

Legal Collection Process Summary (Unopposed Matters)

Basic summary of the stages which needs to be followed in a matter which is undefended by the debtor / Tenant. Where a matter is defended, it becomes far more intricate.

Stage 1 - Instructions

1. Receive instructions to proceed with legal action.
2. Open office file.
3. Letter to client wherein acknowledge receipt of new instruction.
4. Contact debtor to negotiate a repayment plan and obtain an offer to repay debt.
5. Settlement instructions received and finalise AOD.
6. No settlement achieved, advised client accordingly and receive obtain instructions to proceed to Summons.

Stage 2 - Summons

1. Drafted Summons and Particulars of claim, print, perused and signed by attorney.
2. Deliver Summons to Court to be issued by the Clerk of the Court.
3. Receive issued Summons back from the Clerk of Court with allocated case number.
4. Send issued Summons to the Sheriff for service thereof on the Debtor.
5. Received return of Service from Sheriff and send copy thereof to Client. Request client's instruction to appoint tracer in event of non-service.
6. Tracer appointed on "no trace, no fee basis".
7. Trace report received and sheriff instructed to serve summons again on new address.

Stage 3 - Judgement

1. Letter send to client requesting instructions to proceed to apply for Default Judgment on laps of 10 days after good service of summons (prescribed period).
2. Instruction to proceed with application for Default Judgment received from client.
3. Draft application for Default Judgment.
4. Application for Default Judgment delivered to court.
5. Attend Court to apply for default judgment in open court (if referred to open court) or to follow up if Judgment has been granted, or attend queries, if necessary.
6. In so far as is required, we attended Court and addressed all queries that the Court had regarding Request for Default Judgment.
7. Send letter to client advising that Default Judgment has been granted with date thereof.

Stage 4 - Warrant of Execution of Movables

1. Request instructions to proceed with Warrant of Execution against the Debtor for Judgment amount.
2. Received written instructions from client to proceed with Warrant of Execution.
3. Warrant of Execution, drafted, printed, signed and send to the Clerk of the Court to be issued.
4. Received warrant back from court duly issued and instructed sheriff to execute warrant
5. Receive Sheriffs return of Service.

6. Draft indemnity and Forward Indemnity to client for signing, if necessary.
7. Received signed Indemnity from client and forward same to Sheriff.
8. Request client's instruction to appoint tracer in event of non-service.
9. Tracer appointed on "no trace, no fee basis".
10. Trace report received drafted re-Issued warrant and send to court to be issued.
11. Received Re-issued Warrant from court and instruct Sheriff to execute Warrant

Stage 5 - Sale of Movables

1. Receive return of Service from Sheriff, with list of Debtors assets attached in execution. Send letter to client to advise and indemnify Sheriff.
2. Follow up with client to provide indemnity.
3. Received indemnity from client and send to Sheriff to remove and sell the assets that he attached.
4. Follow up with Sheriff to provide auction date.
5. Received sale (auction) date from the Sheriff and reported the date to client.
6. Draft full and detailed conditions of sale and forward to Sheriff.
7. Advertised auction sale of Debtors assets in local newspaper, if necessary.
8. Receive Sheriff's cheque for proceeds of auction sale of Debtors movable assets and account to client.

Stage 6A - Warrant of Immovables

1. Receive sheriff return of "nulla bona" alternatively a non-trace reports from tracer after exaction was attempted against movables.
2. Conduct a deed search to see if debtor owns any immovable property. Send letter to client to advise that the debtor owns immovable property that can be declared executable.
3. Take instruction to proceed with Application [66(1)(a)] to sell immovable property (Unit).
4. Affidavit in terms of Section 66(1)(a) to client - sign before commissioner of oaths.
5. Client return affidavit to our offices.
6. Prepare Application in terms of Section 66(1)(a) for sale of Immovable Property.
7. Send Application in terms of Section 66(1)(a) to Sheriff for personal service.
8. Receive return of service from Sheriff.
9. Attend court on set down date to Argue Application in terms of Section 66(1)(a).
10. Report to client on outcome of Application in terms of Section 66(1)(a) - Successful.

Stage 6B - Financial inquiry

1. Request instructions to proceed with Financial Inquiry against the Debtor for Judgment amount.
2. Received written instructions from client to proceed with Financial Inquiry.
3. Draft and send out Judgment Notice in terms of Section 65A(2).
4. Draft Notice in terms of Section 65A(1).
5. Submit section 65A(1) notice at court in order for the court to allocate on which the financial inquiry will be conducted and to have same issued.
6. Deliver section 65A(1) Notice to the Sheriff for personal service on the Debtor.
7. Receive Sheriffs return of Service.
8. Conduct Section 65A financial inquiry
9. Request client's instruction to appoint tracer in event of non-service.
10. Tracer appointed on "no trace, no fee basis".

11. Trace report received drafted CCJ in order to transfer matter to new court jurisdiction (where Debtor is employed and/or resides)
12. Restart section 65A proceedings form new court

Stage 7 - Sale of Immovables

1. Application in terms of Section 66(1)(a) - Successful.
2. Prepare Warrant of Execution against immovable property, print and sign.
3. Receive issued Warrant of Execution from the Clerk of the Court.
4. Prepare Conveyancer Certificate, print and sign.
5. Warrant to Sheriff for attachment of immovable property.
6. Receive return of Service from Sheriff.
7. Warrant to Sheriff for service on registered bondholder, if applicable.
8. Request sale date from Sheriff.
9. Follow up with Sheriff regarding sale date.
10. Prepare sale condition and forward to Sheriff.
11. Advertise sale in local newspaper and Government Gazette.
12. Follow up with local newspaper and Government Gazette.
13. Await auction.
14. Report to client.

Stage 8 - Conclusion

1. Report to client re the finalisation of the matter and request further instructions.
2. Obtain instruction to proceed with Settlement discussions.
3. Obtain instruction to proceed with an application for sequestration / liquidation.
4. Obtain instruction to proceed with Section 65A proceedings (Stage 6B).
5. Obtain instruction to proceed with an application for an emolument attachment order.
6. Obtain instruction to proceed with closing of file.

Eviction Process Summary (Unopposed Matters)

Basic summary of the stages which needs to be followed in a matter which is undefended by the debtor / Tenant. Where a matter is defended, it becomes far more intricate.

Stage 1 - Instructions

1. Receive instructions to proceed with eviction proceedings.
2. Open office file.
3. Letter to client wherein acknowledge receipt of new instruction.
4. Letter of termination to Tenant.
5. Reaction from Tenant send to client for instructions.
6. Settlement instructions received and notify Tenant.
7. No settlement achieved, advised client accordingly and receive obtain instructions to proceed to launch application for eviction.

Stage 2 – Application for eviction

1. Drafted Notice of Motion and founding affidavit.
2. Send affidavit to client in order to be deposed to before a commissioner of oaths;
3. Receive peruse and consider original founding affidavit to check if it was properly commissioned and signed.
4. Make necessary copies of the Notice of Motion
5. Deliver Notice of Motion to Court to be issued by the Clerk of the Court.
6. Receive issued Notice of Motion back from the Clerk of Court with allocated case number.
7. Send issued Notice of Motion to the Sheriff for service thereof on the Tenant, Occupants and the Municipality.
8. Received returns of Service from Sheriff and send copy thereof to Client. Request client's instruction to appoint tracer in event of non-service.
9. Tracer appointed on "no trace, no fee basis".
10. Trace report received and sheriff instructed to serve summons again on new address.

Stage 3 – *Ex parte* application for direction to bring PIE application to notice of Tenant

1. Letter send to client requesting instructions to proceed to apply for direction to serve notice of motion of eviction application on the respondents.
2. Drafted Notice of Motion and founding affidavit and draft order.
3. Formal attendance at commissioner of oaths to depose to the founding affidavit on behalf of client;
4. Make necessary copies of the Notice of Motion;
5. Arrange a date and time for the *ex parte* application with the Magistrate through the offices of the Clerk of the Court. Also obtain a date for the hearing of the main application (Pie application) from the clerk of the court to complete draft order
6. Attend at court with Notice of Motion in order for the Clerk of the Court to issue the notice of motion and to prepare the court file.
7. Receive issued Notice of Motion and court file back from the Clerk of Court with allocated court date.
8. Formal attendance court in order to obtain *ex parte* order (direction to serve notice of motion of eviction application on the respondents)

9. Send issued Notice of Motion, ex parte application and court order to the Sheriff for service thereof on the Tenant, Occupants and the Municipality by way of personal service.
10. Received returns of Service from Sheriff and send copy thereof to Client. Request client's instruction to appoint tracer in event of non-service (not personal service).
11. Tracer appointed on "no trace, no fee basis".
12. Trace report received and sheriff instructed to serve summons again on new address.
13. On date appointed for the hearing of the Notice of Motion apply for further directions to serve notice of motion of eviction application on the respondents other than by way of personal service

Stage 4 – Order for eviction

1. Letter send to client requesting instructions to proceed to apply for an order for eviction.
2. Instruction to proceed with application for eviction order received from client.
3. Prepare draft order.
4. Attend Court to apply for the order for eviction.
5. Send letter to client advising that the order has been granted with date thereof.
6. Send court order to the Sheriff for service thereof on the Tenant and Occupants by way of personal service.
7. Receive instructions that the Tenant and Occupants failed to vacate the leased premises.
8. Obtain instructions from client to have the Tenant and Occupants evicted from the premises.
9. Instruct Sheriff to evict the Tenant and illegal Occupants form the lease premises.
10. Received returns of Service from Sheriff and send copy thereof to Client.

Stage 5 - Conclusion

1. Report to client re the finalisation of the matter and request further instructions.
2. Obtain instruction to proceed with closing of file.