are the important role players:
 - The sheriff, deputy sheriffs and all staff employed by the sheriff.
 - Locksmiths, demolition contractors, removal contractors and breakdown services.
 - SAPS, emergency services such as ambulance and fire brigade, safety and security, traffic officials, housing as well as human settlement departments of the local municipality.
 - Community leaders and/or councillors of the area.
 - The sheriff will first consult the local police station and commanders.
 - Once a date is set, the other role players are invited to attend the first planning meeting.
 - At the planning meeting the sheriff will advise those present of the nature of the eviction. For e.g. the number of persons or families to be evicted.
 - SAPS will thereafter activate their different departments, such as public order police, tactical response team, dog unit, legal officer, and media liaison officer, helicopter, water cannon as well as crime intelligence.
 - It is important to know the sentiments of the community and how active or inactive are the community leaders within the area.
 - SAPS will assess the crime rate in the area and advise the role players at the meetings.
 - At least two meetings are set aside for consulting the community and their leadership.
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- ▶ In this instance the police community forum is of great assistance.
 - ▶ The municipality is requested to involve housing and human settlement departments. They will assess the need to relocate the evictees.
 - ▶ If the order is silent on relocation, the sheriff has the right to lodge an application to request the courts' guidance, as long as all parties are notified of the application. (Section 11 of the PIE Act).
 - ▶ If it is indeed necessary for the sheriff to remove goods to the sheriffs store rooms, all goods must be clearly marked and labelled.
 - ▶ If the order has to be served before the actual evictions take place, request SAPS's assistance.

- ▶ Request SAPS to employ their video unit whilst serving the illegal occupiers.
 - In this instance video evidence and proof that every house or occupier was properly served, is of value if the service is questioned at a later stage.
 - Minutes must be kept of all meetings. It is important to keep record of all discussions.
 - On the day of the actual evictions, a JOINT OPERATIONAL CENTRE (J O C) is set up at the police station.
 - All role players are present at the J O C on the day of the evictions.
 - The sheriff remain in charge of the eviction and SAPS appoint a commander in charge of the SAPS and security personnel at the scene.

- ▶ From the J O C the operation is monitored.
 - The entire *entourage* leave the police station in a convoy and remain together for the duration of the evictions.
 - The sheriff will take along boxes and plastic refuse bags. Last mentioned is handed to the evictees once the evictions commence and allow them to place their personal goods or items into the boxes or plastic bags.

DEPUTY MINISTER SPEECH AT SASS AGM 28 MAY 2016 QUOTED AS FOLLOWS:

Theme: Sheriffs the key to Civil Justice in South Africa "If the public lose trust in the Sheriff, they lose trust in the entire justice system. If the key doesn't work, justice remains inaccessible, locked and of little value to our people"