

CHAPTER 10 PARTICULAR APPLICATIONS

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10.1 ANTON PILLER TYPE ORDERS

1. These practises apply when an order which is sought ex parte involves a search for a movable object or the attachment thereof in order to preserve evidence as is meant in *Shoba v Officer Commanding 1995 (4) SA 1 (A)* or if the item is not identified in the papers, i.e. if identification is dependent upon a pointing out which is still to be made.
2. Such an application must stand on its own and not form part of an application in which other relief is claimed. Duplication of costs is to be minimised by incorporating evidence in one application by reference in any other application.
3. When the applicant wishes the matter to be heard in camera:
 - 3.1 the applicant may, without being obliged to do so, prove the reason why such a hearing is necessary in a separate affidavit. If a separate affidavit is employed and a hearing in camera is refused without a party or the judge having placed reliance on the contents of the application itself, the applicant may withdraw and remove the Anton Piller application;
 - 3.2 a certificate from counsel in support of a hearing in camera is not necessary;
 - 3.3 all steps must be taken as if the application is being set down on the motion court roll by use of the ordinary forms and in the ordinary manner except that the notice of set down and application are handed to the clerk of the senior judge on motion court duty for purposes of safekeeping and maintaining secrecy all in accordance with the directions of the senior judge.
4. A notice which accords with annexure A hereto must be handed to the person on whom the order is to be served prior to any execution of the order.
- 5.1 Annexure B represents a model order which applies to relief along Anton Piller lines. It may be adapted according to circumstances but the judge's attention must be drawn to deviations.
- 5.2 Deviations from annexure B must be limited to what is necessary and must heed the following guidelines:
 - 5.2.1 Unless the procedure is limited in case law, undertakings to the court must be employed to counteract injustice and avoidable inconvenience to the respondent.
 - 5.2.2 The order must be justifiable in terms of South African law.
 - 5.2.3 It must be borne in mind that it is of the essence of an Anton Piller type order that it results in some immediate interference with the respondent without any prior notice (even if a rule nisi pattern of order were to be used). Immediate operation must be limited to what can be fully justified by urgency or other need for breach of the audi alteram partem principle.
 - 5.2.4 Relief which can not be so justified must be dealt with in a separate part of the notice of motion (and where necessary of the court order) so that the respondent has a proper opportunity to oppose such relief. Immediate preserving of evidence does not imply a need

to allow the making of copies or other early discovery without the other party having a chance to be heard.

ANNEXURE A

1. The order being served on you requires you to allow the persons named therein to enter the premises described in this order and to search for, examine and remove or copy the articles specified in this order. You are also required to point out and hand over any such item to the sheriff. Particulars are stated in the order.

- 2.1 When this notice is handed to you, you are entitled, if you are an employee of the respondent or in charge of the premises, to contact the respondent or a more senior officer of the respondent. You are entitled to the attendance and advice of such senior person, the respondent or an attorney provided such person arrives without delay and not later than one hour after the handing over of this notice.

- 2.2 Until the attorney, the respondent or such other officer arrives or until the time has passed for him or her to arrive, you need not comply with any part of this order, except that you must allow the applicant's attorney, the sheriff and the other persons named in the order to enter the premises and to take such steps as, in the opinion of that attorney, are reasonably necessary to prevent prejudice to the further execution of the order.

3. You are further entitled to have the sheriff and the applicant's attorney explain to you what this notice and the court order mean.

4. You may be punished for contempt of court if you, inter alia,
 - 4.1 obstruct the sheriff unlawfully in the execution of this order; or
 - 4.2 wilfully disobey this order; or
 - 4.3 remove or intentionally cause harm to any item about to be attached or removed in terms of this order, until the attachment is set aside by the Court or is lifted on instruction from the applicant.

ANNEXURE B

Having heard counsel for the applicant and having read the papers filed of record, and on the basis that the applicant undertakes to this court that -

1. this order will not be executed outside the hours between 08h00 and 18h00 on a weekday;
2. applicant will prevent the disclosure of any information gained during the execution of this order to any party except in the course of obtaining legal advice or pursuing litigation against the respondent;
3. applicant will compensate the respondent for any damage caused to the respondent by anyone exceeding the terms of this order;
4. applicant will compensate the respondent for any damage caused to the respondent by reason of the execution of this order should this order subsequently be set aside,

IT IS ORDERED:

1. That the respondent and any other adult person in charge of the premises of the respondent at New Road, Delmas grant the sheriff of the above Honourable Court, applicant's manager (Mr XY Zuma), attorney AB Collins ("applicant's attorney") and a computer operator nominated by applicant access to the said premises for the purpose of
 - 1.1 searching the premises for the purpose of enabling any of those persons to identify and point out to the sheriff originals or copies of or extracts from applicant's recipes and formulae for the manufacture of AZ toys;
 - 1.2 examining any item for the purpose of identifying it and deciding whether it is of the nature mentioned in the preceding subparagraph;
 - 1.3 searching the premises for the purposes of finding any computer disc containing any of the items referred to above.
2. That the respondent forthwith discloses passwords and procedures required for effective access to the computer for the purpose of searching on the computer and making a disc copy, or, if that is not possible, a print out of computer documents containing information of the nature which would be expected in a document mentioned in paragraph 1.1 above.
3.
 - 3.1 That the respondent permit the sheriff to attach and to remove any document pointed out by a person mentioned in paragraph 1 as being a document covered by paragraph 1.
 - 3.2 That, subject to paragraph 5.2 hereof, the sheriff is authorised to attach any document which is pointed out by any of the aforesaid persons and is directed to remove any attached document in respect of which the applicant or the applicant's attorney does not give a different instruction. The sheriff is directed to keep each removed item in his custody until the applicant authorises its release to the respondent or this Court directs otherwise.

4. That until completion of the search authorised in the preceding paragraphs the respondent may not access any computer or any area where documents of the class mentioned in paragraph 1.1 may be present except with the leave of the applicant's attorney or to make telephone calls or send an electronic message to obtain the attendance and advice mentioned in the notice which is handed over immediately prior to execution of this order.
5. The sheriff is directed, before this order and this application is served or executed, to -
 - (a) hand to the respondent or the other person found in charge of the said premises a copy of a notice which accords with annexure A of the Practice Manual; and
 - (b) to explain paragraphs 2, 3 and 4 thereof; and
 - (c) to inform those persons the following:
 - 5.1 That any interested party may apply to this Court on not less than twenty four (24) hours' notice to the offices of the applicant's attorney for a variation or setting aside of this order, the court's practices and rules applying unless the court directs otherwise.
 - 5.2 That the respondent is entitled to make a copy of any document which the sheriff intends to remove unless the sheriff declares that the time involved makes the procedure impractical and the sheriff either does not remove the relevant item or removes it in a container sealed by him and which the sheriff may not open except to give to effect this order or to any further direction from the Court.
 - 5.3 That the respondent or his representative is entitled to inspect items in the sheriff's possession for the purpose of satisfying themselves that the inventory is correct.
6. The sheriff is ordered to immediately make a detailed inventory of all items attached and to provide the Registrar of this court, the applicant's attorney, and the respondent with a clear copy thereof.
7. That unless a different direction is obtained from the Court, applicant and applicant's attorney will, two days after this order is executed, become entitled to inspect any of the removed items in order to assess whether it provides evidence relevant to the present application or to the further legal proceedings envisaged in the application.
8. That the sheriff is ordered to inform the respondent that the execution of this order does not dispose of all the relief sought by the applicant and to simultaneously serve the notice of motion and explain the nature and exigency thereof.
9. The costs of this application are reserved for determination in the further proceedings foreshadowed in this application save that -

- (a) if the applicant does not institute those legal proceedings within three weeks of the date of this order, either party may, on not less than 96 hours' notice to the other, apply to this Honourable Court for an order determining liability for those costs and determining what must be done about removed items and any copies thereof;
- (b) any other party affected by the grant or execution of this order may on no less than 96 hours' notice apply to this Honourable Court for an order determining liability for the costs of such party and determining what must be done about any item removed from any such party or any copy thereof.

Note: in some situations the following may also be appropriate:

- 10. The respondent and any other adult person in charge of the premises at which this order is executed are further directed to disclose to the sheriff of the above Honourable Court the whereabouts of any document or item falling within the categories of documents and items referred to in 1.1 above, whether at the premises at which this order is executed or elsewhere to the extent that the whereabouts are known to such person(s).
- 11. In the event of any document or item is disclosed to be at the premises other than the premises mentioned in paragraph 1.1 of this order, the applicant may approach this court ex parte for leave to permit execution of this order at such other premises.

10.2 ADMISSION OF ADVOCATES

1. An application for admission as an advocate must, in addition to the information required by section 3(1) of the Admissions of Advocates Act No74 of 1964 and Rule 3A of the Rules of the Supreme Court allege that -
 - 1.1 the applicant is not arraigned on a criminal charge and has not been convicted of a criminal offence;
 - 1.2 the applicant's estate has not been sequestrated and that no sequestration proceedings are pending;
 - 1.3 the applicant was not found guilty in misconduct proceedings while in a previous profession or employment and that when any previous profession was relinquished or employment was terminated, no misconduct proceedings were pending; and
 - 1.4 the applicant is unaware of any fact which may detrimentally affect the adjudication of the application.
2. If the applicant is unable to make any of the allegations aforementioned, full details of the circumstances which preclude the allegation being made must be furnished.
3. The registrar is to ensure that the court files containing the admission applications are handed to the clerks of the judges hearing the application at least two days before the hearing of the applications.
4. Applications for admissions are heard before two judges.

10.3 CANCELLATION OF SALE IN EXECUTION

1. If an application in terms of rule 46(11) is unopposed it is dealt with by the judge before whom it comes in chambers. If the application is opposed the application will be heard in open court.
2. The notice of motion must inter alia be served on the purchaser against whom relief is sought. The notice of motion must inform the purchaser of the time within which and the manner in which the applicant and the registrar must be informed of the purchasers intention to oppose the relief sought if any.
3. If no intention to oppose the relief sought is filed, the applicant must depose to an affidavit stating that fact. The affidavit must be placed in the court file before the application comes before the judge.

10.4 CHANGE TO THE MATRIMONIAL REGIME

1. The application is commenced by publication in the Government Gazette of a notice substantially in the form of Annexure A hereto.
2. The report of the Registrar of Deeds must be obtained before such advertisement is placed.
3. At least 3 weeks before the hearing date a copy of the notice referred to in para 1 must be forwarded to each creditor by registered post and must be accompanied by a letter, a copy of which must be placed before the court, which states -
 - 3.1 on which date and time and to which court application will be made;
 - 3.2 the full names of the spouses, their identity numbers and their residential addresses and places of employment in the preceding 12 months;
 - 3.3 the effect of the proposed order;
 - 3.4 that a creditor whose interests will be prejudicially affected by the change of marital regime, may appear at the hearing to oppose the granting of the order.
4. The name, address, amount owing to, and the cause of action of each contingent and other creditor must be set out in the application. Proof of compliance with para 1, 2 and 3 must be proved at the hearing of the application by the filing of a supplementary affidavit.

ANNEXURE A

Take notice that on the _____ day of _____ 20____ at 10h00 or so soon thereafter as the matter can be heard, the abovementioned applicants will apply to the South Gauteng High Court of Johannesburg (address) for an order in the following terms:

1. The applicants are given leave to change the matrimonial property system which applies to their marriage, by the execution and registration of a notarial contract, a draft whereof is attached to the first applicant's supporting affidavit and is marked ". . ." and which contract, after registration thereof, will regulate their property system;
2. The Registrar of Deeds is authorised to register the notarial contract;
3. This order –
 - 3.1 will lapse if the notarial contract is not registered by the Registrar of Deeds within two months of the date of the granting of this order; and
 - 3.2 will not prejudice the rights of any creditor of the applicants as at date of registration of the contract.

10.5 COMPROMISE IN TERMS OF SECTION 311 OF THE COMPANIES ACT 61 OF 1973

1. Every chairperson and alternate chairperson must be identified by name. It must be proved that such person is not a professional advisor of and has no direct or indirect interest in the offeror, in the company or in a holding company or a subsidiary of any of them.
- 2.1 The proposed statement in terms of section 312 must be attached to the application. To limit costs, the facts therein which require proof must be repeated in the affidavit only by way of an appropriate reference to the statement as is meant in *Ex parte De Villiers 1993 1 SA 493 (A) at 508H-I*.
- 2.2 The statement must not amount to an abbreviated repetition of the terms of the compromise but must explain its impact in terms which are readily understandable by a layman. The statement must explain what will happen to an affected party's interest if the scheme is approved; what conditions precedent and other risks of failure are operative and what the prospects are about those risks; what must be done to obtain and to enforce rights created by the scheme; how those rights may be lost; how the party will be informed of or can gain knowledge of fulfilment of conditions like approval of some third party; and what must be done to enable the party to vote.
- 2.3 The statement may be compiled by an accountant, liquidator or other person with adequate knowledge of the facts and must state the name of its author.
 - 2.3.1 The statement in terms of section 312(1)(a)(i) must be approved of by the court in advance and must therefore form part of the application.
 - 2.3.2 That statement must be in a document which is separate from the applicant's statement in compliance with section 312(1)(a)(ii) and separate from any other information (the information which explains why the scheme is a good idea rather than what its impact will be) which the applicant intends putting before interested parties, whether in order to comply with a requirement of some body or of its own volition.
 - 2.3.3 The statement and the actual scheme of arrangement must be forwarded to interested parties in a way which contrast them from documents about which the court made no finding, by way of binding them separately, using pages with a different colour, or making the distinction with a blank page and clear headings.
 - 2.3.4 The papers sent to interested parties must commence with the said statement, followed by the scheme of arrangement and then followed by such other documents as the applicant may have in mind.
 - 2.3.5 Reasons for any opinion that the offer is fair and reasonable must be stated in an affidavit by the individual or individuals who provided the opinion.
3. The court must be informed about the extent to which parties who are entitled to vote are not from the Witwatersrand. If the court is not so informed it will incline to require publication in a newspaper with

national circulation in its dominant language and in another official language in a national newspaper which is in circulation in the province wherein the company carried on business.

4. The order must -
 - 4.1 require proof of giving notice in accordance with membership according to both the company's register and the sub-register of all CSDP's;
 - 4.2 allow shareholders sufficient time to obtain powers of attorney from their CSDP's;
 - 4.3 if relevant information is to be ascertained or published only in the future, allow shareholders sufficient time to receive that information, to consult with their advisers and to get a response to the place where the meeting is to be held.
5. Unless expressly otherwise directed, the court order need not be published in any newspaper. The application must be drafted so as not to ask for such publication. The notice convening the scheme must be published.
6. The chairperson must forthwith
 - 6.1 cause a notice convening the meeting which substantially conforms with the annexure hereto to be published in an official gazette and such newspaper as the court directs, on a date which is at least two weeks prior to the date of the meeting; and
 - 6.2 send the following by prepaid registered post to each creditor of the company:
 - 6.2.1 A copy of the court order.
 - 6.2.2 A copy of the offer to compromise.
 - 6.2.3 A copy of the statement in terms of sections 312(1) and (2) of the Act.
 - 6.2.4 A form which can be used as proxy.
 - 6.2.5 A statement showing
 - 6.2.5.1 the amount for which the creditor is reflected in the company's records as a creditor of the company and the extent to which he is reflected as a preferent or as a secured creditor;
 - 6.2.5.2 the company's asset and the values thereof;
 - 6.2.5.3 the aggregate amounts due to (a) secured, (b) preferent and (c) concurrent creditors;
 - 6.2.5.4 the amount which creditors claim to be owing to them, the validity of those claims; and what security is held therefor;
 - 6.3 A notice which accords with the annexure hereto should form the front page of the documents sent to a creditor. If not, the front page must explain the essence of the scheme in simple terms. In either event the words explaining the scheme must appear in bold print.
7. If reason arises for regarding one or more creditors as a class of creditors which possibly should, in the order authorising the convening of the meetings, have been recognised as a further class of creditors, the votes of any creditor who may be in that class shall be cast, counted and reported on separately.

8. The chairperson must report to the court on
 - 8.1 the grounds, if any, for concluding that one or more creditors constitute such an additional class of creditors;
 - 8.2 the number of creditors who attend in person;
 - 8.3 the number of creditors who were represented by proxies and which thereof was represented by the chairperson in terms of proxies;
 - 8.4 the amount of the claims of those creditors;
 - 8.5 which proxies were rejected;
 - 8.6 each resolution taken at any meeting with particulars of the number of votes cast in favour and against each resolution and the number of abstentions, stating the number of votes cast by the chairperson by virtue of proxies;
 - 8.7 each ruling of the chairperson at a meeting;
 - 8.8 the salient qualities of every other offer of compromise which was open for consideration at a meeting.

10.6 CURATOR BONIS

1. At the first hearing of the application for the appointment of a curator bonis, the only relief granted is the appointment of a curator ad litem. All other relief is postponed sine die pending receipt of the curator ad litem's and the master's report.
2. The application is re-enrolled after the aforementioned reports have come to hand.
3. Save in exceptional circumstances, which must be established on affidavit, an application for the appointment of a curator bonis will not be heard if the aforementioned reports have not been filed in the court file.
4. The consent of both the curator ad litem and the proposed curator bonis must be annexed to the application.

10.7 CURATOR AD LITEM

1. Where the appointment of a curator ad litem is sought to assist a litigant in the institution or conduct of litigation, the applicant must establish the experience of the proposed curator ad litem in the type of litigation which the litigant wishes to institute or conduct.
2. A consent to act by the proposed curator ad litem must be annexed to the application.
3. In order to preclude giving notice of the application to the prospective defendant, the applicant should seek that the costs of the application be reserved for determination in the contemplated trial.
4. The order sought should only permit the proposed curator to settle the action with the approval of a judge.
5. Where the curator ad litem requires the approval of the court to settle the action, the curator ad litem and plaintiff's counsel may approach the deputy judge president for the allocation of a judge in chambers to approve the settlement.

10.8 ENQUIRIES IN TERMS OF SECTION 417 OF THE COMPANIES ACT 61 OF 1973

- 1.1 The request that the enquiry be held in secret should be fully motivated. Secrecy will not be ordered as a matter of course.
- 1.2 Where application is made to examine a particular witness, it must be shown that the witness in question has refused to furnish the information required of him or is otherwise unwilling to cooperate with the liquidator.
- 1.3 Since the amendment of section 417 which has given the power to the Master to hold the enquiry, any application to the Court under this section must indicate whether the Master himself has instituted an enquiry and why it is necessary to apply to Court for this purpose.

10.9 EVICTION IN TERMS OF THE PREVENTION OF ILLEGAL EVICTIONS AND UNLAWFUL OCCUPATION OF LAND ACT, 19 OF 1998

1. The application for eviction must be a separate application. The procedure to be adopted (except in urgent applications) is as follows:
 - 1.1 The notice of motion must follow Form 2(a).
 - 1.2 The notice of motion must allow not less than five days from date of service of the application for delivery of a notice of intention to oppose.
 - 1.3 The notice of motion must give a date when the application will be heard, in the absence of a notice of intention to oppose.
2. After the eviction application has been served and no notice of intention to oppose has been delivered or if a notice of intention to oppose has been delivered at a stage when a date for the hearing of the application has been determined, the applicant may bring an ex parte interlocutory application authorising a section 4(2) notice and for directions on service.
3. When determining a date for the hearing of an eviction application, sufficient time must be allowed for bringing the ex parte application, for serving the section 4(2) notice and for the 14 day notice period to expire.
4. If the eviction application is postponed in open court on a day of which notice in terms of section 4(2) was duly given, and if the postponement is to a specific date, it will not be necessary to serve another section 4(2) notice in respect of the latter date.
5. A number of pro forma orders are attached hereto for the guidance of practitioners. The orders must be adapted to meet the exigencies of each case.

10.10 LIQUIDATION

1. The applicant should seek a final winding-up order in the notice of motion.
2. The court may nonetheless in the exercise of its discretion grant a provisional order and direct that service and publication of the provisional order be affected.
3. The service referred to in para 2 could include -
 - 3.1 service of the order on the company or close corporation at its registered office;
 - 3.2 publication of the order in the government gazette;
 - 3.3 publication of the order in a newspaper circulating in the area where the company or close corporation carries on business;
 - 3.4 service on all known creditors. This will only be ordered where the applicant has ready access to the identity and address of the creditors. Depending on the information that the applicant has as to the creditor's address such service can be ordered to be effected by e-mail, facsimile transmission or pre-paid registered post.
4. If a provisional order of liquidation is granted, proof of compliance with the service ordered must be provided on the return date. Such proof is provided by filling an affidavit setting out the manner in which the ordered service was complied with. The presiding judge will only accept the affidavit of service from the bar in exceptional circumstances made out in an affidavit.
5. If an extension of the return date of a provisional order of liquidation is sought, the party seeking such an extension must deliver an affidavit motivating such an extension.
6. Where a company or a close corporation seeks its own winding-up, it is not necessary for the application or for any provisional order that may be granted to be served on the company or close corporation.
7. Where the applicant seeking a winding-up order is a shareholder of a company or member of a close corporation, he shall serve the application on all interested parties, such as a co-shareholder or joint member. Failing such service the applicant should indicate in the founding affidavit why such service is not necessary.

10.11 PROVISIONAL SENTENCE

1. Proof of presentation of a negotiable instrument is unnecessary unless presentation is disputed or the court requires proof thereof.
2. The original liquid document upon which provisional sentence is sought must be handed to the court when the provisional sentence is sought.

10.12 REHABILITATION

1. An application for rehabilitation will not be read by the presiding judge, if the master's report is not in the court file. The presiding judge will only accept the master's report from the bar in exceptional circumstances made out in an affidavit.
2. If the applicant avers that a contribution paid by a creditor has been repaid to the creditor, adequate proof thereof must be provided.
3. The applicant, as is required by section 127 of Act 24 of 1936, must state what dividend was paid by the creditors. It is not acceptable to attempt to comply with this requirement by attaching the distribution account which the presiding judge is expected to analyse and interpret.
4. As the date of the hearing of an application for rehabilitation has been advertised, any postponement of the application will be to a specific date.

10.13 REMOVAL OR AMENDMENT OF RESTRICTIONS ON LAND USE

1. This section applies to applications based on the principle that the consent of the holder of a right to the cancellation or amendment of the conditions embodying his right is to be inferred from the fact that he does not object to the application, as is discussed in, inter alia, *Ex parte Gold 1956 (2) SA 642 (T)* and *Ex parte Glenrand (Pty) Ltd 1983 (3) SA 203 (W)*.
2. It follows that the court should be convinced that the holder of the right in question has knowledge of the application. There should accordingly be service on all persons concerned. Service under Rule 4(2) of the Rules of Court is authorised by way of exception to the ordinary methods of service. Full and cogent reasons should therefore be advanced in support of a request under the sub-rule.
3. The fact – if fact it is – that it might be difficult or costly to ascertain particulars of the persons concerned, and to effect service on them, is not the most important consideration. The nature and extent of the curtailment of the rights of affected persons and the need to ensure that they are made aware of the application, is of greater importance. It follows that the court might distinguish between persons directly or indirectly affected by such applications, and differentiated service might be authorised.
4. When the application is presented to court
 - 4.1 it must be proved that the application together with a request to report was in good time served upon the Registrar of Deeds, any Township Board which is involved and, if possible, a local authority which is able to comment upon -
 - 4.1.1 the correctness of the facts;
 - 4.1.2 the identity of persons who may have a legal interest or whose refusal of consent could be adequate reason to refuse the application; and
 - 4.1.3 about the best method of notifying interested parties.
 - 4.2 a plan or map must be attached (if necessary extending beyond the township within which the property is situated) which will assist the court to ascertain which owners or users (of roads or of rights) have sufficient interest to make notice appropriate;
 - 4.3 proof must be given of the problems encountered or expected which render normal service on interested parties or direct notice on them (perhaps in terms of Court rule 4(2)) impractical;
 - 4.4 The effect of granting the order must be explained since persons affected may by their mere objection put an end to the application, the order should be so worded as to inform affected persons that they are free to make their objection, either by written notice to the Registrar or on the return day, without fear that they will be mulcted in costs.

10.14 SEQUESTRATION

1. In an application for sequestration, unless leave to proceed by way of substituted service has been granted, personal service of the application must be effected on the respondent.
2. Unless the court directs otherwise in terms of section 11 (2) of Act 24 of 1936, the provisional order of sequestration must be served on the respondent personally.
3. If an extension of a provisional order of sequestration is sought, the party seeking such an extension must deliver an affidavit motivating such an extension.
4. If the applicant fails to establish that the application is not a so-called "friendly" sequestration the following will apply:
 - 4.1 Sufficient proof of the existence of the debt which gives rise to the application must be provided. The mere say so of the applicant and the respondent will generally not be regarded as sufficient.
 - 4.2 The respondent's assets must be valued by a sworn appraiser on the basis of what the assets will probably realise on a forced sale. Mere opinions, devoid of reasoning as to what the assets will probably realise, will not be regarded as compliance herewith. The valuation must be made on oath and the appraiser must be qualified as an expert witness in the normal manner.
 - 4.3 Where the applicant seeks to establish advantage to creditors by relying on the residue between immovable property valued as aforesaid and the amount outstanding on a mortgage bond registered over the immovable property, proof of the amount outstanding on the mortgage bond at the time of the launching of the application is required. The mere say so of the applicant and the respondent will generally not be regarded as sufficient.
 - 4.4 Where the applicant seeks to establish advantage to creditors by relying on a sum of money paid into an attorney's trust account to establish benefit for creditors, an affidavit by the attorney must be attached to the application in which he confirms that the money has been paid into his trust account and will be retained there until the appointment of a trustee.
 - 4.5 In establishing advantage to creditors the following sequestration and administration costs will be assumed in an uncomplicated application:
 - 4.5.1 Cost of application – R 6000
Cost of application if correspondent utilised – R 8000 (if the applicant's attorney of record has agreed to limit fees proof thereof must be provided).
 - 4.5.2 The aforementioned costs are assumed to increase by R 700 for every postponement of if the application or if the provisional order has to be furnished to all known creditors, the aforementioned costs are assumed to increase to R 700.

- 4.5.3 The cost of administration, subject to a minimum of R 2500 are:
 - 4.5.3.1 1% plus VAT on cash or money in a financial institution
 - 4.5.3.2 3% plus VAT on immovable property and shares
 - 4.5.3.3 10% plus VAT on movable property including book debt
 - 4.5.4 Other administration costs include sheriff fees (Schedule 3 of Act 24 of 1936) and the cost of security.
 - 4.5.5 The aforementioned costs do not include the costs of the realisation of the asset. The cost must be established. unless evidence to the contrary is placed before the court, it will be assumed that the cost of the realisation of immovable property is 6% of the selling price plus advertising charges.
 - 4.5.6 Regard being had to the costs set out in para 4.5.5, the applicant must in the application set out a calculation indicating the probable dividend to concurrent creditors.
- 4.6 Where the application is brought as an urgent application with the purpose of staying a sale in execution, notice of the application must be given to the judgement creditor. In addition the applicant must set out facts to enable the court to determine that the assets which are to be sold at the sale in execution will realise more, if sold privately.
- 4.7 Notwithstanding para 3 above, a court will be reluctant to grant an extension of a return date in a “friendly” sequestration.