

March 2013

“When written in Chinese, the word "crisis" is composed of two characters. One represents danger and the other represents opportunity. - John F. Kennedy”

## **EXECUTING A JUDGEMENT: THE PRACTICAL SIDE OF ENFORCING A RIGHT**

Execution can essentially be described as the process whereby a judgement may be/can be enforced. It is usually a lengthy and on-going process and is not complete until the judgement amount has been settled. Execution against property, as a method of enforcing a right to payment of monies owed, is commonly resorted to when a debtor fails to satisfy a judgement ordering him to pay a debt.

From a practical perspective, before it can be said that “execution has been levied” on the property of a judgement debtor or obtained against him, three essential requirements must have been complied with:

- (a) The issue of a valid warrant;
- (b) The attachment of the debtor's property; and
- (c) The sale by public auction by the sheriff of the property attached.

A mere attachment puts nothing in the judgement creditor's pocket and does not make available to him the fruits of his judgement. The process of execution is, therefore, not completed until the judgment creditor is placed in possession of that which the court has awarded him. Thus in a judgement for money, execution is not complete until the goods of the judgement debtor have been attached, removed, the sale in execution is advertised, the goods sold and the proceeds, if sufficient, paid over to the judgement creditor.

The process of execution takes the form of a warrant or writ of execution. The terms warrant and writ are used indiscriminately, but warrant usually connotes a warrant of arrest while a writ is used for the attachment of goods. The word writ is commonly used in the Supreme Court.

A warrant of execution is a document under the hand of the clerk of the Magistrate's Court or the registrar of the Supreme Court and addressed to the sheriff authorising and requiring him to raise on the property of the judgment debtor an amount sufficient to satisfy the judgment debt, cost, and the cost of the sheriff.

*Law & Laughter*

LAWYER: "You say that the stairs went down to the basement?"

WITNESS: "Yes."

LAWYER: "And these stairs, did they go up also?"

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# TRUST LAW: 5 STEPS TO SAFEGUARD YOUR TRUST AGAINST YOURSELF

Judgments regarding the administration of family trusts, have highlighted the need for current legislation to come under review. In three landmark judgments, our courts expressed serious concerns about a lack of proper administration of trust assets and an insufficient degree of separation between the control and enjoyment of these assets by trustees.

The following guidelines, suggested by Adv GPJ van den Berg, should be kept in mind when structuring and managing a trust:

1. In a family trust situation, where the husband and wife are both trustees, it is suggested that there be at least, 3 trustees. Where a trust accordingly has 3 or more trustees, it is further advisable that at least one of these be an independent trustee who is not a beneficiary of the trust and who has no familial connections to either the trustees or the beneficiaries.
3. The right to appoint trustees should be left to existing trustees and should not be granted to the founder, as this affords too much control to the founder.
4. In situations where the founder of a trust is also a beneficiary and a trustee, such a person should be excluded from decisions affording him/her a benefit from the trust. This includes the exclusion of a veto right when it comes to making other decisions.
5. Testamentary reservation by the founder of a trust, as to the division of trust assets, should not be made binding on trustees, who should be free to deviate therefrom should the need arise.
6. The trust must be administered properly to the extent that a proper paper trail exists, including minuted meetings and separate bank accounts.

The approach of our courts, regarding trust assets, is moving in a direction similar to that of “piercing the corporate veil” in the case of companies. This was illustrated by the value of trust assets being taken into account in divorce proceedings, to determine the value of one party's estate for the benefit of the other when dividing the matrimonial property.

## Contact Van Huyssteens

T +27 12 349 2306  
F +086 6151 183

## Address:

De Haviland Crescent Nr. 5,  
III Villaggio Nr.12, Torino Suite  
Persequor Park  
Pretoria, South Africa

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