

# Bank Account Attachments: Importance of Serving on the Debtor

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## INTRODUCTION

Immovable and movable property executions are governed by Rules 46 and 45 respectively of the Uniform Rules of Court ("the Rules"). Rule 46 provides for the execution of corporeal immovable property. Rule 45 provides for the execution of corporeal and incorporeal movable property and incorporeal immovable property. It is trite that a judgment debtor's ("the Debtor's") bank account can be attached subsequent to a judgment being granted in terms of Rule 45(8)(c). This article aims to shed light on the importance of serving the writ of execution and notice of attachment on the Debtor.

## UNIFORM RULES OF COURT

Rule 45(8)(c) provides as follows:

*"in the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid,*

*(i) the attachment shall only be completed when*

*(aa) notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered, and*

*(bb) then sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document*

*(ii) the sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached."*

## CASE LAW

The Court held in *Riordan v First National Bank Limited and Others* [2014] ZAGPJHC 195, at paragraph 9, that the provisions of Rule 48(8)(c) are clear and make it a prerequisite that the attachment of incorporeal property such as bank accounts will only be valid and complete once written notice of the attachment has been given by the sheriff to all interested parties. An interested party will include the Debtor whose bank account and funds have been attached.

## RETURN OF SERVICE

It is important to be cognisant of the sheriff's return of service as it would state under remarks or notes the following:

*"The attachment is not yet complete as satisfaction of the writ was not demanded from the debtor. Please provide me with the debtor's address to complete the writ or attachment."*

This emphasises the legal position that the attachment is not complete until the notice is served on the Debtor.

## CONCLUSION

It is evident from Rule 45(8)(c), case law and the practise adopted by the sheriff in the aforementioned remarks or notes on sheriff's return of service that the attachment of a bank account is incomplete until written notice of the attachment is served on all interested parties, specifically, the debtor.



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