

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.