DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 1272 **17 NOVEMBER 2017**

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA

The Rules Board for Courts of Law has under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE

GENERAL EXPLANATORY NOTE:

Expressions in square brackets in bold **[ ]** indicate omissions from existing rule.

Expressions with solid underline indicate insertions into existing rule.

Definition

1. In this Schedule the "Rules" means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notices Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of 15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1 December 1989, R. 185 of 2 February 1990, R. 1929 of 10 August 1990, R.

1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R 1723 of 30 December 1998, R. 315 of 12 March 1999, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R. 516 of 8 May 2009, R. 518 of 8 May 2009, R 86 of 12 February 2010, R 87 of 12 February 2010, R 88 of 12 February 2010, R 89 of 12 February 2010, R. 90 of 12 February 2010, R. 500 of 11 June 2010, R. 591 of 09 July 2010, R. 980 of 19 November 2010, R. 981 of 19 November 2010, R. 464 of 22 June 2012, R. 992 of 7 December 2012, R 114 of 15 February 2013, R. 262 of 12 April 2013, R. 471 of 12 July 2013, R. 472 of 12 July 2013, R. 759 of 11 October 2013, R. 212 of 28 March 2014, R. 213 of 28 March 2014, R. 214 of 28 March 2014, R. 30 of 23 January 2015, R. 31 of 23 January 2015, R. 317 of 17 April 2015, R. 781 of 31 August 2015, R. 3 of 19 February 2016, R. 678 of 3 June 2016 and R. 1055 of 29 September 2017.

Substitution of rule 46 of the Rules

2. The following rule is hereby substituted for rule 46 of the Rules:

"RULE 46

EXECUTION -

IMMOVABLE[S] PROPERTY

(1)*(a)* Subject to the provisions of rule 46A, **[No]** no writ of execution against the immovable property of any judgment debtor shall be issued **[until]** unless—

(i) a return **[shall have]** has been made of any process **[which may have been]** issued against the movable property of the judgment debtor from which it appears that the said person has **[not]** insufficient movable property to satisfy the writ; or

(ii) such immovable property **[shall have]** has been declared to be specially executable by the court**[;]** or **[, in the case of a judgment granted in terms of rule 31(5), by the registrar:]** where judgment is granted by the registrar under rule 31(5).

[Provided that, where the property sought to be attached is the primary residence of the judgment debtor, no writ shall issue unless the court, having considered all the relevant circumstances, orders execution against such property.]

(b) A writ of execution against immovable property shall contain—

(i) a full description of the nature, **[and]** magisterial district **[, situation (including the address)]** and physical address of the immovable property to enable it to be traced and identified by the sheriff; and **[shall]**

(ii) **[be accompanied by]**sufficient information to enable **[him or her]** the sheriff to give effect to subrule (3) hereof.

(2) **[An]**The attachment of the immovable property shall be made by any sheriff of the district in which the property is situated **[or by any sheriff of the district in which the office of the registrar of deeds or other officer charged with the registration of such property is situate]**, upon a writ corresponding substantially with Form 20 of the First Schedule.

(3) *(a)* **[The mode of attachment of immovable property shall be by] [n]**Notice **[in writing]** of the attachment, corresponding substantially with Form 20A of the First Schedule, shall be served by the sheriff **[served]** upon the owner **[thereof]** of the immovable property**[,]** and upon the registrar of deeds or other officer charged with the registration of such **[immovable]** property, and if the property is **[in the occupation of]** occupied by some person other than the owner, also upon such occupier.

(b) Any **[such]** notice **[as aforesaid]** referred to in paragraph*(a)* shall—

(i) draw attention to the provisions of subrule (8)*(a)*(iii); and

(ii) be served according to the provisions of rule 4, 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.

(4)

(a) When effecting the attachment, the sheriff may enter buildings or structures on the immovable property in order 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 any building or structure on account of the property, building or structure being locked, the sheriff may use a locksmith to gain entry.

[*(a)*]

(b) After attachment, any sale in execution shall take place in the district in which the attached immovable property is situated and shall be conducted by the sheriff of such district who first attached the property:

Provided that the sheriff in the first instance and subject to the provisions of paragraph **[*(b)*]** *(d)* of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

[*(b)*]

(c) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record **[what]** 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.

(5) Subject to rule 46A and any order made by the court, **[No]** no immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless—

(a) the execution creditor has caused notice **[, in writing,]** of the intended sale to be served **[by registered post]** upon— **[the preferent creditor, if his address is known and, if the property is rateable, upon the local authority concerned]**

(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;

calling upon **[them]** the aforesaid entities to stipulate within **[ten]** 10 days of a date to be stated, a reasonable reserve price or to agree in writing to a sale without reserve, and has provided proof to the sheriff that **[the preferent creditor has]** such entities have so stipulated or agreed, or

(b) the sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph *(a)* **[of this subrule]** within the time stated in such notice.

(6) The sheriff may by notice served upon any person require **[him]** such person to deliver up to **[him]** the sheriff forthwith, all documents in **[his]** such person's possession or control relating to the debtor's title to the said property.

(7)*(a)* The sheriff conducting the sale shall appoint a day and place for the sale of **[such]** the attached immovable property, such day being, except by special leave of a magistrate, not less than **[one month]** 45 days after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.

(b) (i) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the attached immovable property, its improvements, magisterial district and

physical address **[situation and street number, if any]**, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the sheriff conducting the sale **[, and he or she shall furnish the said sheriff with as many copies of the notice as the latter may require]**.

(ii) The execution creditor must furnish the sheriff with as many copies of the notice of sale as the sheriff may require.

(c) The execution creditor shall—

(i) publish the notice once in a newspaper circulating daily or weekly in the district in which the attached immovable property is situated and in the **[*Government*]** *Gazette* not less than **[5]** five days and not more than 15 days before the date of the sale; and

(ii) provide the sheriff conducting the sale, by hand, or by facsimile or electronic mail, with one satisfactory photocopy of each of the notices published in the newspaper and the **[*Government*]** *Gazette*, respectively **[, or in the case of the *Government Gazette*, the number of the *Government Gazette* in which the notice was published]**.

(d) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall forward **[by registered post]** a copy of the notice of sale referred to in paragraph *(b)* **[above]** to every **[judgment/]** execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and shall simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.

(e) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall affix—

(i) one copy of the notice on the notice-board of the magistrate's court of the district in which the attached immovable property is situated, or if the said property **[be]** is situated in the district **[in which]** where the court out of which the writ was issued is situated, then on the notice-board of such court;**[,]** and

(ii) one copy at or as near as may be to the place where the said sale is actually to take place.

(8)*(a)*(i) **[The conditions of sale shall, not]** Not less than **[20]**35 days prior to the date of the sale, **[be prepared by]** the execution creditor shall prepare the conditions of sale, corresponding substantially with Form 21 of the First Schedule, upon which the attached property is to be sold and **[the said conditions of sale shall be submitted]** shall submit such conditions to the sheriff conducting the sale, **[to settle]** for the purposes of settling them.

(ii) In addition to any other terms, the conditions of sale shall include any conditions ordered by the court.

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

(iv) Not less than 20 days prior to the date of the sale, the sheriff shall settle the conditions of sale.

(v) 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, 2008 (Act No. 68 of 2008), and the Regulations promulgated thereunder.

(b) **[(ii)]**(i) The execution creditor shall thereafter supply the said sheriff with **[two]** three copies of the conditions of sale, one of which shall lie for inspection by interested parties at **[his or her]** the office of the sheriff for 15 days prior to the date of the sale.**[and the]**

(ii) The sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.

(c) Not less than 15 days prior to the date of the sale, the sheriff shall serve one copy of the conditions of sale on the judgment debtor.

(d) **[(b)] [Any interested party may, not less than 10 days prior to the date of the sale,]** Not less than 10 days prior to the date of the sale, any interested party may, subject to rule 46A and any order made by the court under the provisions thereof, and upon **[twenty-four]** 24 hours' notice to **[the execution creditor and the bondholders]** all known affected parties apply to the magistrate of the district in which the attached immovable property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an appropriate order as to costs **[, as to him may seem meet]**.

(9) The execution creditor **[may]** shall appoint **[an attorney]** a conveyancer to attend to the transfer of the attached immovable property **[when]** sold in execution: 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.

(10) Immovable property attached in execution shall be sold by the sheriff by public auction.

(11)*(a)* (i) If the purchaser fails to carry out any **[of his or her]** 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 **[again]** be put up for sale again.

(ii) The report shall be accompanied by a notice corresponding substantially with Form 21A of the First Schedule.

(iii) If the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.

(b) **[The purchaser shall be responsible for any]** Any loss sustained by reason of **[his or her]** the purchaser's default **[,which loss]** may, on the application of any aggrieved creditor whose name appears on the **[said]** sheriff's distribution account, be recovered from **[him or her]** the purchaser under judgment of **[the]** a judge **[pronounced summarily]** given on a written report by the **[said]** sheriff, after **[such purchaser shall have received]** notice in writing has been given to the purchaser that **[such]** the report will be laid before **[the]** a judge for **[such]** the aforesaid purpose.

(c) If **[such]** the purchaser is already in possession of the immovable property, the said sheriff may, on **[10 days']** notice to affected persons apply to a judge for an order **[ejecting him or her]** evicting the purchaser or any person claiming to **[hold under him or her therefrom]** occupy the property through the purchaser or otherwise occupying the property.

(12) Subject to the provisions of rule 46A and subrule (5) hereof**[,]**—

(a) the sale shall be **[without reserve and]** conducted upon the conditions stipulated under subrule (8); and

(b) the immovable property shall be sold to the highest bidder.

(13)

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

(b) 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]** of 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.

(c) No amount of the purchase money shall be paid out until the provisions of subrule (14) have been complied with.

(14)

[(a) The sheriff conducting the sale shall not pay out to the creditor the purchase money until transfer has been given to the purchaser, but upon receipt thereof he or she shall forthwith pay into the deposit account of the magistrate of the district all moneys received in respect of the purchase price and simultaneously inform all other sheriffs appointed in that district of such payment.]

(a) After conclusion of the sale, but before preparation by the sheriff of a plan of distribution, the execution creditor or his or her attorney shall provide the sheriff with a certificate of all money paid by the judgment debtor to the execution creditor or his or her attorney after the issue of the writ of execution.

[*(b)* The said sheriff shall as soon as possible after the sale prepare in order of preference, as hereinafter provided, a plan of distribution of the proceeds and shall forward a copy of such plan to the registrar of the court and to all other sheriffs appointed in that district. Immediately thereafter the said sheriff shall give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for 15 days from a date mentioned at his or her office and at the office of the registrar, and unless such parties shall signify, in writing, their agreement to the plan, such plan shall so lie for inspection.]

(b) (i) Within 10 days after the date of registration of the 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 and to all other sheriffs appointed in that district.

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

(c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference:

(i) **[the claims]** Claims of preferent creditors ranking in priority in their legal order of preference; and thereafter

(ii) **[the claims]** Claims of other creditors whose writs have been lodged with the sheriff in the order of preference appearing from sections **[ninety-six]** 96, and **[ninety-nine]** 98A to **[one hundred and three]** 103 (inclusive) of the Insolvency Act, 1936 (Act No. 24 of 1936) **[as amended]**.

(d) **[Any interested person objecting to such plan shall, within five days of the expiry of the period referred to in paragraph *(b)* of this subrule give notice in writing to the sheriff and all other interested persons of the particulars of his objection and shall bring such objection before a judge for review on 10 days' notice to the sheriff and the said persons.]**

Any interested person objecting to the plan must—

(i) before the expiry of the period referred to in paragraph *(b)*(ii), 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 judge for review upon 10 days notice to the sheriff and the said persons.

(e) 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 an order as to costs as he or she deems **[to him or her seems meet]** appropriate.

(f) If—

(i) no objection **[be]** is lodged to such plan**[,]**; or

(ii) the interested parties signify their concurrence therein**[,]**; or

(iii) the plan is confirmed or amended on review,

the **[magistrate]** sheriff shall, on production of a certificate from the conveyancer that transfer has been given to the purchaser **[and on the request of the sheriff]**, pay out in accordance with the plan of distribution. **[If the address of a payee is not known the amount due to him shall be paid into the Guardian's Fund established under any law relating to the Administration of Estates.]**

(15) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any **[of the]** immovable property offered for sale either for himself or herself or for any other person.

(16) In this rule, the word "days" shall have the same meaning as "court days" as defined in rule 1 of these Rules."

Insertion of rule 46A in the Rules

3. The following rule is hereby inserted in the Rules after rule 46:

"46A Execution against residential immovable property

(1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.

(2)*(a)* A court considering an application under this rule must—

(i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor; and

(ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.

(b) A court shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the court, having considered all relevant factors, considers that execution against such property is warranted.

(c) The registrar shall not issue a writ of execution against the residential immovable property of any judgment debtor unless a court has ordered execution against such property.

(3) Every notice of application to declare residential immovable property executable shall be—

(a) substantially in accordance with Form 2A of Schedule 1;

(b) on notice to the judgment debtor and to any other party who may be affected by the sale in execution, including the entities referred to in rule 46(5)*(a)*: Provided that the court may order service on any other party it considers necessary;

(c) supported by affidavit which shall set out the reasons for the application and the grounds on which it is based; and

(d) served by the sheriff on the judgment debtor personally: Provided that the court may order service in any other manner.

(4)*(a)* The applicant shall in the notice of application—

(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 in these proceedings; and

(iv) state the applicant's postal, facsimile or electronic mail address where available.

(b) The application shall not be set down for hearing on a date less than five days after expiry of the period referred to in paragraph *(a)*(ii).

(5) Every application shall be supported by the following documents, where applicable, evidencing:

(a) the market value of the immovable property;

(b) the local authority valuation of the immovable property;

(c) the amounts owing on mortgage bonds registered over the immovable property;

(d) the amount owing to the local authority as rates and other dues;

(e) the amounts owing to a body corporate as levies; and

(f) any other factor which may be necessary to enable the court to give effect to subrule (8):

Provided that the court may call for any other document which it considers necessary.

(6)*(a)* A respondent, upon service of an application referred to in subrule (3), may—

(i) oppose the application; or

(ii) oppose the application and make submissions which are relevant to the making of an appropriate order by the court; or

(iii) without opposing the application, make submissions which are relevant to the making of an appropriate order by the court.

(b) A respondent referred to in paragraph *(a)*(i) and (ii) shall—

(i) admit or deny the allegations made by the applicant in the applicant's founding affidavit; and

(ii) set out the reasons for opposing the application and the grounds on which the application is opposed.

(c) Every opposition or submission referred to in paragraphs *(a)* and *(b)* shall be set out in an affidavit.

(d) A respondent opposing an application or making submissions shall, within 10 days of service of the application—

(i) deliver the affidavit referred to in paragraph *(c)*;

(ii) appoint a physical address within 15 kilometres of the office of the registrar at which documents may be served upon such respondent; and

(iii) state the respondent's postal, facsimile or electronic mail address where available.

(7) The registrar shall place the matter on the roll for hearing by the court on the date stated in the Notice of Application.

(8) A court considering an application under this rule may—

(a) of its own accord or on the application of any affected party, order the inclusion in the conditions of sale, of any condition which it may consider appropriate;

(b) order the furnishing by—

(i) a municipality of rates due to it by the judgment debtor; or

(ii) a body corporate of levies due to it by the judgment debtor;

(c) on good cause shown, condone—

(i) failure to provide any document referred to in subrule (5); or

(ii) delivery of an affidavit outside the period prescribed in subrule (6)*(d)*;

(d) order execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt;

(e) set a reserve price;

(f) postpone the application on such terms as it may consider appropriate;

(g) refuse the application if it has no merit;

(h) make an appropriate order as to costs, including a punitive order against a party who delays the finalisation of an application under this rule; or

(i) make any other appropriate order.

(9)*(a)* In an application under this rule, or upon submissions made by a respondent, the court must consider whether a reserve price is to be set.

(b) In deciding whether to set a reserve price and the amount at which the reserve is to be set, the court shall take into account—

(i) the market value of the immovable property;

(ii) the amounts owing as rates or levies;

(iii) the amounts owing on registered mortgage bonds;

(iv) any equity which may be realised between the reserve price and the market value of the property;

(v) reduction of the judgment debtor's indebtedness on the judgment debt and as contemplated in subrule (5)*(a)* to *(e)*, whether or not equity may be found in the immovable property, as referred to in subparagraph (iv);

(vi) whether the immovable property is occupied, the persons occupying the property and the circumstances of such occupation;

(vii) the likelihood of the reserve price not being realised and the likelihood of the immovable property not being sold;

(viii) any prejudice which any party may suffer if the reserve price is not achieved; and

(ix) any other factor which in the opinion of the court is necessary for the protection of the interests of the execution creditor and the judgment debtor.

(c) If the reserve price is not achieved at a sale in execution, the court must, on a reconsideration of the factors in paragraph *(b)* and its powers under this rule, order how execution is to proceed.

(d) Where the reserve price is not achieved at a 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;

(iii) the highest bid or offer made; and

(iv) Any other relevant factor which may assist the court in performing its function in paragraph *(c)*.

(e) The court may, after considering the factors in paragraph *(d)* and any other relevant factor, order that the property be sold to the person who made the highest offer or bid."

Substitution of Form 21 of the Rules

4. The following Form is hereby substituted for Form 21 in the First Schedule of the Rules:

"FORM 21

CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

In re:

.....

[Plaintiff] Execution Creditor

and

.....

[Defendant] Judgment Debtor

The immovable property (hereinafter referred to as the "property") which will be put up **[to]** for auction on the ..... day of ..... **[19]** 20....., consists of: .....

The sale shall be **[subject to]** conducted on the following conditions:

1. The sale shall be conducted in accordance with the provisions of rule 46 of the Uniform Rules of Court and all other applicable law.

[1.]2. The property shall be sold by the sheriff of ..... at .....to the highest bidder without reserve/**[with]** subject to a reserve price of.....

[2.]3. The sale shall be for rands, and no bid for less than one thousand rands shall be accepted.

[3.]4. If any dispute arises about any bid, the property may **[be]** again be put up **[to]** for auction.

[4.]5(a) If the **[auctioneer]** sheriff makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified.

(b) If the **[auctioneer]** sheriff suspects that a bidder is unable to pay either the deposit referred to in condition **[6]** 7 or the balance of the purchase price, **[he]** the sheriff may

refuse to accept the bid of such bidder, or accept it provisionally until the bidder satisfies **[shall have satisfied him]** the sheriff that **[he]** such bidder is **[in a position]** able to pay **[both such amounts]** the deposit and the balance of the purchase price.

(c) On the refusal of a bid under **[such]** circumstances referred to in paragraph (b), the property may immediately **[be again]** be put up **[to]** for auction again.

[5.]6(a) The purchaser shall, as soon as possible after the sale**[,]** and immediately on being requested by the **[.....]** sheriff, sign these conditions **[, and if he has bought qua qualitate, state the name of his principal]**.

(b) If the purchaser purchases in a representative capacity, the purchaser shall disclose the name of the principal or person on whose behalf the property is being purchased.

[6.]7(a) The purchaser shall pay to the sheriff a deposit of **[ten]** 10 per cent of the purchase price in cash or by bank guaranteed cheque on the day of the sale**[,]**.

(b) **[the]**The balance shall be paid against transfer **[to]** and shall be secured by a **[bank or building society]** guarantee issued by a financial institution **[, to be]** approved by **[plaintiff's]** the execution creditor or his or her attorney, **[to]** and shall be furnished to the sheriff within ..... days after the date of sale.

[(b) If transfer of the property is not registered within one month after the sale, the purchaser shall be liable for payment of interest to the plaintiff at the rate of ..... per cent p.a. and to the .....bondholder at the rate of ..... per cent p.a. on the respective amounts of the award to the plaintiff and the ..... bondholder in the plan of distribution as from the expiration of one month after the sale to date of transfer.]

[7. Inasmuch as the defendant is a member of the ..... Group, no bids will be accepted by or on behalf of a person who is not a member of such Group, unless such person exhibits to the auctioneer at the sale a permit from the Minister of the Interior authorizing him to acquire such property.]

8. (a) If the purchaser fails to carry out any **[of his]** obligation**[s]** due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the

report of the sheriff after due notice to the purchaser, and the property may again be put up for sale. **[; and]**

(b) In the event of the circumstances in paragraph (a) occurring, the purchaser shall be responsible for any loss sustained by reason of **[his]** such default, which loss may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from **[him]** the purchaser under judgment of **[the]** a judge pronounced **[summarily]** on a written report by the sheriff, after such purchaser **[shall have received]** has been given notice in writing that such report will be laid before the judge for such purpose.**[; and]**

(c) **[if he]** If the purchaser is already in possession of the property, the sheriff may, on **[seven days']** notice to affected parties, apply to a judge for an order **[ejecting]** evicting **[him]** the purchaser or any person claiming to **[hold under him therefrom]** occupy the property through the purchaser or otherwise occupying the property.

9**[.]** (a) The purchaser shall immediately on demand pay **[auctioneer's charges on the day of sale and in addition, transfer dues, costs of transfer, and arrear rates, taxes and other charges necessary to effect transfer, upon request by the attorney for the execution creditor.]** the sheriffs' commission calculated as follows:

.....;

(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 a 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 **[immediately]** after signature of the conditions of sale, payment of the **[initial]** deposit**[,]** and upon the balance of the purchase price being secured in terms of condition 7(b). **[and shall after such deposit be at the risk and profit of the purchaser.]**

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

[b] (c) Upon the purchaser taking **(occupation)** possession, the property shall be at the risk and profit of the purchaser.

[c] (d) The execution creditor and the sheriff 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 **[may]** shall be entitled to obtain transfer forthwith **[if he pays]** upon payment of the whole purchase price and **[complies]** compliance with condition 9, **[in which case any claim for interest shall lapse,] [otherwise]** 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 of .....per cent per annum on the purchase price.

12**[.]** (a) The sheriff may demand that any **[buildings standing on]** improvements to the property sold shall be immediately insured by the purchaser for **[the]** their full value, **[of the same and the insurance policy handed to him]** proof of insurance given to the sheriff and such insurance policy kept in force **[as long as the whole price has not been paid:]** until transfer is registered.**[if he does not do so, the sheriff may effect the insurance at the purchaser's expense.]**

(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]**The sheriff **[not holding himself]** shall not be liable for any deficiency that may be found to exist in the property **[and renouncing all excess]**. **[The property is also sold subject to all servitudes and conditions specified in the deed of transfer.]**

14. The execution creditor shall **[be entitled to]** appoint **[an attorney]** the conveyancer to **[attend to the]** 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.

Dated at ..... this ..... day of ..... **[19]** 20.....

Sheriff

I certify hereby that to-day the ..... in my presence the hereinbefore-mentioned property was sold for ..... to .....

.....

.....

I, the undersigned ....., residing at ..... in the district of ..... do hereby bind myself as the purchaser of the hereinbefore-mentioned property to pay the purchase price and to perform all and singular the conditions mentioned above."

Insertion of Form 2A in the Rules

5. The following Form is hereby inserted in the First Schedule of the Rules after Form 2:

"FORM 2A

NOTICE OF APPLICATION TO DECLARE IMMOVABLE PROPERTY EXECUTABLE IN TERMS OF RULE 46A

In the High Court of South Africa
(..... Division)

Case No. .....

In the matter between:

.....Applicant

and

.....Respondent

Please take notice that the applicant herein intends to make application to the above Honourable Court on.....at .....or as soon thereafter as the matter may be heard for an order in the following terms:

(a) .....

(b) .....

(c) .....

And take notice that—

(a) the affidavit of .....annexed hereto, together with annexures thereto, will be used in support of the application; and

(b) the applicant appoints the address below as the address at which service of documents in this application will be accepted.

The/any respondent may oppose the application or make relevant submissions to the court. A respondent intending to do so must—

(a) set out such opposition or submissions in an affidavit;

(b) serve a copy of the affidavit on the applicant/attorney and file the original with the registrar of the above court within 10 days of service of this notice of application;

(c) together with service and filing of the affidavit, appoint an address within 15 kilometres of the office of the registrar of the above court where documents may be served on the respondent; and

(d) appear at the above court on .....

A respondent who opposes the application must in addition in such respondent's affidavit—

(a) admit or deny the allegations made by the applicant; and

(b) state the reasons for opposing the application and set out the grounds upon which the opposition is based.

Failure by a respondent to do any of the things mentioned in this notice of application may result in the court granting the orders prayed for above.

DATED at ..... this ..... day of ..... 20.....

.....

Applicant /his or her Attorney

Address: .....

.....

To: The Registrar of the High Court

And to:

....Respondent

Address: .....

....."

Insertion of Form 20A in the Rules

6. The following Form is hereby inserted in the First Schedule of the Rules after Form 20:

"FORM 20A

NOTICE OF ATTACHMENT IN EXECUTION

In the High Court of South Africa

Case No. .....

In the matter between

..... Execution Creditor

And

..... Judgment Debtor

To: .....

Take notice that I have this day laid under judicial attachment the property in the attached inventory in pursuance of a warrant directed to me by the registrar of the above Honourable Court, whereby I am required to cause to be raised of your property in this district the sum of R..... and R ..... costs recovered against you

by judgment of this court in this action together with my charges in respect of the said warrant.

Your attention is drawn to the provisions of rule 46(8)(*a*)(iii) of the Uniform Rules of the above Honourable Court which reads:

"(iii) Not less than 25 days prior to the date of the 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."

Insertion of Form 21A in the Rules

7. The following Form is hereby inserted in the First Schedule of the Rules after Form 21:

"FORM 21A

NOTICE TO CANCEL SALE OF IMMOVABLE PROPERTY IN TERMS OF RULE 46(11)*(a)*

IN THE HIGH COURT OF SOUTH AFRICA
(..... Division)

Case No.....

In the matter between:

The Sheriff of .....
Applicant

and

.....
Purchaser

In re:

..... Execution Creditor

and

..... Judgment Debtor

PLEASE TAKE NOTICE that the Sheriff of.....intends to request a Judge in chambers, on a date to be allocated by the registrar, 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 Judge will be made to cancel the sale, is attached hereto.

DATED at..... this ..... day of .....20.....

Sheriff of the High Court

..... (Area)

.....

(Address)

To: The Registrar of the above Honourable Court

.....

And to:

Purchaser

.....

.....

(Address)"

Commencement

8. These rules shall come into operation on 22 December 2017.