



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Price 20c Prys
Overseas 30c Oorsee
POST FREE—POSVRY

Vol. 131]

CAPE TOWN, 14 MAY 1976

KAAPSTAD, 14 MEI 1976

No. 5120

DEPARTMENT OF THE PRIME MINISTER

No. 823. 14 May 1976.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 63 of 1976: Magistrates' Courts Amendment Act, 1976.

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 823. 14 Mei 1976.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 63 van 1976: Wysigingswet op Landdroshowe, 1976.

WET

Tot wysiging van die Wet op Landdroshowe, 1944, ten einde verdere voorsiening te maak vir die invordering van skulde en die verlening van administrasiebevele; die verhaal van gelde of vergoeding in verband met die invordering van 'n skuld op 'n skuldenaar, te reël; die wyse van tenuitvoerlegging van vonnisse van landdroshowe verder te reël; die bepalings omtrent adresverandering deur sekere vonnis-skuldenaars uit te brei; en voorsiening te maak vir wysiging van hofstukke met betrekking tot verkeerde benamings en vrouens getroud binne gemeenskap van goedere; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 4 Mei 1976.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Vervanging van
Hoofstuk VIII van
Wet 32 van 1944.

1. Hoofstuk VIII van die Wet op Landdroshowe, 1944 (hieronder die Hoofwet genoem), word hierby deur die volgende Hoofstuk vervang:

„HOOFSTUK VIII

INVORDERING VAN SKULDE

Woordom- 55. In hierdie Hoofstuk, tensy uit die samehang
skrywing. anders blyk, beteken—
,skuld' 'n gelikwildeerde bedrag geld verskuldig.

Verhaal van 56. Indien iemand (in hierdie artikel die skulde-
koste van naar genoem) 'n skuld wat hy aan iemand anders
aanmaning. (in hierdie artikel die skuldeiser genoem) verskuldig
is, betaal nadat die skuldeiser 'n geregistreerde
aanmaning deur 'n prokureur aan die skuldenaar
laat stuur het waarin betaling van die skuld geëis
word, is die skuldeiser geregtig om die gelde en
koste wat in die reëls vir 'n geregistreerde aanmaning
voorgeskryf word, op die skuldenaar te verhaal: Met
dien verstande dat die bedrag van sodanige gelde en
koste in die aanmaning vermeld is.

Erkenning 57. (1) Indien iemand (in hierdie artikel die
van aan- verweerder genoem) 'n aanmaning ontvang het of
spreeklikheid aan hom 'n dagvaarding beteken is waarin betaling
en onder- van 'n skuld geëis word, kan die verweerder
neming om skuld in skriftelik—
paaie- (a) aanspreeklikheid teenoor die eiser erken vir die
mente of andersins (b) aanbod om die bedrag van die skuld en koste
te betaal. waarvoor hy aanspreeklikheid erken, in paaie-
mente of andersins te betaal;

MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

ACT

To amend the Magistrates' Courts Act, 1944, so as to make further provision for the recovery of debts and the granting of administration orders; to regulate the recovery from a debtor of fees or remuneration in connection with the collection of any debt; to further regulate the manner of execution of judgments of magistrates' courts; to extend the provisions with regard to change of address by certain judgment debtors; and to provide for the amendment of court records with reference to misnomers in regard to names and women married in community of property; and to provide for matters connected therewith.

*(English text signed by the State President.)
(Assented to 4 May 1976.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. The following Chapter is hereby substituted for Chapter VIII of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act):

Substitution of
Chapter VIII of
Act 32 of 1944.

"CHAPTER VIII

RECOVERY OF DEBTS

Definition. 55. In this Chapter, unless the context otherwise indicates—
'debt' means any liquidated sum of money due.

Recovery of costs of letter of demand. 56. If any person (in this section called the debtor) pays any debt due by him to any other person (in this section called the creditor) after the creditor has caused a registered letter of demand to be sent to the debtor through an attorney demanding payment of the debt, the creditor shall be entitled to recover from the debtor the fees and costs prescribed in the rules for a registered letter of demand: Provided that the amount of such fees and costs was stated in the letter of demand.

Admission of liability and undertaking to pay debt in instalments or otherwise. 57. (1) If any person (in this section called the defendant) has received a letter of demand or has been served with a summons demanding payment of any debt, the defendant may in writing—
(a) admit liability to the plaintiff for the amount of the debt and costs claimed in the letter of demand or summons or for any other amount;
(b) offer to pay the amount of the debt and costs for which he admits liability, in instalments or otherwise;

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(c) onderneem om by betaling van 'n paalement ingevolge sy aanbod die invorderingsgelde te betaal waarvoor die eiser ten opsigte van die invordering van daardie paalement aanspreeklik is; en

(d) instem dat, in geval hy versuim om sy aanbod na te kom, die eiser geregtig sal wees om sonder kennisgewing aan die verweerder aansoek te doen om vonnis vir die bedrag of die uitstaande saldo van die bedrag van die skuld waarvoor hy aanspreeklikheid erken, met koste, en om 'n hofbevel vir die betaling van die vonnisskuld en koste in paalemente of andersins ooreenkomstig sy aanbod,

en indien die eiser of sy prokureur bedoelde aanbod aanneem, stel hy die verweerder van bedoelde aanname skriftelik per geregistreerde brief in kennis.

(2) Indien die verweerder, nadat hy deur die eiser of sy prokureur skriftelik in kennis gestel is dat sy aanbod aangeneem is, versuim om sy aanbod na te kom, moet die klerk van die hof, op die skriftelike versoek van die eiser of sy prokureur vergesel van—

(a) indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning;

(b) die verweerder se skriftelike erkenning van skuld en aanbod en 'n afskrif van die eiser of sy prokureur se skriftelike aanname van die aanbod;

(c) 'n beëdigde verklaring of 'n bevestiging deur die eiser of 'n sertifikaat deur sy prokureur waarin verklaar word in watter opsigte die verweerder versuim het om sy aanbod na te kom en, indien die verweerder sedert die datum van die aanmaning of dagvaarding betalings gemaak het, waarin aangetoon word hoe die saldo wat geëis word, bereken word,

(i) vonnis aanteken ten gunste van die eiser vir die bedrag of die uitstaande saldo van die bedrag van die skuld waarvoor die verweerder aanspreeklikheid erken het, met koste; en

(ii) die verweerder beveel om die vonnisskuld en koste in bepaalde paalemente of andersins ooreenkomstig sy aanbod te betaal, en so 'n bevel word geag 'n in artikel 65A (1) genoemde bevel van die hof te wees.

(3) Nadat 'n in subartikel (2) bedoelde vonnis aangeteken en bevel gegee is, en indien die vonnisskuldenaar nie by die klerk van die hof teenwoordig of verteenwoordig was toe die vonnis aangeteken en die bevel gegee is nie, stel die vonnisskuldeiser of sy prokureur die vonnisskuldenaar onverwyld per geregistreerde brief in kennis van die bepaling van die vonnis en bevel en van die gevolge van sy versuim om daaraan te voldoen.

(4) 'n Vonnis wat ten gunste van die eiser kragtens subartikel (2) aangeteken is, het die uitwerking van 'n vonnis by verstek.

Toe-
stemming
tot vonnis
of tot vonnis
en 'n bevel
vir die
betaling van
vonnisskuld
in
paalemente.

58. (1) Indien iemand (in hierdie artikel die verweerder genoem), nadat hy 'n aanmaning ontvang het of aan hom 'n dagvaarding beteken is waarin betaling van 'n skuld geëis word, skriftelik toestem tot vonnis ten gunste van die skuldeiser (in hierdie artikel die eiser genoem) vir die bedrag van die skuld en die koste wat in die aanmaning of dagvaarding geëis word, of vir 'n ander bedrag, moet die klerk van die hof, op die skriftelike versoek van die eiser of sy prokureur vergesel van—

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- (c) undertake on payment of any instalment in terms of his offer to pay the collection fees for which the plaintiff is liable in respect of the recovery of such instalment; and
- (d) agree that in the event of his failure to carry out the terms of his offer the plaintiff shall, without notice to the defendant, be entitled to apply for judgment for the amount of the outstanding balance of the debt for which he admits liability, with costs, and for an order of court for payment of the judgment debt and costs in instalments or otherwise in accordance with his offer,

and if the plaintiff or his attorney accepts the said offer, he shall advise the defendant of such acceptance in writing by registered letter.

(2) If, after having been advised by the plaintiff or his attorney in writing that his offer has been accepted, the defendant fails to carry out the terms of his offer, the clerk of the court shall, upon the written request of the plaintiff or his attorney accompanied by—

- (a) if no summons has been issued, a copy of the letter of demand;
- (b) the defendant's written acknowledgment of debt and offer and a copy of the plaintiff's or his attorney's written acceptance of the offer;
- (c) an affidavit or affirmation by the plaintiff or a certificate by his attorney stating in what respects the defendant has failed to carry out the terms of his offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at—
 - (i) enter judgment in favour of the plaintiff for the amount or the outstanding balance of the amount of the debt for which the defendant has admitted liability, with costs; and
 - (ii) order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with his offer, and such order shall be deemed to be an order of the court mentioned in section 65A (1).

(3) When the judgment referred to in subsection (2) has been entered and an order made, and if the judgment debtor was not present or represented when the judgment was entered by the clerk of the court and the order made, the judgment creditor or his attorney shall forthwith advise the judgment debtor by registered letter of the terms of the judgment and order and of the consequences of his failure to satisfy them.

(4) Any judgment entered in favour of the plaintiff under subsection (2) shall have the effect of a judgment by default.

Consent to judgment or to judgment and an order for payment of judgment debt in instalments.

58. (1) If any person (in this section called the defendant), upon receipt of a letter of demand or service upon him of a summons demanding payment of any debt, consents in writing to judgment in favour of the creditor (in this section called the plaintiff) for the amount of the debt and the costs claimed in the letter of demand or summons, or for any other amount, the clerk of the court shall, on the written request of the plaintiff or his attorney accompanied by—

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- (a) indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning; en
- (b) die verweerder se skriftelike toestemming tot vonnis,
 - (i) vonnis aanteken ten gunste van die eiser vir die bedrag van die skuld en die koste waarvoor die verweerder tot vonnis toegestem het; en
 - (ii) indien dit uit die verweerder se skriftelike toestemming tot vonnis blyk dat hy ook toegestem het tot 'n hofbevel vir die betaling van die bedrag van die skuld en koste waarvoor hy tot vonnis toegestem het in bepaalde paaielemente of andersins, die verweerder beveel om die vonnisskuld en koste in bepaalde paaielemente of andersins ooreenkomstig sy toestemming te betaal, en so 'n bevel word geag 'n in artikel 65A (1) genoemde bevel van die hof te wees.
- (2) Die bepalinge van artikel 57 (3) en (4) is ten opsigte van die vonnis en hofbevel in subartikel (1) van hierdie artikel bedoel van toepassing.

Skriftelike versoek geld as eerste dokument in 'n aksie.

59. Indien geen dagvaarding in 'n aksie uitgereik word nie, geld die in artikels 57 (2) en 58 (1) bedoelde skriftelike versoek as die eerste dokument wat in die aksie geliasseer word en moet dit die besonderhede bevat wat in die reëls voorgeskryf word.

Verbod op verhaal van gelde of vergoeding deur sekere persone in verband met die invordering van skulde.

60. Behalwe waar in hierdie Wet of die reëls uitdruklik anders bepaal word, is niemand, behalwe 'n prokureur of 'n in artikel 22 bedoelde agent, geregtig om enige gelde of vergoeding in verband met die invordering van 'n skuld op die skuldenaar te verhaal nie."

Vervanging van artikel 65 van Wet 32 van 1944, soos vervang deur artikel 15 van Wet 40 van 1952 en gewysig deur artikel 1 van Wet 14 van 1954, artikel 20 van Wet 50 van 1956, artikel 10 van Wet 19 van 1963, artikel 30 van Wet 70 van 1968 en artikel 2 van Wet 17 van 1969.

2. Artikel 65 van die Hoofwet word hierby deur die volgende artikels vervang:

„Aanbod deur vonnisskuldenaar na vonnis.

65. Indien, te eniger tyd nadat 'n hof vonnis gevel het vir die betaling van 'n bedrag geld en voordat 'n kennisgewing kragtens artikel 65A (1) uitgereik word, die vonnisskuldenaar aan die vonnisskuldeiser 'n skriftelike aanbod doen om die vonnisskuld en koste in bepaalde paaielemente of andersins te betaal, en so 'n aanbod deur die vonnisskuldeiser of sy prokureur aangeneem word, beveel die klerk van die hof, op die skriftelike versoek van die vonnisskuldeiser of sy prokureur, vergesel van die aanbod, die vonnisskuldenaar om die vonnisskuld en koste in bepaalde paaielemente of andersins ooreenkomstig sy aanbod te betaal, en so 'n bevel word geag 'n in artikel 65A (1) genoemde bevel van die hof te wees.

Kennisgewing aan vonnisskuldenaar indien vonnis onvoldaan bly.

65A. (1) Indien 'n hof 'n vonnis gevel het vir die betaling van 'n bedrag geld of die betaling in bepaalde paaielemente van so 'n bedrag beveel het, en so 'n vonnis of bevel onvoldaan gebly het vir 'n tydperk van 10 dae vanaf die datum waarop dit gevel is of waarop so 'n bedrag betaalbaar geword het of vanaf verstryking van die tydperk van opskorting kragtens artikel 48 (e) beveel, na gelang van die geval, kan die vonnisskuldeiser uit die hof van die distrik waarin die vonnisskuldenaar woon, besigheid dryf of in diens is, of indien die vonnisskuldenaar 'n regspersoon is, uit die hof van die distrik waarin die geregistreerde kantoor of hoofbesigheidsplek van

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- (a) if no summons has been issued, a copy of the letter of demand; and
- (b) the defendant's written consent to judgment,
 - (i) enter judgment in favour of the plaintiff for the amount of the debt and the costs for which the defendant has consented to judgment; and
 - (ii) if it appears from the defendant's written consent to judgment that he has also consented to an order of court for payment in specified instalments or otherwise of the amount of the debt and costs in respect of which he has consented to judgment, order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with his consent, and such order shall be deemed to be an order of the court mentioned in section 65A (1).
- (2) The provisions of section 57 (3) and (4) shall apply in respect of the judgment and court order referred to in subsection (1) of this section.

Written request constitutes first document in an action.

59. If no summons is issued in an action the written request referred to in sections 57(2) and 58(1) shall constitute the first document to be filed in the action and shall contain the particulars prescribed in the rules.

Prohibition of recovery of fees or remuneration by certain persons in connection with the collection of debts.

60. Unless expressly otherwise provided in this Act or the rules no person other than an attorney or an agent referred to in section 22 shall be entitled to recover from the debtor any fees or remuneration in connection with the collection of any debt."

2. The following sections are hereby substituted for section 65 of the principal Act:

"Offer by judgment debtor after judgment.

65. If at any time after a court has given judgment for the payment of a sum of money and before the issue of a notice under section 65A (1), the judgment debtor makes a written offer to the judgment creditor to pay the judgment debt in specified instalments or otherwise and such offer is accepted by the judgment creditor or his attorney, the clerk of the court shall, at the written request of the judgment creditor or his attorney, accompanied by the offer, order the judgment debtor to pay the judgment debt in specified instalments or otherwise in accordance with his offer, and such order shall be deemed to be an order of the court mentioned in section 65A (1).

Substitution of section 65 of Act 32 of 1944, as substituted by section 15 of Act 40 of 1952 and amended by section 1 of Act 14 of 1954, section 20 of Act 50 of 1956, section 10 of Act 19 of 1963, section 30 of Act 70 of 1968 and section 2 of Act 17 of 1969.

Notice to judgment debtor if judgment remains unsatisfied.

65A. (1) If a court has given judgment for the payment of a sum of money or has ordered the payment in specified instalments or otherwise of such an amount, and such judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or on which such an amount became payable or from the expiry of the period of suspension ordered in terms of section 48 (e), as the case may be, the judgment creditor may issue, from the court of the district in which the judgment debtor resides, carries on business or is employed, or if the judgment debtor is a juristic person, from the court of the district in which the registered office or main place of business of the juristic person

die regspersoon geleë is, 'n kennisgewing uitreik waarby die vonnisskuldenaar, of, indien die vonnisskuldenaar 'n regspersoon is, 'n direkteur of beampte van die regspersoon, as verteenwoordiger van die regspersoon en in sy persoonlike hoedanigheid, aangesê word om op 'n datum in die kennisgewing vermeld voor die hof *in camera* te verskyn om redes aan te voer waarom hy nie weens minagting van die hof ter gevangesetting verwys moet word nie en waarom die vonnisskuldenaar nie beveel moet word om die vonnisskuld en koste in paaielemente of andersins te betaal nie.

(2) Indien die notule van die verrigtinge nie aantoon dat die vonnisskuldenaar persoonlik of deur 'n verteenwoordiger aanwesig was toe die vonnis gevel is nie, mag geen kennisgewing kragtens subartikel (1) uitgereik word nie tensy die vonnisskuldeiser of sy prokureur bewys ten genoeë van die klerk van die hof lewer dat hy die vonnisskuldenaar per geregistreerde brief in kennis gestel het van die bepalinge van die vonnis of van die verstryking van die tydperk van opskorting kragtens artikel 48 (e) beveel, na gelang van die geval, en van die gevolge van sy versuim om aan die vonnis te voldoen, en 'n tydperk van 10 dae verstryk het vanaf die datum waarop bedoelde brief gepos is.

(3) Die hof kan in enige stadium van die verrigtinge, indien 'n in subartikel (1) genoemde direkteur of beampte ophou om 'n direkteur of beampte van die betrokke regspersoon te wees of vlug, op versoek van die vonnisskuldeiser van tyd tot tyd genoemde direkteur of beampte vervang deur 'n ander persoon wat ten tyde van so 'n vervanging 'n direkteur of beampte van die regspersoon is, en die verrigtinge gaan dan voort asof geen vervanging geskied het nie.

(4) Indien die hof 'n vonnis gevel het vir die betaling van 'n bedrag geld in paaielemente, mag geen kennisgewing kragtens subartikel (1) uitgereik word nie tensy die vonnisskuldeiser 'n beëdigde verklaring of 'n bevestiging of sy prokureur 'n sertifikaat by die klerk van die hof ingedien het waarin vermeld word die uitstaande saldo van die vonnisskuld, in watter opsigte die vonnisskuldenaar versuim het om aan die hof bevel te voldoen, in watter mate hy agterstallig is met die betaling van die paaielemente en dat die vonnisskuldenaar per geregistreerde brief in kennis gestel is van die bepalinge van die vonnis en van die gevolge van sy versuim om daaraan te voldoen.

Opstel en betekening van kennisgewing aan vonnisskuldenaar.

65B. Die in artikel 65A (1) genoemde kennisgewing word deur die vonnisskuldeiser of sy prokureur opgestel, word deur die vonnisskuldeiser of sy prokureur en die klerk van die hof onderteken en word deur die geregsbode aan die vonnisskuldenaar of, indien die vonnisskuldenaar 'n regspersoon is, aan die direkteur of beampte gedaag as verteenwoordiger van die regspersoon en in sy persoonlike hoedanigheid, op die wyse deur die reëls vir die betekening van prosesstukke in die algemeen voorgeskryf, beteken minstens 7 dae voor die datum daarin bepaal vir die verhoor van die verrigtinge.

Samevoeging van verrigtinge.

65C. Indien twee of meer kennisgewings kragtens artikel 65A (1) aan 'n vonnisskuldenaar of direkteur of beampte beteken is om op dieselfde dag redes aan te voer soos in daardie artikel bepaal, kan die verrigtinge ingevolge daardie kennisgewings saam verhoor word.

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is situate, a notice calling upon the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person as representative of the juristic person and in his personal capacity, to appear before the court in chambers on a date specified in such notice to show cause why he should not be committed for contempt of court and why the judgment debtor should not be ordered to pay the judgment debt in instalments or otherwise.

(2) If the minutes of the proceedings do not show that the judgment debtor was present in person or represented by any person when judgment was given, no notice under subsection (1) shall be issued unless the judgment creditor or his attorney provides proof to the satisfaction of the clerk of the court that he has advised the judgment debtor by registered letter of the terms of the judgment or of the expiry of the period of suspension ordered under section 48 (e), as the case may be, and of the consequences of his failure to satisfy the judgment, and a period of 10 days has elapsed since the date on which the said letter was posted.

(3) The court may, at any stage of the proceedings, if a director or officer mentioned in subsection (1) ceases to be a director or officer of the juristic person concerned or absconds, at the request of the judgment creditor, from time to time replace such director or officer by any other person who at the time of such replacement may be a director or officer of the juristic person, and the proceedings shall then continue as if there has been no replacement.

(4) If the court has given judgment for the payment of an amount of money in instalments, no notice under subsection (1) shall be issued unless the judgment creditor has delivered an affidavit or affirmation or his attorney has delivered a certificate to the clerk of the court in which is mentioned the outstanding balance of the judgment debt, in what respects the judgment debtor has failed to comply with the court order, to what extent he is in arrear with the payment of the instalments and that the judgment debtor was advised by registered letter of the terms of the judgment and of the consequences of his failure to satisfy it.

Drawing up
and service
of notice on
judgment
debtor.

65B. The notice referred to in section 65A (1) shall be drawn up by the judgment creditor or his attorney, shall be signed by the judgment creditor or his attorney and the clerk of the court and shall be served by the messenger of the court on the judgment debtor or, if the judgment debtor is a juristic person, on the director or officer summonsed as the representative of the juristic person and in his personal capacity, in the manner prescribed by the rules for the service of process in general and at least 7 days before the date specified therein for the hearing of the proceedings.

Joinder of
proceedings.

65C. If, under section 65A (1), two or more notices have been served on any judgment debtor or director or officer to show cause on the same day as provided in that section, the proceedings in terms of such notices may be heard concurrently.

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Vasstelling
van vonnis-
skuldenaar
se finansiële
toestand.

65D. (1) Wanneer die vonnisskuldenaar of, as die vonnisskuldenaar 'n regspersoon is, die direkteur of beampte van die regspersoon gedaag as verteenwoordiger van die regspersoon of in sy persoonlike hoedanigheid, op die keerdag van die kennisgewing in artikel 65A (1) genoem of op 'n dag waarna die verrigtinge uitgestel is, voor die hof verskyn, roep die hof *in camera*, behoudens die bepalings van subartikel (2) van hierdie artikel, hom op om getuienis onder eed of bevestiging af te lê aangaande sy finansiële toestand of die finansiële toestand van die regspersoon, na gelang van die geval, en laat die hof die ondervraging of kruisondervraging van die vonnisskuldenaar of genoemde direkteur of beampte toe oor alle aangeleenthede rakende die vonnisskuldenaar se finansiële toestand en sy vermoë om die vonnisskuld en koste te betaal en sy versuim om dit te doen, en ontvang die hof sodanige verdere getuienis, hetsy mondeling of by beëdigde verklaring, of op 'n ander wyse wat die hof billik ag, deur of ten behoeve van of die vonnisskuldenaar of die vonnisskuldeiser aangevoer wat ter sake is by die vasstelling van die vonnisskuldenaar se finansiële toestand en sy vermoë om die vonnisskuld te betaal en sy versuim om dit te doen, en vir die doeleindes van sodanige getuienis kan getuies gedagvaar word op die in die reëls voorgeskrewe wyse.

(2) Die hof kan die verrigtinge te eniger tyd in die teenwoordigheid van die vonnisskuldenaar of genoemde direkteur of beampte uitstel na 'n datum wat die hof bepaal.

(3) Wanneer die hof die verrigtinge kragtens subartikel (2) uitstel—

- (a) verwittig die hof die vonnisskuldenaar of die betrokke direkteur of beampte van die bepalings van artikel 65E (1) (c);
- (b) kan die hof die vonnisskuldenaar of direkteur of beampte beveel om die dokumente wat die hof vermeld, voor te lê by die verhoor op die datum deur die hof bepaal; en
- (c) kan die hof die voorwaardes bepaal wat hy goedvind.

(4) By die bepaling van die vermoë van 'n vonnisskuldenaar om aan die vonnis te voldoen, neem die hof in ag—

- (a) in die geval van 'n vonnisskuldenaar wat 'n natuurlike persoon is, die aard van sy inkomste, die bedrae wat hy nodig het ten opsigte van sy noodsaaklike uitgawes en dié van die persone wat van hom afhanklik is en vir die betaling van periodieke betalings wat hy verplig is om te betaal ingevolge 'n hofbevel, ooreenkoms of andersins ten opsigte van sy ander verpligtings soos geopenbaar in die getuienis voorgelê by die verhoor van die verrigtinge; of
- (b) in die geval van 'n vonnisskuldenaar wat 'n regspersoon is, die bedrae wat die regspersoon nodig het ten opsigte van sy noodsaaklike administrasiekoste en vir die betaling van periodieke betalings wat hy verplig is om te betaal ingevolge 'n hofbevel, ooreenkoms of andersins ten opsigte van sy ander verpligtings soos geopenbaar in die getuienis voorgelê by die verhoor van die verrigtinge.

(5) Die hof kan na goeddunke weier om periodieke betalings in ag te neem wat 'n vonnisskuldenaar onderneem het om te betaal ingevolge 'n huurkoop-ooreenkoms vir die aankoop van goed wat nie

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Determina-
tion of
judgment
debtor's
financial
position.

65D. (1) On the appearance before the court of the judgment debtor or, if the judgment debtor is a juristic person, the director or officer of the juristic person summoned as the representative of the juristic person or in his personal capacity, on the return day of the notice referred to in section 65A (1) or on any date to which the proceedings have been postponed, the court in chambers shall, subject to the provisions of subsection (2) of this section, call upon him to give evidence under oath or affirmation on his financial position or the financial position of the juristic person, as the case may be, and the court shall permit the examination or cross-examination of the judgment debtor or the said director or officer on all matters relevant to the judgment debtor's financial position and his ability to pay the judgment debt and his failure to do so, and the court shall receive such further evidence as may be adduced either orally or by affidavit or in such other manner as the court may deem just, by or on behalf of either the judgment debtor or the judgment creditor, as is material to the determination of the judgment debtor's financial position and his ability to pay the judgment debt and his failure so to do, and for the purposes of such evidence witnesses may be summoned in the manner prescribed in the rules.

(2) The court may at any time in the presence of the judgment debtor or the said director or officer postpone the proceedings to such date as the court may determine.

(3) When postponing the proceedings under subsection (2) the court—

(a) shall inform the judgment debtor or the director or officer concerned of the provisions of section 65E (1) (c);

(b) may order the judgment debtor or the director or officer to produce such documents as the court may specify at the hearing on the date determined by the court; and

(c) may determine such conditions as it may deem fit.

(4) In determining the ability of the judgment debtor to satisfy the judgment the court shall take into consideration—

(a) in the case of a judgment debtor who is a natural person, the nature of his income, the amounts needed by him for his necessary expenses and those of the persons dependent on him, and for the making of periodical payments which he is obliged to make in terms of an order of court, agreement or otherwise in respect of his other commitments as disclosed in the evidence presented at the hearing of the proceedings; or

(b) in the case of a judgment debtor who is a juristic person, the amounts required by such juristic person to meet its necessary administrative expenses and for the making of periodical payments which it is obliged to make in terms of an order of court, agreement or otherwise in respect of its other commitments as disclosed in the evidence presented at the hearing of the proceedings.

(5) The court may, in its discretion, refuse to take account of the periodical payments that a judgment debtor has undertaken to make in terms of a hire-purchase agreement for the purchase of goods

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ingevolge artikel 67 van beslaglegging vrygestel is nie of wat na die oordeel van die hof nie as huishoudelike benodigdhede van die vonnisskuldenaar beskou kan word nie.

Uitstel van
verrigtinge
hangende
tenuit-
voerlegging.

65E. (1) Indien by die verhoor van die verrigtinge ingevolge 'n kennisgewing kragtens artikel 65A (1) die hof oortuig is—

(a) dat die vonnisskuldenaar roerende of onroerende goed het waarop beslag gelê kan word en wat verkoop kan word ter voldoening aan die vonnisskuld of 'n gedeelte daarvan, kan die hof—

(i) magtiging verleen vir die uitreiking van 'n lasbrief vir eksekusie teen daardie roerende of onroerende goed of dié gedeelte daarvan wat die hof goedvind; of

(ii) magtiging verleen vir die uitreiking van so 'n lasbrief, gepaard met 'n bevel kragtens artikel 73; of

(b) dat daar 'n skuld aan die vonnisskuldenaar verskuldig is waarop kragtens artikel 72 beslag gelê kan word ter voldoening aan die vonnis-skuld en koste of 'n gedeelte daarvan, kan die hof magtiging verleen vir die inbeslagneming van daardie skuld ingevolge daardie artikel; of

(c) dat die vonnisskuldenaar of, as die vonnis-skuldenaar 'n regspersoon is, die direkteur of beampte gedaag as verteenwoordiger van die regspersoon, te eniger tyd nadat hy 'n in artikel 65A (1) genoemde kennisgewing ontvang het, 'n skriftelike aanbod aan die vonnis-skuldeiser of sy prokureur gedoen het om die vonnis-skuld en koste in bepaalde paaielemente of andersins te betaal, hetsy by wyse van 'n besoldigingbeslagbevel of andersins, of, indien so 'n aanbod nie gemaak is nie, dat die vonnis-skuldenaar die vonnis-skuld en koste in redelike paaielemente kan betaal, kan die hof die vonnis-skuldenaar beveel om die vonnis-skuld en koste in bepaalde paaielemente te vereffen en, indien die vonnis-skuldenaar in diens is by iemand wat in die distrik woon, besigheid dryf of in diens is, of indien die vonnis-skuldenaar in die distrik in diens van die Staat is, daarbenewens die uitreiking van 'n besoldigingbeslagbevel uit hoofde van artikel 65J (1) magtig vir die betaling van die vonnis-skuld en koste deur die werkgewer van die vonnis-skuldenaar,

en die verdere verhoor van die verrigtinge uitstel.

(2) 'n Magtiging kragtens subartikel (1) (a) dien, hangende die tenuitvoerlegging van die lasbrief, as interdik teen die vervreemding van die betrokke goed deur die vonnis-skuldenaar.

(3) Verrigtinge kragtens subartikel (1) uitgestel, kan weer op die rol geplaas word deur die vonnis-skuldeiser of sy prokureur by kennisgewing persoonlik afgelewer of beteken per geregistreerde brief gerig aan die vonnis-skuldenaar of, as die vonnis-skuldenaar 'n regspersoon is, aan die direkteur of beampte gedaag as verteenwoordiger van die regspersoon en in sy persoonlike hoedanigheid en afgelewer of gepos minstens 10 dae voor die dag daarin bepaal vir die verhoor.

(4) Indien die vonnis-skuldeiser 'n lasbrief vir eksekusie teen roerende goed van 'n vonnis-skuldenaar uitreik of laat uitreik voor die verhoor van

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which have not been exempted from seizure in terms of section 67 or which cannot, in the opinion of the court, be regarded as the judgment debtor's household requirements.

Postpone-
ment of
proceedings
pending
execution.

65E. (1) If at the hearing of the proceedings in terms of a notice under section 65A (1) the court is satisfied—

(a) that the judgment debtor has movable or immovable property which may be attached and sold in order to satisfy the judgment debt or any part thereof, the court may—

(i) authorize the issue of a warrant of execution against such movable or immovable property or such part thereof as the court may deem fit; or

(ii) authorize the issue of such a warrant, together with an order in terms of section 73; or

(b) that there is a debt due to the judgment debtor which may be attached in terms of section 72 to satisfy the judgment debt and costs or a part thereof, the court may authorize the attachment of that debt in terms of that section; or

(c) that the judgment debtor or, if the judgment debtor is a juristic person, the director or officer summoned as representative of the juristic person, at any time after receipt of a notice referred to in section 65A (1), has made an offer in writing to the judgment creditor or his attorney to pay the judgment debt and costs in specified instalments or otherwise, whether by way of an emoluments attachment order or otherwise, or, if such an offer has not been made, that the judgment debtor is able to pay the judgment debt and costs in reasonable instalments, the court may order the judgment debtor to pay the judgment debt and costs in specified instalments and, if the judgment debtor is employed by any person who resides, carries on business or is employed in the district, or if the judgment debtor is employed by the State in the district, in addition authorize the issue of an emoluments attachment order by virtue of section 65J (1) for the payment of the judgment debt and costs by the employer of the judgment debtor,

and postpone the further hearing of the proceedings.

(2) Any authorization under subsection (1) (a) shall, pending the execution of the warrant, serve as an interdict against the alienation of the property concerned by the judgment debtor.

(3) Proceedings postponed under subsection (1) may again be placed on the roll by the judgment creditor or his attorney by notice delivered personally or served by registered letter addressed to the judgment debtor or, if the judgment debtor is a juristic person, to the director or officer summoned as the representative of the juristic person and in his personal capacity and delivered or posted at least 10 days before the day appointed therein for the hearing.

(4) If the judgment creditor issues or causes to be issued a warrant of execution against movable property belonging to any judgment debtor before

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verrigtinge ingevolge 'n kennisgewing kragtens artikel 65A (1) en 'n *nulla bona*-relaas daarop gedoen is, is die vonnisskuldeiser nie op koste in verband met die uitreiking en uitvoering van daardie lasbrief geregtig nie tensy die hof by die verhoor van die verrigtinge om 'n gegronde rede aangevoer anders beveel.

(5) Die hof kan van tyd tot tyd 'n bevel vir die betaling van 'n vonnisskuld en koste in bepaalde paalemente of andersins ingevolge subartikel (1) (c) van hierdie artikel of artikel 57, 58 of 65 uitgereik, opskort, wysig of intrek.

(6) Nadat 'n in subartikel (1) (c) van hierdie artikel of artikel 57, 58 of 65 genoemde bevel uitgereik is en indien die vonnisskuldenaar nie in die hof teenwoordig of verteenwoordig was toe die bevel uitgereik is nie, stel die vonnisskuldeiser of sy prokureur die vonnisskuldenaar onverwyld per geregistreerde brief in kennis van die bepalings van die bevel en van die gevolge van sy versuim om daaraan te voldoen.

Gevange-
setting
weens
minagting
van die hof.

65F. (1) Behoudens die bepalings van hierdie artikel en van artikels 65E en 65I, kan die hof by die verhoor van die verrigtinge ingevolge 'n kennisgewing kragtens artikel 65A (1), en hetsy die vonnisskuldenaar in die hof teenwoordig of verteenwoordig is of nie, na goeë dunde 'n bevel verleen vir die gevangesetting van die vonnisskuldenaar of, as die vonnisskuldenaar 'n regspersoon is, van die direkteur of beampte van die vonnisskuldenaar gedaag in sy persoonlike hoedanigheid, weens minagting van die hof vir 'n tydperk van hoogstens 90 dae of kan die hof, in plaas daarvan, hom vonnis om, ooreenkomstig die bepalings van enige wet op gevangenis, periodieke gevangenisstraf te ondergaan vir 'n tydperk van hoogstens 2 160 uur weens sy versuim om aan die vonnis te voldoen en kan die hof die uitreiking magtig van 'n lasbrief vir sy inhegtenisneming en aanhouding in 'n gevangenis in die lasbrief vermeld.

(2) Die hof kan te eniger tyd om 'n gegronde rede aangevoer so 'n bevel of vonnis of aldus uitgereikte lasbrief opskort op die voorwaardes, met inbegrip van voorwaardes betreffende die betaling van die vonnisskuld en koste in vermelde paalemente of andersins uit middele wat tans bestaan of uit toekomstige besoldiging of inkomste, wat hy billik en redelik ag, of sodanige bevel, vonnis of lasbrief tersyde stel by betaling van die volle bedrag van genoemde vonnisskuld en koste.

(3) Geen bevel word verleen en geen vonnis word opgelê en geen lasbrief word gemagtig ingevolge subartikel (1) van hierdie artikel nie indien die vonnisskuldenaar of, as die vonnisskuldenaar 'n regspersoon is, die direkteur of beampte van die regspersoon gedaag in sy persoonlike hoedanigheid, ten genoeë van die hof bewys—

- (a) dat hy benede die ouderdom van 18 jaar is; of
- (b) dat voordat die kennisgewing in artikel 65A (1) genoem aan hom beteken is, hy inderdaad nie van die vonnis of van die verstryking van die termyn van opskorting kragtens artikel 48 (e) beveel, bewus was nie; of
- (c) dat hy of, as die vonnisskuldenaar 'n regspersoon is, die regspersoon, geen middele besit om die vonnisskuld en koste in sy geheel of ten dele te betaal nie en dat sodanige gebrek

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the hearing of proceedings in terms of a notice under section 65A (1) and a *nulla bona* return is made, the judgment creditor shall not be entitled to costs in connection with the issue and execution of such warrant unless the court on good cause shown orders otherwise at the hearing of the proceedings.

(5) The court may from time to time suspend, amend or rescind an order for the payment of a judgment debt and costs in specified instalments made in terms of subsection (1) (c) of this section or section 57, 58 or 65.

(6) Upon an order referred to in subsection (1) (c) of this section or section 57, 58 or 65 having been made and if the judgment debtor was not present or represented in court when the order was made, the judgment creditor or his attorney shall forthwith by registered letter advise the judgment debtor of the terms of the order and of the consequences of his failure to satisfy it.

Committal
for con-
tempt of
court.

65F. (1) Subject to the provisions of this section and of sections 65E and 65I, the court may, at the hearing of the proceedings in terms of a notice under section 65A (1), and whether or not the judgment debtor is present or is represented in court, in its discretion grant an order for the committal of the judgment debtor for contempt of court or, if the judgment debtor is a juristic person, of the director or officer of the judgment debtor summoned in his personal capacity, for a period not exceeding 90 days or may in lieu thereof sentence him, in accordance with the provisions of any law relating to prisons, to periodical imprisonment for a period not exceeding 2 160 hours for failing to satisfy the judgment, and may authorize the issue of a warrant for his arrest and detention in any prison specified in the warrant.

(2) The court may at any time on good cause shown suspend any such order or sentence or any warrant so issued on such conditions, including conditions relating to the payment of the judgment debt and costs in specified instalments or otherwise out of present means or out of any future emoluments or income, as the court may deem just and reasonable, or may set aside such order, sentence or warrant on payment in full of the said judgment debt and costs.

(3) No order shall be granted and no sentence shall be imposed and no warrant shall be authorized in terms of subsection (1) of this section if the judgment debtor or, if the judgment debtor is a juristic person, the director or officer of the juristic person summoned in his personal capacity, proves to the satisfaction of the court—

- (a) that he is under the age of 18 years; or
- (b) that before the notice referred to in section 65A (1) was served on him he had in fact been unaware of the judgment or of the expiry of the period of suspension ordered under section 48 (e); or
- (c) that he has or, if the judgment debtor is a juristic person, such juristic person has, no means of satisfying the judgment debt and costs either wholly or in part and that such lack

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aan middele nie daaraan te wyte is nie dat die vonnisskuldenaar—

- (i) opsetlik sy goedere weggemaak het ten einde die betaling van die vonnisskuld en koste te verydel of te vertraag; of
- (ii) hoewel hy in staat is om genoeg te verdien om aan die vonnisskuld en koste in paaie-mente te voldoen of om dit andersins te betaal, opsetlik weier om dit te doen ten einde die betaling van die vonnisskuld en koste te ontduik of te vertraag; of
- (iii) sy geld verkwis of oënskynlik bo sy inkomste leef; of
- (iv) na die datum van die vonnis, skuld aangegaan het anders as vir huishoudelike benodigdhede.

(4) 'n Direkteur of beamppte gedaag as verteenwoordiger van 'n regspersoon in sodanige verteenwoordigende hoedanigheid kan by skuldigbevinding aan minagting van die hof ingevolge hierdie artikel gevonniss word tot 'n boete van hoogstens R100, welke boete betaalbaar is deur die regspersoon en deur beslaglegging op en verkoping van goed van die regspersoon by lasbrief ingevolge artikel 337 van die Strafproseswet, 1955 (Wet No. 56 van 1955), verhaal kan word, en die hof kan te eniger tyd sodanige vonnis of lasbrief om 'n gegronde rede aangevoer, opskort op die voorwaardes, met inbegrip van voorwaardes betreffende die betaling van die vonnisskuld en koste in bepaalde paaie-mente of andersins uit middele wat tans bestaan of toekomstige inkomste van die vonnisskuldenaar, wat die hof billik en redelik ag, of die vonnis of lasbrief tersyde stel by betaling van die volle bedrag van genoemde vonnisskuld en koste.

(5) Die bepalinge van die Strafproseswet, 1955, met betrekking tot periodieke gevangenisstraf is *mutatis mutandis* van toepassing op periodieke gevangenisstraf kragtens hierdie artikel opgelê.

(6) Indien 'n bevel of lasbrief in subartikel (1) genoem opgeskort is en die vonnisskuldenaar of, indien die vonnisskuldenaar 'n regspersoon is, die direkteur of beamppte van die regspersoon gedaag in sy persoonlike hoedanigheid, gedurende die tydperk van opskorting al die voorwaardes in die opskortingsbevel vermeld, nagekom het, word die bevel vir die gevangesetting van die vonnisskuldenaar of genoemde direkteur of beamppte, na gelang van die geval, nie uitgevoer nie.

(7) Indien 'n vonnis van 'n boete 'n direkteur of beamppte van 'n regspersoon kragtens subartikel (4) opgelê, opgeskort word en genoemde direkteur of beamppte gedurende die tydperk van opskorting al die voorwaardes in die opskortingsbevel vermeld, nagekom het, word die vonnis nie afgedwing nie.

Nie-na-koming van voorwaardes van opskortingsbevel.

65G. (1) Indien die tenuitvoerlegging van 'n bevel, vonnis of lasbrief ingevolge artikel 65F (2) opgeskort is en die vonnisskuldenaar of betrokke direkteur of beamppte versuim het om die voorwaardes vermeld in die opskortingsbevel na te kom, kan die vonnisskuldeiser 'n beëdigde verklaring of 'n bevestiging, of kan sy prokureur 'n sertifikaat, by die klerk van die hof indien waarin verklaar word in watter opsigte die vonnisskuldenaar of direkteur of beamppte versuim het om die voorwaardes van die opskortingsbevel na te kom en in watter mate hy agterstallig is, en kan hy, behoudens

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of means is not due to the fact that the judgment debtor—

- (i) has wilfully disposed of his goods in order to defeat or delay payment of the judgment debt and costs; or
- (ii) although he is able to earn sufficient to satisfy the judgment debt and costs in instalments or otherwise to pay such debt and costs, wilfully refuses to do so in order to evade or delay payment of the judgment debt and costs; or
- (iii) is squandering his money or is apparently living beyond his means; or
- (iv) incurred debts other than for household requirements after the judgment date.

(4) A director or officer summoned as the representative of a juristic person in such representative capacity may on conviction of contempt of court in terms of this section be sentenced to a fine not exceeding R100, which fine shall be payable by the juristic person and be recoverable by the attachment and sale of property belonging to the juristic person by warrant in terms of section 337 of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), and the court may on good cause shown at any time suspend such sentence or warrant on such conditions, including conditions relating to the payment of the judgment debt and costs in specified instalments or otherwise from present means or from any future income of the judgment debtor as the court may deem just and reasonable, or set aside the sentence or warrant on payment of the full amount of the said judgment debt and costs.

(5) The provisions of the Criminal Procedure Act, 1955, relating to periodical imprisonment shall *mutatis mutandis* apply to any periodical imprisonment imposed under this section.

(6) If any order or warrant referred to in subsection (1) has been suspended and the judgment debtor, or if the judgment debtor is a juristic person, the director or officer of the juristic person summoned in his personal capacity, has, during the period of suspension, complied with all the conditions specified in the suspension order, the order for the committal of the judgment debtor or the said director or officer, as the case may be, shall not be executed.

(7) If a sentence of a fine imposed on any director or officer of a juristic person under subsection (4) is suspended and the said director or officer has, during the period of suspension, complied with all the conditions specified in the suspension order, the sentence shall not be enforced.

Non-compliance with conditions of suspension order.

65G. (1) If the execution of an order, sentence or warrant has been suspended in terms of section 65F (2) and the judgment debtor or director or officer concerned has failed to comply with the conditions mentioned in the suspension order, the judgment creditor may lodge an affidavit or affirmation or his attorney may lodge a certificate with the clerk of the court specifying in which respects the judgment debtor or director or officer has failed to comply with the conditions of the suspension order and to what extent he is in arrear, and may,

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die bepalings van subartikel (2), die lasbrief vir die inhegtenisneming en aanhouding in 'n gevangenis van die vonnisskuldenaar of die direkteur of beampte laat uitreik of weer laat uitreik sonder 'n verdere hofbevel.

(2) Die hof kan, na goeddunke—

- (a) indien die vonnisskuldenaar die hof oortuig dat sy versuim om die voorwaardes vermeld in die betrokke opskortingsbevel na te kom, te wyte was aan gebrek aan middele en dat sodanige gebrek aan middele nie te wyte was aan omstandighede in artikel 65F (3) (c) vermeld nie; of
 - (b) indien genoemde direkteur of beampte die hof oortuig dat sy versuim om die voorwaardes vermeld in die betrokke opskortingsbevel na te kom, nie aan sy toedoen te wyte was nie,
- 'n bevel uitreik waarby die tenuitvoerlegging van 'n in subartikel (1) genoemde lasbrief opgeskort of verder opgeskort word op die voorwaardes betreffende betaling van die uitstaande saldo van die vonnisskuld in paaiement of andersins wat die hof billik en redelik ag.

Lasbrief vir inhegtenisneming en aanhouding van vonnisskuldenaar.

65H. 'n Lasbrief vir die inhegtenisneming en aanhouding van 'n vonnisskuldenaar of, as 'n vonnisskuldenaar 'n regspersoon is, van die direkteur of beampte van die regspersoon gedag in sy persoonlike hoedanigheid, word deur die vonnisskuldeiser of sy prokureur opgestel, word deur die vonnisskuldeiser of sy prokureur en die klerk van die hof onderteken, en word deur die geregsbode uitgevoer.

Aansoek om administrasiebevel geniet voorkeur.

65I. (1) Indien 'n vonnisskuldenaar voor of tydens die verhoor van die verrigtinge ingevolge 'n kennisgewing kragtens artikel 65A (1) 'n aansoek om 'n administrasiebevel by die hof ingedien het of indien vir verhoor op 'n datum wat nie later is nie as die vroegste datum waarop daardie aansoek verhoor kan word en dit blyk dat hy aan die bepalings van artikel 74 voldoen het, stel die hof die verhoor van die verrigtinge uit tot na afhandeling van die aansoek om 'n administrasiebevel.

(2) Indien 'n vonnisskuldenaar nie voor of tydens die verhoor van sodanige verrigtinge 'n aansoek om 'n administrasiebevel by die hof ingedien het nie en dit by die verhoor blyk dat die vonnisskuldenaar ook ander skulde het, oorweeg die hof of die vonnisskuldenaar se skulde saam behandel behoort te word, en indien die hof van oordeel is dat dit wel aldus behandel behoort te word, kan die hof, met die oog op die verlening van 'n administrasiebevel, die verdere verhoor van die verrigtinge uitstel tot 'n datum wat deur die hof bepaal word en die vonnisskuldenaar gelas om 'n volledige staat van sy sake aan die hof voor te lê in die vorm in die reëls voorgeskryf en wat die besonderhede bevat waarvoor in genoemde reëls voorsiening gemaak word, en 'n afskrif daarvan per geregistreerde pos te laat besorg aan elkeen van sy skuldeisers minstens 3 dae voor die datum wat vir die verdere verhoor vasgestel is.

(3) Indien dit by ontvangs van die in subartikel (2) genoemde staat blyk dat die vonnisskuldenaar se totale skuld nie meer as R4 000 bedra nie, kan die hof 'n administrasiebevel kragtens artikel 74 verleen ten opsigte van die vonnisskuldenaar se boedel.

(4) Indien die hof 'n administrasiebevel ten opsigte van die vonnisskuldenaar se boedel verleen, skort die hof die verrigtinge ingevolge die kennis-

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subject to the provisions of subsection (2), have the warrant for the arrest and detention of the judgment debtor or the director or officer issued or re-issued without any further order of court.

(2) The court in its discretion may—

(a) if the judgment debtor satisfies the court that his failure to comply with the conditions mentioned in the suspension order in question is due to lack of means and that such lack is not due to circumstances mentioned in section 65F (3) (c); or

(b) if the said director or officer satisfies the court that his failure to comply with the conditions mentioned in the suspension order concerned was not due to any fault of his own,

make an order suspending or further suspending the execution of a warrant referred to in subsection (1) on such conditions relating to the payment, in instalments or otherwise, of the outstanding balance of the judgment debt as the court may deem just and reasonable.

Warrant for arrest and detention of judgment debtor.

65H. A warrant for the arrest and detention of a judgment debtor or, if a judgment debtor is a juristic person, of the director or officer of the juristic person summoned in his personal capacity, shall be prepared by the judgment creditor or his attorney, shall be signed by the judgment creditor or his attorney and the clerk of the court, and shall be executed by the messenger of the court.

Application for administration order has preference.

65I. (1) If, before or during the hearing of the proceedings in terms of a notice under section 65A (1) a judgment debtor has lodged or lodges with the court an application for an administration order for hearing on a date not later than the earliest date on which such application may be heard and it appears that he has complied with the provisions of section 74, the court shall postpone the hearing of the proceedings until the application for an administration order has been disposed of.

(2) If a judgment debtor has not lodged or does not lodge with the court an application for an administration order before or during the hearing of such proceedings and it appears at the hearing that the judgment debtor has other debts as well, the court shall consider whether all the judgment debtor's debts should be treated collectively and if it is of opinion that they should be so treated, it may, with a view to granting an administration order, postpone further hearing of the proceedings to a date determined by the court and order the judgment debtor to submit to the court a full statement of his affairs in the form prescribed in the rules, and containing the particulars for which the said rules make provision and to cause a copy thereof to be delivered by registered post to each of his creditors at least 3 days before the date appointed for the further hearing.

(3) If upon receipt of the statement referred to in subsection (2) it appears that the judgment debtor's total debts do not exceed R4 000, the court may grant an administration order under section 74 in respect of the judgment debtor's estate.

(4) If the court grants an administration order in respect of the judgment debtor's estate, it shall stay the proceedings in terms of the notice under section

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gewing kragtens artikel 65A (1) op, maar kan die hof aan die vonnisskuldeiser koste wat alreeds in verband met daardie verrigtinge aangegaan is, toestaan, en daardie koste kan by die vonnisskuld gevoeg word.

Besoldiging-
beslagbevele. 65J. (1) Wanneer—

- (a) 'n hof die uitvoering van 'n bevel of lasbrief vir die gevangesetting van 'n vonnisskuldenaar kragtens artikel 65F (2) opgeskort het hangende die betaling deur hom van die vonnisskuld en koste in bepaalde paalemente vasgestel in die opskortingsbevel; of
 - (b) 'n hof 'n vonnisskuldenaar beveel het om die vonnisskuld en koste te betaal in bepaalde paalemente vasgestel in die bevel; of
 - (c) ondanks die feit dat die vonnisskuldenaar die tydperk van gevangenisstraf of periodieke gevangenisstraf uitgedien het wat die hof opgelê het vanweë sy versuim om die bevel na te kom, die vonnisskuld onbetaald bly; of
 - (d) die vonnisskuldenaar skriftelik daartoe toegestem het; of
 - (e) 'n hof daartoe magtiging verleen het, kan die vonnisskuldeiser uit die hof van die distrik waarin die werkgewer van die vonnisskuldenaar woon, besigheid dryf of in diens is, of, indien die vonnisskuldenaar in diens van die Staat is, waarin die vonnisskuldenaar in diens is, behoudens die bepalinge van subartikel (2), 'n bevel (hieronder 'n besoldigingbeslagbevel genoem) uitreik waarby beslag gelê word op die besoldiging wat dan of in die toekoms aan die vonnisskuldenaar verskuldig is of hom toekom deur of van sodanige werkgewer (in hierdie artikel die beslagskuldenaar genoem) tot 'n bedrag wat nodig is om die vonnis en die koste van die inbeslagneming te dek, hetsy die vonnis in daardie hof of in 'n ander landdroshof verkry is, en waarby die beslagskuldenaar verplig word om van tyd tot tyd aan die vonnisskuldeiser of sy prokureur by die adres van die vonnisskuldeiser of sy prokureur bepaalde bedrae uit die besoldiging van die vonnisskuldenaar te betaal ooreenkomstig die hofbevel wat die bepaalde paalemente vasgestel het wat deur die vonnisskuldenaar betaalbaar is, totdat bedoelde vonnisskuld en koste ten volle betaal is.
- (2) Tensy die vonnisskuldenaar skriftelik daartoe toegestem het, of die hof magtiging daartoe verleen het en die magtiging nie opgeskort het nie, word 'n besoldigingbeslagbevel nie uitgereik nie tensy die vonnisskuldeiser of sy prokureur eers—
- (a) 'n geregistreerde brief gestuur het aan die vonnisskuldenaar by sy jongsbekende adres waarin hy in kennis gestel word van die bedrag van die vonnisskuld en koste wat nog onbetaald is en gewaarsku word dat 'n besoldigingbeslagbevel uitgereik sal word indien die genoemde bedrag nie binne 7 dae vanaf die datum waarop daardie geregistreerde brief gepos is, betaal word nie; en
 - (b) 'n beëdigde verklaring of 'n bevestiging deur die vonnisskuldeiser of 'n sertifikaat deur sy prokureur by die klerk van die hof ingedien het waarin—
 - (i) uiteengesit word die bedrag van die vonnisskuld op die datum van die bevel waarby die bepaalde paalemente vasgestel word, die koste, indien daar is, opgeloop sedert daardie datum, die betalings ontvang sedert daardie datum en die saldo verskul-

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65A (1), but may grant the judgment creditor costs already incurred in connection with such proceedings, and such costs may be added to the judgment debt.

Emoluments
attachment
orders.

65J. (1) Whenever—

- (a) a court has, under section 65F (2), suspended the execution of any order or warrant for the committal of the judgment debtor pending the payment by him of the judgment debt and costs in specific instalments laid down in the suspension order; or
- (b) a court has ordered the judgment debtor to pay the judgment debt and costs in specific instalments laid down in the order; or
- (c) notwithstanding the fact that the judgment debtor has served the term of imprisonment or periodical imprisonment imposed by the court for his failure to comply with the order, the judgment debt remains unpaid; or
- (d) the judgment debtor has consented thereto in writing; or
- (e) the court has so authorized,

the judgment creditor may, subject to the provisions of subsection (2), issue an order (hereinafter called an emoluments attachment order) from the court of the district in which the employer of the judgment debtor resides, carries on business or is employed, or, if the judgment debtor is employed by the State, in which he is employed, attaching the emoluments at present or in future owing or accruing to the judgment debtor by or from such employer (in this section called the garnishee) to the amount necessary to cover the judgment and the costs of the attachment, whether such judgment was obtained in that court or in any other magistrate's court, and obliging the garnishee to pay from time to time to the judgment creditor or his attorney at the address of such judgment creditor or his attorney specific amounts out of the emoluments of the judgment debtor in accordance with the order of court laying down the specific instalments payable by the judgment debtor, until such judgment debt and costs have been paid in full.

(2) Unless the judgment debtor has consented thereto in writing, or the court has so authorized and such authorization has not been suspended, any emoluments attachment order shall not be issued unless the judgment creditor or his attorney has first—

- (a) sent a registered letter to the judgment debtor at his last known address advising him of the amount of the judgment debt and costs as yet unpaid and warning him that an emoluments attachment order will be issued if the said amount is not paid within 7 days of the date on which the said registered letter was posted; and
- (b) filed with the clerk of the court an affidavit or affirmation by the judgment creditor or a certificate by his attorney—
 - (i) setting forth the amount of the judgment debt at the date of the order laying down the specific instalments, the costs, if any, which have accumulated since that date, the payments received since that date and the balance owing, and declaring that the

dig, en verklaar word dat die bepalings van paragraaf (a) nagekom is en op watter datum; en

- (ii) in 'n geval in subartikel (1) (c) bedoel, vermeld word dat die vonnisskuldenaar die gevangenisstraf of periodieke gevangenisstraf wat die hof opgelê het, uitgedien het.

(3) 'n Besoldigingbeslagbevel word opgestel deur die vonnisskuldeiser of sy prokureur, word deur die vonnisskuldeiser of sy prokureur en die klerk van die hof onderteken, en word aan die beslagskuldenaar beteken deur die geregsbode per geregistreerde brief.

(4) Aftrekkings moet ingevolge 'n besoldigingbeslagbevel gemaak word, indien die besoldiging van die vonnisskuldenaar maandeliks betaal word, aan die einde van die maand wat volg op die maand waarin dit aan die beslagskuldenaar beteken word of indien die besoldiging van die vonnisskuldenaar weekliks betaal word, aan die einde van die tweede week van die maand wat volg op die maand waarin dit aan die beslagskuldenaar aldus beteken word, en alle betalings daarkragtens aan die vonnisskuldeiser of sy prokureur word maandeliks met ingang van die einde van die maand wat volg op die maand waarin daardie bevel aan die beslagskuldenaar beteken word, gedoen.

(5) 'n Besoldigingbeslagbevel kan teen die beslagskuldenaar ten uitvoer gelê word asof dit 'n vonnis van die hof is, onderworpe aan die reg van die vonnisskuldenaar, die beslagskuldenaar of 'n ander belanghebbende om die bestaan of geldigheid van die bevel of die juistheid van die gevorderde saldo te betwis.

(6) Indien na betekening van so 'n besoldigingbeslagbevel aan die beslagskuldenaar, dit bewys word dat die vonnisskuldenaar, nadat aan die besoldigingbeslagbevel voldoen is, nie genoegsame middele sal hê om homself en sy afhanklikes te onderhou nie, trek die hof die besoldigingbeslagbevel in of wysig hy dit op so 'n wyse dat dit slegs die saldo van die besoldiging van die vonnisskuldenaar bo en behalwe sodanige voldoende middele, sal raak.

(7) 'n Besoldigingbeslagbevel kan te eniger tyd om 'n gegronde rede aangevoer, deur die hof opgeskort, gewysig of ingetrek word en by opskorting van so 'n bevel kan die hof die voorwaardes opleë wat hy billik en redelik ag.

(8) (a) Wanneer 'n vonnisskuldenaar op wie 'n besoldigingbeslagbevel betrekking het, die diens van die beslagskuldenaar verlaat voordat die vonnisskuld ten volle vereffen is, stel die vonnisskuldenaar onverwyld die vonnisskuldeiser skriftelik in kennis van die naam en adres van sy nuwe werkgewer, en kan die vonnisskuldeiser 'n gesertifiseerde afskrif van die besoldigingbeslagbevel aan daardie nuwe werkgewer laat beteken, tesame met 'n beëdigde verklaring of 'n bevestiging deur hom of 'n sertifikaat deur sy prokureur waarin die betalings deur hom sedert die uitreiking van die besoldigingbeslagbevel ontvang, die koste, indien daar is, wat sedert die datum waarop daardie bevel uitgereik is, aangegaan is, en die saldo wat verskuldig is, vermeld word.

(b) 'n Werkgewer aan wie 'n in paragraaf (a) genoemde gesertifiseerde afskrif aldus beteken is, is deur die besoldigingbeslagbevel gebonde en word geag in die plek van die oorspronklike

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provisions of paragraph (a) have been complied with and giving the date of such compliance; and

- (ii) stating, in a case referred to in subsection (1) (c), that the judgment debtor has served the term of imprisonment or the periodical imprisonment imposed by the court.

(3) Any emoluments attachment order shall be prepared by the judgment creditor or his attorney, shall be signed by the judgment creditor or his attorney and the clerk of the court, and shall be served by registered letter on the garnishee by the messenger of the court.

(4) Deductions in terms of an emoluments attachment order shall be made, if the emoluments of the judgment debtor are paid monthly, at the end of the month following the month in which it is served on the garnishee, or, if the emoluments of the judgment debtor are paid weekly, at the end of the second week of the month following the month in which it is so served on the garnishee, and all payments thereunder to the judgment creditor or his attorney shall be made monthly with effect from the end of the month following the month in which the said order is served on the garnishee.

(5) An emoluments attachment order may be executed against the garnishee as if it were a court judgment, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order or the correctness of the balance claimed.

(6) If, after the service of such an emoluments attachment order on the garnishee, it is shown that the judgment debtor, after satisfaction of the emoluments attachment order, will not have sufficient means for his own and his dependants' maintenance, the court shall rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above such sufficient means.

(7) Any emoluments attachment order may at any time on good cause shown be suspended, amended or rescinded by the court, and when suspending any such order the court may impose such conditions as it may deem just and reasonable.

(8) (a) Whenever any judgment debtor to whom an emoluments attachment order relates leaves the service of a garnishee before the judgment debt has been paid in full, such judgment debtor shall forthwith advise the judgment creditor in writing of the name and address of his new employer, and the judgment creditor may cause a certified copy of such emoluments attachment order to be served on the said new employer, together with an affidavit or affirmation by him or a certificate by his attorney specifying the payments received by him since such order was issued, the costs, if any, incurred since the date on which that order was issued and the balance outstanding.

(b) An employer on whom a certified copy referred to in paragraph (a) has been so served, shall thereupon be bound thereby and shall then be deemed to have been substituted for the original

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beslagskuldenaar gestel te wees, onderworpe aan die reg van die vonnisskuldenaar, die beslagskuldenaar of 'n ander belanghebbende om die bestaan of geldigheid van die bevel en die juistheid van die gevorderde saldo te betwis.

(9) (a) Wanneer 'n vonnisskuldenaar op wie 'n besoldigingbeslagbevel betrekking het, die diens van die beslagskuldenaar verlaat voordat die vonnisskuld ten volle vereffen is en vir homself begin werk of in die diens van iemand anders tree, is hy, of is hy hangende die betekening van die besoldigingbeslagbevel aan sy nuwe werkgewer, weer verplig om te voldoen aan die toepaslike bevel in subartikel (1) (a) of (b) genoem, en kan hy, behoudens die bepalinge van artikel 65G, ter gevangesetting verwys word weens minagting van die hof ten opsigte van sy versuim om aan daardie bevel te voldoen.

(b) Die bepalinge van artikel 65A is *mutatis mutandis* van toepassing met betrekking tot 'n in paragraaf (a) beoogde versuim ten opsigte waarvan die vonnisskuldenaar aldus ter gevangesetting verwys kan word.

(10) 'n Beslagskuldenaar kan vir die dienste deur hom gelewer ingevolge 'n besoldigingbeslagbevel 'n kommissie van hoogstens 5 persent van alle bedrae deur hom afgetrek van die vonnisskuldenaar se besoldiging op die vonnisskuldeiser verhaal deur daardie kommissie af te trek van die bedrag wat aan die vonnisskuldeiser betaalbaar is.

Kostebevele
met betrek-
king tot
sekere
verrigtinge.

65K. (1) Tensy by die verhoor van verrigtinge ingevolge 'n kennisgewing kragtens artikel 65A (1) dit vir die hof blyk dat die vonnisskuldenaar, nadat hy te wete gekom het van die vonnis waarop daardie verrigtinge gegrond is, 'n aanbod gemaak het om die vonnisskuld te vereffen in paaiemente wat die hof redelik ag, of die vonnisskuldeiser in kennis gestel het dat hy nie in staat is om 'n aanbod te maak nie en die hof bevind dat dit waar is, kan die hof die vonnisskuldenaar beveel om die koste van sodanige verrigtinge te betaal, maar indien dit blyk dat die vonnisskuldeiser daardie aanbod geweier het, kan die hof die vonnisskuldeiser beveel om daardie koste te betaal, met inbegrip van verlies van loon wat die vonnisskuldenaar gely het omdat hy in die hof moes verskyn in verband met die verrigtinge.

(2) By verrigtinge vir die opskorting of intrekking van 'n bevel of lasbrief vir die gevangesetting van 'n vonnisskuldenaar of 'n direkteur of beampte van 'n regspersoon of van 'n vonnis wat 'n boete oplê op 'n direkteur of beampte wat 'n vonnisskuldenaar wat 'n regspersoon is, verteenwoordig, kan die hof die vonnisskuldenaar beveel om die koste van daardie verrigtinge te betaal, tensy dit blyk dat die verrigtinge te wyte was aan 'n handeling of versuim deur die vonnisskuldeiser.

(3) Die bepalinge van hierdie artikel belet nie die hof om by verrigtinge ingevolge 'n kennisgewing kragtens artikel 65A (1) 'n bevel betreffende koste te maak wat die hof billik ag nie.

Vrylating
van vonnis-
skuldenaar
uit
gevangenis.

65L. Die beampte aan die hoof van 'n gevangenis laat 'n vonnisskuldenaar of direkteur of beampte van 'n regspersoon dadelik uit die gevangenis vry—

(a) na afloop van die tydperk waarvoor die vonnisskuldenaar, direkteur of beampte gevangegeset is;

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garnishee, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order and the correctness of the balance claimed.

- (9) (a) Whenever any judgment debtor to whom an emoluments attachment order relates leaves the service of the garnishee before the judgment debt has been paid in full and becomes self-employed or is employed by someone else he shall, or shall pending the service of the emoluments attachment order on his new employer, again be obliged to comply with the relevant order referred to in subsection 1 (a) or (b) and may, subject to the provisions of section 65G, be committed for contempt of court for failing to comply with the said order.
- (b) The provisions of section 65A shall apply *mutatis mutandis* to any failure contemplated in paragraph (a) in respect of which the judgment debtor may be so committed.

(10) Any garnishee may, in respect of the services rendered by him in terms of an emoluments attachment order, recover from the judgment creditor a commission of up to 5 per cent of all amounts deducted by him from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor.

Orders as to costs relating to certain proceedings.

65K. (1) Unless at the hearing of any proceedings in terms of a notice under section 65A (1) it appears to the court that the judgment debtor, after learning of the judgment upon which such proceedings were founded, made an offer to pay the judgment debt in instalments which the court deems reasonable, or notified the judgment creditor that he was not able to make an offer and the court finds this to be true, the court may order the judgment debtor to pay the costs of such proceedings, but if it appears that the judgment creditor refused such offer, the court may order the judgment creditor to pay such costs, including the loss of wages suffered by the judgment debtor through having to appear in court in connection with the proceedings.

(2) At any proceedings for the suspension or rescission of any order or warrant for the committal of a judgment debtor or a director or an officer of any juristic person or of any sentence imposing a fine on any director or officer representing a judgment debtor who is a juristic person, the court may order the judgment debtor to pay the costs of such proceedings, unless it appears that the proceedings were due to any act or omission on the part of the judgment creditor.

(3) The provisions of this section shall not preclude the court from making such order regarding costs as it may deem just in any proceedings in terms of a notice under section 65A (1).

Releasing of judgment debtor from prison.

65L. The officer in charge of a prison shall forthwith release from the prison a judgment debtor or director or an officer of any juristic person—

- (a) upon the expiry of the period for which the judgment debtor, director or officer was committed;

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- (b) wanneer die vonnis-skuldeiser of sy prokureur of die geregsbode skriftelik sertifiseer dat die bedrag van die vonnis-skuld en koste genoem in die lasbrief betaal is, of in die geval waar 'n hof 'n vonnis gevel het vir die betaling van 'n bedrag geld in bepaalde paalemente, dat die bedrag van enige agterstallige paalement en koste betaal is, welke sertifikaat deur die vonnis-skuldeiser of sy prokureur of die geregsbode aan genoemde beampte aan die hoof van die gevangenis gegee moet word so gou doenlik na enige sodanige betaling;
- (c) op 'n bevel deur 'n regter van die Hooggeregshof van Suid-Afrika of deur 'n regterlike amptenaar van die distrik waar die bevel tot gevangesetting uitgereik is of van die distrik waarin die gevangenis is.

Afdwing van sekere vonnisse van Hooggeregshof.

65M. Indien 'n vonnis vir die betaling van 'n bedrag geld deur 'n afdeling van die Hooggeregshof van Suid-Afrika gevel is, kan die vonnis-skuldeiser 'n gewaarmerkte afskrif van daardie vonnis en 'n beëdigde verklaring of 'n bevestiging van die vonnis-skuldeiser of 'n sertifikaat van sy prokureur waarin uiteengesit word die bedrag wat nog kragtens die vonnis verskuldig is en hoe dit bereken is, by die klerk van die hof waaruit die vonnis-skuldeiser 'n kennisgewing ingevolge artikel 65A (1) moet uitreik, laat indien, en daarna het daardie vonnis, hetsy die bedrag van daardie vonnis andersins die jurisdiksie van die hof sou oorskry het of nie, al die gevolge van 'n vonnis van daardie hof, en kan stappe daarop gedoen word asof dit 'n vonnis was wat wettiglik in daardie hof gevel is ten gunste van die vonnis-skuldeiser vir die bedrag vermeld in die beëdigde verklaring of die bevestiging of die sertifikaat as nog verskuldig kragtens daardie vonnis, dog onderworpe aan die reg van die vonnis-skuldeenaar om die juistheid van die bedrag wat in bedoelde beëdigde verklaring of bevestiging of sertifikaat vermeld word, te betwis."

Wysiging van artikel 66 van Wet 32 van 1944, soos gewysig deur artikel 16 van Wet 40 van 1952.

3. Artikel 66 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:

„(1) (a) Wanneer 'n hof vir die betaling van geld vonnis vel of 'n bevel uitvaardig vir die betaling van geld in paalemente, dan kan sodanige vonnis, ingeval van versuim om bedoelde geld onverwyld te betaal, of kan sodanige bevel, in geval van versuim om 'n paalement te betaal op die tyd en op die wyse deur die hof bepaal, by eksekusie afgedwing word teen die roerende goedere, en ingeval die roerende goedere nie toereikend is om aan die vonnis of bevel te voldoen nie, of die hof om 'n gegronde rede aangevoer aldus beveel, teen die onroerende goed van die party teen wie die vonnis gevel of die bevel uitvaardig is.

- (b) By 'n versuim om 'n paalement ooreenkomstig 'n hofbevel te betaal, kan tenuitvoerlegging geskied vir die geheel van die vonnis-skuld en koste wat dan nog onbetaald is, tensy die hof op aansoek van die party wat aanspreeklik is, anders beveel.”;

en

- (b) deur die volgende subartikels by te voeg:

„(4) Indien 'n in subartikel (3) bedoelde verkoping nie plaasvind of die betrokke onroerende goed nie van die inbeslagneming onthef word binne 'n tydperk

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- (b) when the judgment creditor or his attorney or the messenger of the court certifies in writing that the judgment debt and costs mentioned in the warrant have been paid, or in the case where a court has given judgment for the payment of an amount of money in specified instalments, that the amount of any arrear instalment and costs have been paid, which certificate shall be handed by the judgment creditor or his attorney or the messenger to the officer in charge of the prison as soon as practicable after any such payment;
- (c) upon an order given by a judge of the Supreme Court of South Africa or by any judicial officer of the district in which the order for committal was made or of the district in which the prison is situate.

Enforcement
of certain
judgments
of Supreme
Court.

65M. If a judgment for the payment of any amount of money has been given by a division of the Supreme Court of South Africa, the judgment creditor may file with the clerk of the court from which the judgment creditor is required to issue a notice in terms of section 65A (1), a certified copy of such judgment and an affidavit or affirmation by the judgment creditor or a certificate by his attorney specifying the amount still owing under the judgment and how such amount is arrived at, and thereupon such judgment, whether or not the amount of such judgment would otherwise have exceeded the jurisdiction of the court, shall have all the effects of a judgment of such court and any proceedings may be taken thereon as if it were a judgment lawfully given in such court in favour of the judgment creditor for the amount mentioned in the affidavit or affirmation or the certificate as still owing under such judgment, subject however to the right of the judgment debtor to dispute the correctness of the amount specified in the said affidavit or affirmation or certificate.”

3. Section 66 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) (a) Whenever a court gives judgment for the payment of money or makes an order for the payment of money in instalments, such judgment, in case of failure to pay such money forthwith, or such order in case of failure to pay any instalment at the time and in the manner ordered by the court, shall be enforceable by execution against the movable property and, if there is not found sufficient movable property to satisfy the judgment or order, or the court, on good cause shown, so orders, then against the immovable property of the party against whom such judgment has been given or such order has been made.

- (b) Upon such failure to pay any instalment in accordance with any court order, execution may be effected in respect of the whole of the judgment debt and of costs then still unpaid, unless the court, on the application of the party that is liable, orders otherwise.”; and

- (b) by the addition of the following subsections:

“(4) If a sale referred to in subsection (3) does not take place or the immovable property concerned is not released from attachment within a period of one year

Amendment of
section 66 of
Act 32 of 1944,
as amended by
section 16 of
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van een jaar vanaf die datum van inbeslagneming nie, verval die inbeslagneming.

(5) Die hof kan op aansoek en op koste van die vonniskskuldeiser, nadat die vonniskskuldenaar behoorlik kennis gegee is van so 'n aansoek, die in subartikel (4) bedoelde tydperk van een jaar met verdere tydperke van een jaar elk verleng.

(6) 'n Vonniskskuldeiser (hetsy uit hoofde van 'n vonnis in die Hooggeregshof van Suid-Afrika of 'n landdroshof gevel) wat verlang om beslag te lê op onroerende goed wat reeds onder beslaglegging (hetsy deur 'n adjunk-balju of 'n geregsbode uitgevoer) is en met betrekking waartoe 'n verkoping in eksekusie nie hangende is nie, en wat 'n lasbrief vir eksekusie by die adjunk-balju of geregsbode ingedien het, kan na kennisgewing aan die belanghebbendes by die hof aansoek doen om 'n bevel dat die goed kragtens sy lasbrief verkoop kan word.

(7) 'n Geregsbode wat by 'n lasbrief gelas word om op onroerende goed beslag te lê, word nie bloot deur die afwesigheid van die eksekusieskuldenaar van sy woon- of besigheidsplek belet om sy pligte uit te voer nie maar kan sy pligte uitvoer indien hy daartoe in staat is, en doen 'n relaas op die lasbrief aan die hof.

(8) Indien die eksekusieskuldenaar, wanneer hy versoek word deur die geregsbode om goed aan te dui om aan 'n lasbrief vir eksekusie teen roerende goed te voldoen, verklaar dat hy geen roerende goed of voldoende roerende goed besit nie en die geregsbode self nie voldoende roerende goed kan vind om aan die lasbrief te voldoen nie, versoek die geregsbode die eksekusieskuldenaar om te verklaar of hy onroerende goed besit waarop tenuitvoerlegging kan geskied, en teken die eksekusieskuldenaar se antwoord in sy relaas op daardie lasbrief aan."

Vervanging van artikel 72 van Wet 32 van 1944, soos vervang deur artikel 17 van Wet 40 van 1952 en gewysig deur artikel 26 van Wet 93 van 1962 en artikel 11 van Wet 19 van 1963.

4. Artikel 72 van die Hoofwet word hierby deur die volgende artikel vervang:

„Beslaglegging op skulde.

72. (1) Die hof kan na *ex parte*-aansoek deur die vonniskskuldeiser of ingevolge artikel 65E (1) (b), die inbeslagneming beveel van 'n skuld wat dan of in die toekoms aan 'n vonniskskuldenaar verskuldig is of hom toekom, deur of van 'n ander persoon (behalwe die Staat) wat in die distrik woon, besigheid dryf of in diens is, tot 'n bedrag wat voldoende is om die vonnis en die koste van die verrigtinge tot inbeslagneming te dek, hetsy die vonnis in daardie hof of in 'n ander landdroshof verkry is, en kan 'n bevel (hieronder 'n skuldbeslagbevel genoem) teen so iemand (hieronder die beslagskuldenaar genoem) uitreik om aan die vonniskskuldeiser of sy prokureur by die adres van die vonniskskuldeiser of sy prokureur soveel van die skuld te betaal as wat genoegsaam is om die vonnis en koste te dek, en kan so 'n skuldbeslagbevel op dieselfde wyse ten uitvoer laat lê asof dit 'n vonnis van die hof is.

(2) Indien na die uitreiking van so 'n skuldbeslagbevel ten opsigte van skuld, ten genoë van die hof bewys word dat die vonniskskuldenaar, nadat aan die skuldbeslagbevel voldoen is, nie genoegsame middele sal hê om homself en sy afhanklikes te onderhou nie, stel die hof die skuldbeslagbevel tersyde of wysig hy dit op so 'n wyse dat dit slegs die saldo van daardie skuld, bo en behalwe sodanige voldoende middele, sal raak.

(3) 'n Bevel ingevolge hierdie artikel kan te eniger tyd, mits gegronde redes aangevoer word, deur die hof opgeskort of gewysig of ingetrek word.

(4) Indien dit blyk dat daar vorderings aan ander skuldeisers verskuldig is waaraan nie voldoen is nie, kan die hof die aansoek uitstel ten einde die

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from the date of attachment, such attachment shall lapse.

(5) The court may, upon the application and at the expense of the judgment creditor, after due notice of such application has been given to the judgment debtor, extend the period of one year referred to in subsection (4) by further periods of one year each.

(6) A judgment creditor (whether by virtue of a judgment given in the Supreme Court of South Africa or in a magistrate's court) desiring to attach immovable property that is already under attachment (whether made by a deputy sheriff or by a messenger) and in respect of which a sale in execution is not pending, and who has lodged a warrant of execution with the deputy sheriff or messenger of the court, may, after notifying the interested parties, apply to the court for an order to the effect that the property may be sold in terms of his warrant.

(7) A messenger who is directed to attach immovable property, shall not be precluded merely by the absence of the execution debtor from his place of residence or business, from discharging his duties, but may discharge his duties if he is able to do so and shall endorse a return of service to the court on the warrant.

(8) If the execution debtor, having been requested by the messenger of the court to point out property in order to satisfy a warrant of execution against movable property, declares that he has no movable property or insufficient movable property and the messenger is unable to find sufficient movable property to satisfy the warrant, the messenger shall request the execution debtor to declare whether he has immovable property which is executable and shall enter the execution debtor's reply in his return of service endorsed on such warrant."

4. The following section is hereby substituted for section 72 of the principal Act:

"Attach-
ment of
debts.

72. (1) The court may, on *ex parte* application by the judgment creditor or under section 65E (1) (b), order the attachment of any debt at present or in future owing or accruing to a judgment debtor by or from any other person (excluding the State), residing, carrying on business or employed in the district, to an amount sufficient to satisfy the judgment and the costs of the proceedings for attachment, whether such judgment has been obtained in such court or in any other magistrate's court, and may make an order (hereinafter called a garnishee order) against such person (hereinafter called the garnishee) to pay to the judgment creditor or his attorney at the address of the judgment creditor or his attorney, so much of the debt as may be sufficient to satisfy the judgment and costs, and may enforce such garnishee order as if it were a judgment of the court.

(2) If, after any such garnishee order in respect of any debt has been granted, it is shown to the satisfaction of the court that sufficient means to maintain himself and those dependent upon him will not, after satisfaction of the garnishee order, be left to the judgment debtor, the court shall set aside the garnishee order or amend it in such manner that it will affect only the balance of the debt over and above such sufficient means.

(3) Any order under this section may at any time for good cause be suspended, amended or rescinded by the court.

(4) The court may, if it appears that there are unsatisfied claims owing to other creditors, postpone the application to enable the judgment debtor to

Substitution of section 72 of Act 32 of 1944, as substituted by section 17 of Act 40 of 1952 and amended by section 26 of Act 93 of 1962 and section 11 of Act 19 of 1963.

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vonnisskuldenaar in die geleentheid te stel om 'n administrasiebevel kragtens artikel 74 aan te vra.”.

Wysiging van artikel 73 van Wet 32 van 1944, soos gewysig deur artikel 18 van Wet 40 van 1952.

5. Artikel 73 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

„(1) Die hof kan, op aansoek van 'n vonnisskuldenaar of kragtens artikel 65E (1) (a) (ii) of 65E (1) (c) en indien dit vir die hof blyk dat die vonnisskuldenaar nie by vermoë is om onmiddellik ten volle aan die vonnisskuld te voldoen nie, dog wel by vermoë is om dit in redelike periodieke paaie af te betaal of waar die vonnisskuldenaar toestem dat 'n besoldigingbeslagbevel of 'n skuldbeslagbevel teen hom verleen word, eksekusie teen daardie vonnisskuldenaar geheel en al of ten dele opskort op die voorwaardes ten aansien van sekerheidstelling of andersins wat die hof bepaal.”.

Vervanging van artikel 74 van Wet 32 van 1944, soos gewysig deur artikel 19 van Wet 40 van 1952, artikel 2 van Wet 14 van 1954, artikel 27 van Wet 93 van 1962 en artikel 12 van Wet 19 van 1963.

6. Artikel 74 van die Hoofwet word hierby deur die volgende artikels vervang:

„Verlening van administrasiebevele.

74. (1) Wanneer 'n skuldenaar—

(a) nie in staat is om die bedrag van 'n vonnis wat teen hom in 'n hof verkry is, onmiddellik te betaal nie, of om sy finansiële verpligtings na te kom nie, en nie genoegsame vir beslag vatbare bates het om aan sodanige vonnis of verpligtings te voldoen nie; en

(b) beweer dat die totale bedrag van sy skulde wat verskuldig is, nie R4 000 te bowe gaan nie, kan daardie hof of die hof van die distrik waarin die skuldenaar woon of besigheid dryf of in diens is, op aansoek van die skuldenaar of kragtens artikel 65I, onderworpe aan die voorwaardes wat die hof goed ag ten opsigte van die stel van sekuriteit, bewaring of van die hand sit van bates, tegeldekking van verhipotekeerde roerende goedere (behalwe roerende goedere in artikel 34*bis* van die Landbankwet, 1944 (Wet No. 13 van 1944), bedoel), of andersins, 'n bevel (in hierdie Wet 'n administrasiebevel genoem) verleen waarby voorsiening gemaak word vir die administrasie van sy boedel en vir die vereffening van sy skulde in paaie of andersins.

(2) 'n Administrasiebevel is nie ongeldig nie slegs omdat daar te eniger tyd gevind word dat die totale bedrag van die skuldenaar se skulde wat verskuldig is R4 000 te bowe gaan, maar in daardie geval kan die hof, as hy dit goedvind, die bevel intrek.

Stukke wat voorgelê moet word met aansoek om administrasiebevel.

74A. (1) Met 'n in artikel 74 (1) bedoelde aansoek lê die skuldenaar 'n volledige staat van sy sake voor in die vorm voorgeskryf in die reëls.

(2) In die vorm in subartikel (1) genoem, moet voorsiening gemaak word vir, onder andere, die volgende besonderhede, naamlik—

(a) die naam en besigheidsadres van die skuldenaar se werkgewer of, indien die skuldenaar nie in diens is nie, die rede waarom hy nie in diens is nie;

(b) 'n gedetailleerde lys van die skuldenaar se bates en hulle huidige markwaarde en volle besonderhede van belange in eiendom en van vorderings in sy guns, met inbegrip van geld in 'n spaar- of ander rekening by 'n bank of elders;

(c) die skuldenaar se ambag of beroep en sy bruto weeklikse of maandelikse inkomste en ook dié van sy eggenote wat by hom inwoon, en besonderhede van alle aftrekkings daarvan gemaak by wyse van aftrekorder of andersins,

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make application for an administration order under section 74."

5. Section 73 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 73 of Act 32 of 1944, as amended by section 18 of Act 40 of 1952.

"(1) The court may, upon the application of any judgment debtor or under section 65E (1) (a) (ii) or 65E (1) (c) and if it appears to the court that the judgment debtor is unable to satisfy the judgment debt in full at once, but is able to pay reasonable periodical instalments towards satisfaction thereof or if the judgment debtor consents to an emoluments attachment order or a garnishee order being made against him, suspend execution against that debtor either wholly or in part on such conditions as to security or otherwise as the court may determine."

6. The following sections are hereby substituted for section 74 of the principal Act:

Substitution of section 74 of Act 32 of 1944, as amended by section 19 of Act 40 of 1952, section 2 of Act 14 of 1954, section 27 of Act 93 of 1962 and section 12 of Act 19 of 1963.

"Granting of administration orders. 74. (1) Where a debtor—

- (a) is unable forthwith to pay the amount of any judgment obtained against him in court, or to meet his financial obligations, and has not sufficient assets capable of attachment to satisfy such judgment or obligations; and
- (b) states that the total amount of all his debts due does not exceed R4 000,

such court or the court of the district in which the debtor resides or carries on business or is employed may, upon application by the debtor or under section 65I, subject to such conditions as the court may deem fit with regard to security, preservation or disposal of assets, realization of movables subject to hypothec (except movables referred to in section 34bis of the Land Bank Act, 1944 (Act No. 13 of 1944), or otherwise, make an order (in this Act called an administration order) providing for the administration of his estate and for the payment of his debts in instalments or otherwise.

(2) An administration order shall not be invalid merely because at some time or other the total amount of the debtor's debts are found to exceed R4 000, but in such a case the court may, if it deems fit, rescind the order.

Documents to be submitted with application for administration order.

74A. (1) With an application referred to in section 74 (1) the debtor shall submit a full statement of his affairs in the form prescribed in the rules.

(2) In the form referred to in subsection (1) provision shall be made for the following particulars, *inter alia*, namely—

- (a) the name and business address of the debtor's employer or, if the debtor is not employed, the reason why he is unemployed;
- (b) a detailed list of the debtor's assets and their current market values and full particulars of interests in property and claims in his favour, including moneys in a savings or other account with a bank or elsewhere;
- (c) the debtor's trade or occupation and his gross weekly or monthly income and that of his wife living with him, and particulars of all deductions from such income by stop order or otherwise,

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gesteun sover moontlik deur skriftelike state deur die werkgewers van die skuldenaar en sy eggenote;

- (d) 'n gedetailleerde lys van die skuldenaar se weeklikse of maandelikse noodsaaklike uitgawes en dié van die persone wat van hom afhanklik is, met inbegrip van die vervoerkoste van homself en sy eggenote na en van werk en dié van sy kinders na en van skool;
- (e) 'n volledige lys van al die skuldenaar se skuldeisers en hulle adresse, en die bedrag verskuldig aan elke skuldeiser, waarin duidelik onderskei word tussen—
 - (i) die skulde waarvan die hele bedrag verskuldig is, met inbegrip van vonnis-skulde wat in paalemente betaalbaar is ingevolge 'n hofbevel, besoldigingbeslagbevel of skuldbeslagbevel; en
 - (ii) die verpligtings wat *in futuro* in periodieke betalings of andersins betaalbaar is of betaalbaar gaan word ingevolge 'n onderhoudebevel, ooreenkoms, aftrekorder of andersins, en waarin verklaar word wat daardie periodieke betalings in iedere geval is of wanneer die verpligtings betaalbaar gaan word en hoe dit dan betaal moet word, die saldo verskuldig in iedere geval en wanneer in iedere geval die verpligting ten einde sal loop;
- (f) die sekuriteit en die geskatte waarde van die sekuriteit deur 'n skuldeiser besit of die naam en adres van 'n ander persoon wat, benewens die skuldenaar, aanspreeklik is vir 'n skuld;
- (g) volle besonderhede, gesteun sover moontlik deur 'n staat en afskrif van die ooreenkoms in artikel 9 (1) van die Wet op Huurkoop, 1942 (Wet No. 36 van 1942), bedoel, van goed kragtens 'n huurkoop-ooreenkoms gekoop, die koopprys, die paalemente betaalbaar, die saldo verskuldig en die datum wanneer die koopprys ten volle betaal sal wees, en die redes wat die skuldenaar aanvoer waarom voorsiening gemaak moet word vir die betaling van die oorblywende paalemente;
- (h) volle besonderhede van 'n verband op onroerende goed wat deur die skuldenaar besit word, die paalemente betaalbaar, die saldo verskuldig, die datum wanneer die verbandskuld ten volle betaal sal wees en die redes wat die skuldenaar aanvoer waarom voorsiening gemaak moet word vir die betaling van die paalemente wat kragtens bedoelde verband betaalbaar word;
- (i) volle besonderhede van 'n bate wat kragtens 'n skriftelike ooreenkoms wat nie 'n huurkoop-ooreenkoms is nie, aangekoop is, die paalemente betaalbaar, die saldo verskuldig, en die datum wanneer die koopprys ten volle betaal sal wees, en die redes wat die skuldenaar aanvoer waarom voorsiening gemaak moet word vir die betaling van die paalemente wat kragtens bedoelde ooreenkoms betaalbaar word;
- (j) of 'n administrasiebevel te eniger tyd ten opsigte van die skuldenaar se boedel verleen is en, indien wel, of daardie bevel verval het dan wel of dit tersyde gestel is en, indien wel, wanneer en om watter redes;

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supported as far as possible by written statements by the employers of the debtor and his wife;

- (d) a detailed list of the debtor's essential weekly or monthly expenses and those of the persons dependent on him, including his own transport expenses and those of his wife to and from work, and those of his children to and from school;
- (e) a complete list of all the debtor's creditors and their addresses, and the amount owing to each creditor, in which a clear distinction shall be made between—
 - (i) debts the whole amount of which is owing, including judgment debts payable in instalments in terms of a court order, an emoluments attachment order or a garnishee order; and
 - (ii) obligations which are payable *in futuro* in periodical payments or otherwise or which will become payable under a maintenance order, agreement, stop order or otherwise, and in which the nature of such periodical payments is specified in each case or when the obligations will be payable and how they are then to be paid, the balance owing in each case and when, in each case, the obligation will terminate;
- (f) the security and the estimated value of the security that a creditor has or the name and address of any other person who, in addition to the debtor, is liable for any debt;
- (g) full particulars, supported as far as possible by a statement and a copy of the agreement referred to in section 9 (1) of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), of goods purchased under a hire-purchase agreement, the purchase price, the instalments payable, the balance owing and the date on which the purchase price will be paid in full, and the reasons adduced by the debtor why provision should be made for the payment of the remaining instalments;
- (h) full particulars of any mortgage bond on immovable property owned by the debtor, the instalments payable, the balance owing, the date on which the mortgage debt will be paid in full and the reasons adduced by the debtor why provision should be made for the payment of the instalments payable in terms of such mortgage bond;
- (i) full particulars of any asset purchased under a written agreement other than a hire-purchase agreement, the instalments payable, the balance owing, and the date on which the purchase price will be paid in full, and the reasons adduced by the debtor why provision should be made for the payment of the instalments that become payable under such agreement;
- (j) whether any administration order was made at any time in respect of the debtor's estate and, if so, whether such order lapsed or was set aside and, if so, when and for what reasons;

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(k) die getal en ouderdomme van die persone wat van die skuldenaar en sy eggenote afhanklik is en hulle verwantskap tot hulle;

(l) indien 'n administrasiebevel verleen word, die bedrag van die weeklikse of maandelikse of ander paaiemente wat die skuldenaar aanbied om te betaal ter vereffening van die skulde in paragraaf (e) (i) bedoel.

(3) Die in subartikel (1) genoemde staat moet bevestig word deur 'n beëdigde verklaring waarin die skuldenaar verklaar dat na sy beste wete die name van al sy skuldeisers en die bedrae wat deur hom aan hulle afsonderlik verskuldig is, in die staat uiteengesit word en dat die verklarings wat daarin gedoen is, waar is.

(4) Indien daartoe versoek deur 'n ongeletterde skuldenaar en na betaling van die in die reëls voorgeskrewe geld, help die klerk van die om die skuldenaar om die in subartikel (1) gehhoefde staat te voltooi.

(5) 'n Skuldenaar dien 'n aansoek om 'n administrasiebevel en die in subartikel (1) genoemde staat by die klerk van die hof in en besorg 'n afskrif van so 'n aansoek en staat, met die saaknommer waaronder die oorspronklike aansoek geliasseer is daarop, deur persoonlike aflewering of per geregistreerde pos aan elkeen van sy skuldeisers minstens 3 dae voor die datum wat vir die verhoor vasgestel is.

Verhoor van
aansoek om
admini-
strasiebevel.

74B. (1) By die verhoor van 'n aansoek om 'n administrasiebevel—

- (a) kan 'n skuldeiser, hetsy hy ingevolge artikel 74A (5) kennis ontvang het of nie, die verhoor bywoon en sy skuld bewys en beswaar maak teen 'n skuld wat die skuldenaar in die in artikel 74A (1) genoemde staat van sy sake gelys het;
- (b) word elke skuld deur die skuldenaar in bedoelde staat gelys, geag bewys te wees, onderworpe aan enige wysigings daaraan deur die hof aangebring, tensy 'n skuldeiser daarteen beswaar maak of die hof dit verwerp of vereis dat dit deur getuienis gestaaf word;
- (c) bewys 'n skuldeiser teen wie se skuld beswaar gemaak word deur die skuldenaar of 'n ander skuldeiser of wat deur die hof vereis word om sy skuld te staaf met getuienis, sy skuld;
- (d) kan die hof die bewys van 'n skuld en die ooreweging van die aansoek om 'n administrasiebevel uitstel, of oorgaan tot die afhandeling van die aansoek en, indien 'n administrasiebevel verleen word, word die skuld later, wanneer dit bewys word, by die gelyste skulde gevoeg;
- (e) kan die skuldenaar deur die hof en deur enige skuldeiser wie se skuld erken of bewys is of met die toestemming van die hof, enige skuldeiser die bewys van wie se skuld uitgestel is, of deur die regsvertegenwoordiger van so 'n skuldeiser, ondervra word met betrekking tot—
 - (i) sy bates en laste;
 - (ii) sy teenwoordige en toekomstige inkomste en dié van sy eggenote wat by hom inwoon;
 - (iii) sy lewenstandaard, en die moontlikheid om besuiniging te beoefen; en
 - (iv) enige ander aangeleentheid wat die hof ter sake ag.

(2) Indien dit by die verhoor vir die hof blyk dat 'n skuld, behalwe 'n skuld wat gegrond is op of ontstaan uit 'n vonnisskuld, betwis word tussen die

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- (k) the number and ages of the persons dependent on the debtor and his wife and their kinship with them;
- (l) if an administration order is made, the amount of the weekly or monthly or other instalments which the debtor offers to pay towards settlement of the debts referred to in paragraph (e) (i).
- (3) The statement referred to in subsection (1) shall be confirmed by an affidavit in which the debtor declares that to the best of his knowledge the names of all his creditors and the amounts owed by him to each of them severally are set forth in the statement and that the declarations made therein are true.
- (4) The clerk of the court shall, if requested there-to by an illiterate debtor and upon payment of the fee prescribed in the rules, assist the debtor in completing the statement referred to in subsection (1).
- (5) The debtor shall lodge an application for an administration order and the statement referred to in subsection (1) with the clerk of the court and shall deliver to each of his creditors, at least 3 days before the date appointed for the hearing, personally or by registered post a copy of such application and statement on which shall appear the case number under which the original application was filed.

Hearing of
application
for admini-
stration
order.

74B. (1) At the hearing of an application for an administration order—

- (a) any creditor, whether he has received notice in terms of section 74A (5) or not, may attend the hearing and provide proof of his debt and object to any debt listed by the debtor in the statement of his affairs referred to in section 74A (1);
- (b) every debt listed by the debtor in the said statement shall be deemed to be proved, subject to any amendments made thereto by the court, unless any creditor raises objections thereto or the court rejects it or requires substantiation thereof by evidence;
- (c) any creditor to whose debt an objection is raised by the debtor or any other creditor or who is required by the court to substantiate his debt with evidence shall provide proof of debt;
- (d) the court may defer proof of debt and postpone consideration of the application for an administration order or proceed to deal with such application and, if an administration order is granted, the debt shall subsequently when proved be added to the debts listed;
- (e) the debtor may be interrogated by the court and by any creditor whose debt has been acknowledged or proved, or, by leave of the court, by any creditor the proof of whose debt has been deferred, or by the legal representative of such creditor with regard to—
 - (i) his assets and liabilities;
 - (ii) his present and future income and that of his wife living with him;
 - (iii) his standard of living, and the possibility of economising; and
 - (iv) any other matter that the court may deem relevant.
- (2) If at the hearing it appears to the court that any debt other than a debt on the ground of or arising from any judgment debt is a matter of con-

skuldenaar en die skuldeiser of tussen die skuldeiser en 'n ander skuldeiser van die skuldenaar, kan die hof, nadat hy ondersoek ingestel het na die beswaar, die skuld of 'n gedeelte daarvan toelaat of verwerp.

(3) Iemand wie se skuld ooreenkomstig subartikel (2) verwerp is, kan, ondanks die bepalings van artikel 74P, 'n aksie instel of voortgaan met 'n aksie wat alreeds ingestel is met betrekking tot so 'n skuld.

(4) Indien iemand in subartikel (3) bedoel vonnis verkry op 'n in daardie subartikel bedoelde skuld, word die bedrag van die vonnis gevoeg by die lys van bewese skulde in subartikel (1) genoem.

(5) Geen administrasiebevel word op aansoek van 'n skuldenaar verleen nie indien daar bewys word dat binne die voorafgaande tydperk van 6 maande 'n administrasiebevel ingetrek is vanweë die skuldenaar se nie-voldoening daaraan, tensy die skuldenaar ten genoeë van die hof bewys dat sy nie-voldoening aan die bevel nie opsetlik was nie.

Inhoud van
admini-
strasiebevel.

74C. (1) 'n Administrasiebevel moet in die by reël voorgeskrewe vorm wees en—

- (a) moet die bedrag bepaal van die weeklikse of maandelikse of ander betalings wat ingevolge daarvan gedoen moet word; en
 - (b) kan vermeld—
 - (i) die bates, indien daar is, van die boedel onder administrasie wat deur die administrateur te gelde gemaak kan word met die doel om die opbrengs onder die skuldeisers te verdeel: Met dien verstande dat geen sodanige bate wat die onderwerp van 'n ooreenkoms is wat deur die Wet op Huurkoop, 1942 (Wet No. 36 van 1942), gereël word, sonder die skriftelike toestemming van die verkoper te gelde gemaak mag word nie;
 - (ii) die bates, indien daar is, van die boedel onder administrasie wat deur die administrateur ingevolge artikel 14 van die Wet op Huurkoop, 1942, aan die verkoper teruggegee kan word;
 - (iii) die verpligtinge van die skuldenaar wat die hof in aanmerking geneem het by die vaststelling van die bedrag van die weeklikse of maandelikse of ander paaiemente wat deur die skuldenaar aan die administrateur betaal moet word;
 - (iv) die bates, indien daar is, wat nie sonder die toestemming van die administrateur of die hof deur die skuldenaar van die hand gesit mag word nie;
 - (v) die ander bepalings of voorwaardes wat die hof nodig of dienstig ag.
- (2) Die bedrag van die weeklikse of maandelikse of ander betalings wat deur die skuldenaar kragtens die administrasiebevel aan die administrateur gedoen moet word, moet so na doenlik gelyk wees aan die verskil tussen die skuldenaar se toekomstige inkomste en die som van—
- (a) die bedrag wat deur die hof vasgestel is as die bedrag wat die skuldenaar redelikerwys nodig het vir sy noodsaaklike uitgawes en dié van die persone wat van hom afhanklik is;
 - (b) die periodieke betalings wat die skuldenaar verplig is om te doen ingevolge 'n huurkoop-ooreenkoms: Met dien verstande dat die hof na goeëddunke kan weier om die periodieke be-

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tention between the debtor and the creditor or between the creditor and any other creditor of the debtor, the court may, upon inquiry into the objection, allow or reject the debt or a part thereof.

(3) Any person whose debt has been rejected in accordance with subsection (2) may, notwithstanding the provisions of section 74P, institute proceedings or proceed with an action already instituted in respect of such debt.

(4) If any person referred to in subsection (3) has obtained judgment in respect of any debt referred to in that subsection, the amount of the judgment shall be added to the list of proved debts referred to in subsection (1).

(5) No administration order shall be granted at the request of any debtor if it is proved that any administration order was rescinded within the preceding period of 6 months because of the debtor's non-compliance therewith, unless the debtor proves to the satisfaction of the court that his non-compliance with the order was not wilful.

Contents of
adminis-
tration
order.

74C. (1) An administration order shall be in the form prescribed by the rules and—

(a) shall lay down the amount of the weekly or monthly or other payments to be made in terms thereof; and

(b) may specify—

(i) the assets, if any, of the estate under administration which may be realized by the administrator for the purpose of distributing the proceeds among the creditors: Provided that no such asset that is the subject of any agreement regulated by the Hire-Purchase Act, 1942 (Act No. 36 of 1942), shall be realized without the written permission of the seller;

(ii) the assets, if any, of the estate under administration which may be returned by the administrator to the seller in terms of section 14 of the Hire-Purchase Act, 1942;

(iii) the debtor's obligations which the court took account of in determining the amount of the weekly or monthly or other instalments to be paid by the debtor to the administrator;

(iv) the assets, if any, which shall not be disposed of by the debtor except by leave of the administrator or the court;

(v) such other provisions or conditions as the court may deem necessary or expedient.

(2) The amount of the weekly or monthly or other payments to be made by the debtor to the administrator in terms of the administration order shall, as nearly as possible, approximate the difference between the debtor's future income and the sum of—

(a) the amount determined by the court as the reasonable amount required by the debtor for his necessary expenses and those of the persons dependent on him;

(b) the periodical payments which the debtor is obliged to make under a hire-purchase agreement: Provided that the court may in its discretion refuse to take into account the

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talings in ag te neem wat die skuldenaar onderneem het om te betaal ingevolge so 'n ooreenkoms vir die aankoop van goed wat nie ingevolge artikel 67 nie vir eksekusie vatbaar is nie, of wat na die oordeel van die hof nie as huishoudelike benodigdhede van die skuldenaar beskou kan word nie, tensy die hof van oordeel is dat in al die omstandighede dit wenslik is om die betrokke goed te bewaar;

- (c) die periodieke betalings wat deur die skuldenaar gedoen moet word kragtens 'n bestaande onderhoudsbevel;
- (d) die periodieke betalings wat deur die skuldenaar gedoen moet word ingevolge 'n verband, of 'n ander skriftelike ooreenkoms vir die aankoop van 'n bate ingevolge waarvan die verpligtinge daarkragtens betaalbaar is in paaielemente, indien in al die omstandighede die hof van oordeel is dat die paaielemente wat betaalbaar is, redelik is met die oog op die vonnisskuldenaar se inkomste en die bedrae geld deur hom verskuldig aan ander skuldeisers of dat dit wenslik is om die met verband beswaarde eiendom of die bate waarop die skriftelike ooreenkoms betrekking het, te bewaar; en
- (e) die betalings wat deur die skuldenaar gedoen moet word uit hoofde van enige ander verpligting in artikel 74A (2) (e) (ii) genoem.

(3) Die hof kan die inkomste van die skuldenaar se eggenote wat by hom inwoon, in aanmerking neem by die vasstelling van die bedrag in subartikel (2) (a) genoem en, wanneer die skuldenaar binne gemeenskap van goedere getroud is, by die vasstelling van die skuldenaar se inkomste.

Magtiging van uitreiking van besoldigingbeslagbevel of skuldbeslagbevel.

74D. Wanneer 'n administrasiebevel voorsiening maak vir die betaling van paaielemente uit toekomstige besoldiging of inkomste, magtig die hof die uitreiking van 'n besoldigingbeslagbevel ingevolge artikel 65J om beslag te lê op besoldiging wat dan of in die toekoms aan die skuldenaar verskuldig is of hom toekom deur of van sy werkgewer, of die uitreiking van 'n skuldbeslagbevel kragtens artikel 72 om beslag te lê op 'n skuld wat dan of in die toekoms aan die skuldenaar verskuldig is of hom toekom deur of van 'n ander persoon (behalwe die Staat), vir sover die een of ander van genoemde artikels van toepassing is, en die hof kan so 'n magtiging opskort op die voorwaardes wat die hof billik en redelik ag.

Aanstelling van administrateur.

74E. (1) Wanneer 'n administrasiebevel kragtens artikel 74 (1) verleen is, stel die hof iemand as administrateur aan, welke aanstelling as administrateur eers van krag word nadat 'n afskrif van die administrasiebevel aan hom oorhandig of per geregistreerde pos gestuur is en, in die geval waar hy as administrateur sekerheid moet stel, hy daardie sekerheid gestel het.

(2) 'n Administrateur kan om 'n gegronde rede aangevoer, van sy aanstelling onthef word deur die hof en die hof kan iemand anders in sy plek aanstel.

(3) 'n Administrateur wat nie 'n beampte van die hof of 'n praktisyn is nie, stel alvorens 'n afskrif van die administrasiebevel aan hom oorhandig of per geregistreerde pos gestuur word, sekerheid ten genoë van die hof en daarna soos deur die hof vereis vir die behoorlike en stiptelike betaling deur hom

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periodical payments which the debtor undertook to pay under such an agreement for the purchase of goods which are not exempt from execution in terms of section 67 or which, in the opinion of the court, cannot be regarded as the debtor's household requirements, unless the court is of opinion that in all the circumstances it is desirable to safeguard the goods concerned;

- (c) the periodical payments to be made by the debtor in terms of an existing maintenance order;
- (d) the periodical payments to be made by the debtor under a mortgage bond or any other written agreement for the purchase of any asset in terms of which the liabilities thereunder are payable in instalments, if in all the circumstances the court is of opinion that the instalments payable are reasonable in view of the judgment debtor's income and the sums of money due by him to other creditors or that it is desirable to safeguard the mortgaged property or the asset to which the written agreement relates; and
- (e) the payments to be made by the debtor by virtue of any other obligation referred to in section 74A (2) (e) (ii).

(3) The court may take into account the income of the debtor's wife, who is living with him, in determining the amount referred to in subsection (2) (a) and, where the debtor is married in community of property, in determining the debtor's income.

Authorizing
of issue of
emoluments
attachment
order or
garnishee
order.

74D. Where the administration order provides for the payment of instalments out of future emoluments or income, the court shall authorize the issue of an emoluments attachment order in terms of section 65J in order to attach emoluments at present or in future owing or accruing to the debtor by or from his employer, or shall authorize the issue of a garnishee order under section 72 in order to attach any debt at present or in future owing or accruing to the debtor by or from any other person (excluding the State), in so far as either of the said sections is applicable, and the court may suspend such an authorization on such conditions as the court may deem just and reasonable.

Appoint-
ment of
administra-
tor.

74E. (1) When an administration order has been granted under section 74 (1), the court shall appoint a person as administrator, which appointment shall become effective only after a copy of the administration order has been handed or sent to him by registered post and, in the event of his being required as administrator to give security, after he has given such security,

(2) An administrator may on good cause shown be relieved of his appointment by the court, and the court may appoint any other person in his place.

(3) An administrator who is not an officer of the court or a practitioner shall, before a copy of the administration order is handed or sent to him by registered post, give security to the satisfaction of the court and thereafter as required by the court for the due and prompt payment by him to the parties

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aan die partye wat daarop geregtig is, van alle geld wat uit hoofde van sy aanstelling as administrateur in sy besit kom.

(4) 'n Administrateur is nie verplig nie om ten opsigte van sy aanstelling as administrateur van die boedel van 'n bepaalde skuldenaar sekerheid te stel indien hy ten genoeë van die hof sekerheid gestel het of stel vir die behoorlike en stiptelike betaling deur hom aan die partye wat daarop geregtig is, van alle geld wat in sy besit kom uit hoofde van sy aanstelling as administrateur van die boedel van enige skuldenaar, ongeag of so 'n aanstelling gemaak is voor of na die datum waarop die betrokke sekerheid gestel is.

Kennis-
gewing van
en besware
teen admini-
strasiebevele.

74F. (1) 'n Afskrif van 'n administrasiebevel word deur die klerk van die hof aan die skuldenaar en die administrateur gegee of per geregistreerde pos gestuur.

(2) Die administrateur stuur 'n afskrif van die administrasiebevel per geregistreerde pos aan elke skuldeiser wie se naam deur die skuldenaar genoem is in die staat van sy sake of wat 'n skuld bewys het.

(3) 'n Skuldeiser wat nie kennis van die aansoek om 'n administrasiebevel ontvang het nie, en wat beswaar wil maak teen 'n skuld wat by die bevel gelys is of teen die wyse waarop die bevel gelas dat die betalings gedoen moet word, moet binne 'n redelike tydperk wat deur die reëls bepaal word, kennis gee van sy beswaar en die gronde waarop sy beswaar berus, aan die klerk van die hof, die skuldenaar en die administrateur en, indien hy teen die insluiting van 'n skuld beswaar maak, ook aan die betrokke skuldeiser.

(4) By die oorweging van 'n in subartikel (3) bedoelde beswaar kan die hof—

- (a) dit handhaaf;
- (b) dit van die hand wys; of
- (c) die oorweging daarvan uitstel vir verhoor na kennisgewing aan die persone en op die voorwaardes wat betref koste of andersins wat die hof goedgevind.

Lys van
skuldeisers
en skulde en
aanvulling
daarvan.

74G. (1) Die administrateur stel so spoedig doenlik op en dien by die klerk van die hof in 'n volledige lys waarop die saaknommer moet voorkom waaronder die aansoek om 'n administrasiebevel geliasseer is, en wat die name van die skuldeisers en die bedrae wat afsonderlik aan hulle verskuldig is soos op die datum waarop die administrasiebevel verleen is, moet bevat.

(2) 'n Skuldeiser wat 'n skuld verskuldig voor die verlening van 'n administrasiebevel en nie in die bevel gelys nie, wil bewys, dien sy eis skriftelik in by die administrateur wat daarop kennis daarvan in die in die reëls voorgeskrewe vorm aan die skuldenaar gee.

(3) Indien die skuldenaar binne die tydperk in die in subartikel (2) genoemde kennisgewing toegelaat die eis erken of dit nie betwis nie, word die eis, behoudens die reg van 'n ander skuldeiser wat nie kennis van die eis ontvang het nie, om teen die skuld beswaar te maak, geag bewys te wees en voeg die administrateur by kennisgewing by die klerk van die hof ingedien die naam van die skuldeiser en die bedrag van die skuld aan hom verskuldig by die in subartikel (1) genoemde lys by en stel die skuldeiser in die in die reëls voorgeskrewe vorm in kennis dat dit gedoen is.

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entitled thereto of all moneys which come into his possession by virtue of his appointment as an administrator.

(4) An administrator shall not be obliged to give security in respect of his appointment as an administrator of the estate of any particular debtor if he has given or gives security to the satisfaction of the court for the due and prompt payment by him to the parties entitled thereto of all moneys which may come into his possession by virtue of his appointment as administrator of the estate of any debtor, irrespective of whether such appointment was made before or after the date on which the said security was given.

Notice of
and
objections
to ad-
ministration
orders.

74F. (1) A copy of an administration order shall be handed or sent by registered post to the debtor and the administrator by the clerk of the court.

(2) The administrator shall forward a copy of the administration order by registered post to each creditor whose name is mentioned by the debtor in the statement of his affairs or who has given proof of a debt.

(3) A creditor who has not received notice of the application for an administration order and who wishes to object to any debt listed with the order or to the manner in which payments shall be made in terms of the order shall, within a reasonable time as laid down in the rules, give notice of his objection and the grounds therefor to the clerk of the court, the debtor and the administrator and, if he objects to the inclusion of any debt, also to the creditor concerned.

(4) In considering the objection referred to in subsection (3) the court may—

- (a) uphold it;
- (b) refuse it; or
- (c) postpone consideration thereof for hearing after notice given to the persons concerned and on such conditions as to costs or otherwise as the court may deem fit.

List of
creditors
and debts
and addi-
tions
thereto.

74G. (1) The administrator shall as soon as may be draw up and lodge with the clerk of the court a complete list on which shall appear the case number under which the application for an administration order has been filed, and which shall contain the names of the creditors and the amounts owing to them severally as at the date on which the administration order was granted.

(2) Any creditor who wishes to provide proof of a debt owing before the making of an administration order and not listed in such order, shall lodge his claim in writing with the administrator, who shall thereupon give the debtor notice thereof in the form prescribed in the rules.

(3) If, within the period allowed in the notice referred to in subsection (2), the debtor admits the claim or does not dispute it, the claim shall be deemed to be proved, subject to the right of any other creditor who has not received notice of the claim to object to the debt, and the administrator shall by notice lodged with the clerk of the court add the name of the creditor and the amount of the debt owing to him to the list referred to in subsection (1) and shall inform the creditor in the form prescribed in the rules that this has been done.

(4) Indien die skuldenaar binne die tydperk in die in subartikel (2) genoemde kennisgewing toegelaat skriftelik kennis aan die administrateur gee dat hy die eis betwis, stel die administrateur die skuldeiser daarvan in kennis, en kan die skuldeiser die klerk van die hof versoek om die dag en tyd te bepaal wanneer die hof die beswaar kan aanhoor en gee die skuldeiser die skuldenaar skriftelik van daardie dag en tyd kennis.

(5) Die hof kan by die aanhoor van die in subartikel (4) genoemde beswaar—

- (a) die eis in sy geheel verwerp;
- (b) die eis in sy geheel of gedeeltelik toelaat;
- (c) vereis dat die eis deur getuienis gestaaf word; of
- (d) die verhoor uitstel op die voorwaardes wat hy goedvind.

(6) Indien die hof 'n eis kragtens subartikel (5) in sy geheel of gedeeltelik toelaat, word die skuld in die mate waarin dit toegelaat is, by die in subartikel (1) genoemde lys gevoeg.

(7) Indien iemand wat goed aan die skuldenaar kragtens 'n huurkoop-ooreenkoms soos omskryf in artikel 1 van die Wet op Huurkoop, 1942 (Wet No. 36 van 1942), voor die verlening van 'n administrasiebevel verkoop en gelever het, vanweë die skuldenaar se versuim om 'n verpligting ingevolge die ooreenkoms na te kom, geregtig is of word om die onmiddellike betaling te eis van die bedrag van die koopprys wat dan nog verskuldig is en hy die administrateur skriftelik meedeel dat hy kies om dit te doen, word sodanige ooreenkoms geag ten gunste van die verkoper 'n hipoteek oor die goed te vestig waardeur die bedrag wat nog aan hom kragtens die ooreenkoms verskuldig is, gesekureer word, en is 'n beding van die ooreenkoms met betrekking tot die verkoper se reg op ontbinding of beëindiging van die ooreenkoms of tot sy reg op die teruggawe van die goed waarop die ooreenkoms betrekking het, as gevolg van die nie-nakoming deur die skuldenaar van 'n beding daarvan, ondanks andersluidende bepalinge van enige wet, nie afdwingbaar nie.

(8) Die hof kan die in subartikel (7) bedoelde verkoper by hofbevel magtig om besit te neem van die in daardie subartikel bedoelde goed en om dit by openbare veiling te verkoop deur 'n afslaer deur die hof benoem nadat hy die administrateur en al die skuldeisers skriftelike kennis gegee het van die tyd en plek van die verkoping en, indien die hof dit gelas het, die kennisgewing of kennisgewings in een of meer nuusblaai wat die hof aangewys het, gepubliseer het op die wyse deur die hof voorgeskryf, of om, indien die verkoper, koper en administrateur aldus ooreenkom, dit uit die hand te verkoop.

(9) Wanneer die verkoper die goed ingevolge 'n in subartikel (8) bedoelde hofbevel verkoop het, dien hy, indien die verkoping by openbare veiling geskied het, die vendu-rol onverwyld by die administrateur in en betaal hy aan die administrateur die bedrag oor wat die verkoping meer as sy skuld en die koste verbonde aan die verkoping opgelewer het of, indien die netto opbrengs van die verkoping onvoldoende is om sy skuld ten volle te vereffen, kan hy 'n eis by die administrateur indien ten opsigte van die saldo van die koopprys aan hom verskuldig, om opgeneem te word in die lys van skuldeisers wat geregtig is om te deel in die *pro rata*-distribusie van die fondse deur die administrateur ontvang.

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(4) If, within the period allowed in the notice referred to in subsection (2), the debtor gives notice in writing to the administrator that he disputes the claim, the administrator shall notify the creditor thereof and the creditor may request the clerk of the court to appoint a day and time for the hearing of the objection by the court and shall notify the debtor in writing of such day and time.

(5) At the hearing of the objection referred to in subsection (4) the court may—

- (a) refuse the claim as a whole;
- (b) allow the claim as a whole or in part;
- (c) require that the claim be supported by evidence; or
- (d) postpone the hearing on such conditions as it may deem fit.

(6) If the court allows a claim as a whole or in part under subsection (5), the debt shall, to the extent to which it has been allowed, be added to the list referred to in subsection (1).

(7) If any person who sold and delivered goods to the debtor under a hire-purchase agreement as defined in section 1 of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), before the administration order was granted, is entitled or becomes entitled, by reason of the debtor's failure to fulfil any obligation under such agreement, to demand immediate payment of the sum of the purchase price then still owing, and if such person advises the administrator in writing that he elects so to do, such agreement shall be deemed to create a hypothec on the goods in favour of the seller whereby the amount still owing to him in terms of the agreement is secured, and any term or condition of the agreement with regard to the seller's right to dissolve or terminate such agreement or his right to the return of the goods to which the agreement relates shall not, in consequence of the debtor's non-compliance with any term or condition thereof, notwithstanding anything to the contrary in any law contained, be enforceable.

(8) The court may by order of court authorize the seller referred to in subsection (7) to take possession of the goods referred to in that subsection and to sell them by public auction by an auctioneer nominated by the court after giving the administrator and all the creditors written notice of the time and place of the sale and, if the court has so ordered, after publishing the notice or notices in the manner prescribed by the court, in one or more newspapers designated by the court or, if the seller, buyer and administrator so agree, to sell them by private treaty.

(9) Where the seller has sold the goods in terms of a court order referred to in subsection (8) he shall, if the sale was by public auction, forthwith lodge the auction list with the administrator and pay to the administrator the amount of the proceeds of the sale in excess of the amount of his debt and the costs connected with the sale or, if the net proceeds of the sale are insufficient to pay his debt in full, he may lodge a claim with the administrator in respect of the balance of the purchase price owing to him for inclusion in the list of creditors who are entitled to share in the *pro rata* distribution of funds received by the administrator.

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- (10) (a) Die in subartikel (1) genoemde lys van skuldeisers kan te eniger tyd gedurende werksure in die kantoor van die klerk van die hof en die kantoor van die administrateur deur die skuldeisers of hulle prokureurs ingesien word.
- (b) 'n Skuldeiser kan op die wyse en binne die tydperk in die reëls voorgeskryf, beswaar maak teen 'n skuld wat in die lys van skuldeisers opgeneem is.

Opname van
skuldeisers
in lys na
verlening van
admini-
strasiebevel.

74H. (1) Iemand wat 'n skuldeiser van 'n skuldenaar word na die verlening van 'n administrasiebevel en begerig is om sy skuld te bewys, dien sy eis skriftelik by die administrateur in, wat daarop kennis daarvan in die in die reëls voorgeskrewe vorm aan die skuldenaar gee.

(2) Indien die skuldenaar binne die tydperk in die in subartikel (1) genoemde kennisgewing toegelaat die eis erken of dit nie betwis nie, is die bepaling van artikel 74G (3) *mutatis mutandis* van toepassing, maar die skuldeiser is nie geregtig op 'n dividend kragtens die administrasiebevel nie totdat die skuldeisers wat skuldeisers was op die datum van die verlening van die bevel, ten volle betaal is.

(3) Indien die skuldenaar binne die tydperk in die in subartikel (1) genoemde kennisgewing toegelaat, die eis betwis, is die bepaling van artikel 74G (4), (5) en (6) *mutatis mutandis* van toepassing, maar as die hof die eis in sy geheel of gedeeltelik toelaat, geskied dit onderworpe aan die in subartikel (2) genoemde regte van skuldeisers wat skuldeisers was op die datum waarop die administrasiebevel verleen is.

(4) Die bepaling van artikel 74G (7), (8) en (9) en van subartikels (1), (2) en (3) van hierdie artikel is *mutatis mutandis* van toepassing op iemand wat na die verlening van 'n administrasiebevel goed aan die skuldenaar kragtens 'n huurkoop-ooreenkoms soos omskryf in artikel 1 van die Wet op Huurkoop, 1942 (Wet No. 36 van 1942), verkoop en gelewer het en begerig is om sy skuld te bewys.

Betalings
deur
skuldenaar
ingevolge
admini-
strasiebevel.

74I. (1) Behoudens die bepaling van hierdie artikel, betaal 'n skuldenaar die bedrae van die weeklikse of maandelikse of ander betalings wat hy ingevolge 'n administrasiebevel moet doen, aan die administrateur.

(2) Indien 'n skuldenaar versuim om die betalings wat hy ingevolge 'n administrasiebevel moet doen, aan die administrateur te betaal, is die bepaling van artikels 65A tot 65L *mutatis mutandis* van toepassing, terwyl 'n verwysing in genoemde bepaling na die betrokke vonnis, die vonnisskuldeiser of die vonnisskuldenaar uitgelê word as 'n verwysing na onderskeidelik die betrokke administrasiebevel, die administrateur of die skuldenaar.

(3) Indien die hof benewens 'n administrasiebevel magtiging verleen het vir die uitreiking van 'n besoldigingbeslagbevel of 'n skuldbeslagbevel en daardie magtiging voorwaardelik opgeskort het, en die skuldenaar versuim om aan die voorwaardes van opskorting te voldoen, kan die administrateur 'n sertifikaat te dien effekte by die klerk van die hof indien, en daarop reik die klerk van die hof die besoldigingbeslagbevel of skuldbeslagbevel, na gelang van die geval, uit.

(4) 'n Besoldigingbeslagbevel of skuldbeslagbevel in subartikel (3) genoem, word deur die admini-

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- (10) (a) The list of creditors referred to in subsection (1) shall be open to inspection by the creditors or their attorneys in the office of the clerk of the court and the office of the administrator at any time during office hours.
- (b) Any creditor may, in the manner and within the period prescribed in the rules, object to any debt included in the list of creditors.

Inclusion
of creditors
in list after
granting of
adminis-
tration
order.

74H. (1) Any person who becomes a creditor of the judgment debtor after an administration order has been granted and who is desirous of providing proof of debt, shall lodge his claim in writing with the administrator, who shall thereupon advise the debtor thereof in the form prescribed in the rules.

(2) If the debtor admits the claim or does not dispute it within the period allowed in the notice referred to in subsection (1), the provisions of section 74G (3) shall, *mutatis mutandis*, apply, but the creditor shall not be entitled to a dividend in terms of the administration order until the creditors who were creditors on the date of the granting of the order have been paid in full.

(3) If the debtor disputes the claim within the period allowed in the notice referred to in subsection (1), the provisions of section 74G (4), (5) and (6) shall, *mutatis mutandis*, apply but if the court allows the claim as a whole or in part, such claim shall be subject to the rights referred to in subsection (2), of creditors who were creditors on the date on which the administration order was granted.

(4) The provisions of section 74G (7), (8) and (9) and of subsections (1), (2) and (3) of this section shall, *mutatis mutandis*, apply to any person who after the granting of an administration order sold and delivered goods to the debtor under a hire-purchase agreement as defined in section 1 of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), and is desirous of providing proof of debt.

Payments by
debtor in
terms of
administra-
tion order.

74I. (1) The debtor shall, subject to the provisions of this section, pay the administrator the amounts of the weekly or monthly or other payments that he is required to make in terms of the administration order.

(2) If a debtor fails to make the payments to the administrator that he is required to make in terms of the administration order, the provisions of sections 65A to 65L shall *mutatis mutandis* apply, while any reference in the said provisions to the judgment concerned, the judgment creditor or the judgment debtor shall be construed as a reference to the administration order concerned, the administrator or the debtor, respectively.

(3) If, in addition to the administration order, the court has authorized the issue of an emoluments attachment order or a garnishee order and has suspended such authorization conditionally and the debtor fails to comply with the conditions of suspension, the administrator may lodge a certificate to this effect with the clerk of the court, and the clerk of the court shall thereupon issue the emoluments attachment order or garnishee order, as the case may be.

(4) An emoluments attachment order or garnishee order referred to in subsection (3) shall be prepared

strateur of sy prokureur opgestel, word deur die administrateur of sy prokureur en die klerk van die hof onderteken, en word deur die geregsbode aan die beslagskuldenaar per geregistreerde pos beteken.

- (5) (a) Nadat 'n besoldigingbeslagbevel of skuld-beslagbevel in subartikel (3) genoem aan die beslagskuldenaar beteken is, is hy verplig om die betrokke bedrae volgens voorskrif van die bevel aan die administrateur te betaal en sodanige betalings geniet voorkeur bo enige ander aftrekkings van die inkomste van die skuldenaar.
- (b) Die bepalinge van artikel 65J (4) tot (8) is *mutatis mutandis* van toepassing op die besoldigingbeslagbevel in paragraaf (a) genoem, en by sodanige toepassing word 'n verwysing in genoemde bepalinge na die vonnisskuldeiser uitgelê as 'n verwysing na die administrateur en 'n verwysing daarin na die toepaslike bevel in artikel 65J (1) (a) of (b) genoem, uitgelê as 'n verwysing na die toepaslike administrasiebevel in artikel 74 (1) bedoel.

Pligte van
admini-
strateur.

74J. (1) 'n Administrateur vorder die betalings wat ingevolge die betrokke administrasiebevel gedoen moet word, in en hou 'n lys (wat beskikbaar moet wees vir kostelose insae deur die skuldenaar en skuldeisers of hulle prokureurs gedurende werksure) by van alle betalings en ander fondse deur hom ontvang van of namens die skuldenaar en waarin aangetoon word die bedrag en datum van elke betaling, en verdeel daardie betalings, behoudens artikel 74L, minstens een maal elke drie maande *pro rata* onder die skuldeisers, tensy al die skuldeisers andersins ooreenkom of die hof in 'n bepaalde geval anders beveel.

(2) Indien 'n skuld of die saldo van 'n skuld minder as R10 is, kan 'n administrateur na goeddunke daardie skuld ten volle betaal indien sodanige optrede die verdeling van die fondse in sy besit sal vergemaklik.

(3) Vorderings wat volgens die bepalinge van enige wet op insolvensie voorkeur sou geniet, word in die volgorde deur bedoelde bepalinge voorgeskryf, uitbetaal.

(4) 'n Administrateur kan uit die geld wat hy beheer, enige dringende of buitengewone mediese, tandheelkundige, of hospitaalenskoste wat deur die skuldenaar na die datum van die administrasiebevel aangegaan word, betaal.

(5) Elke distribusierekening ten opsigte van die periodieke betalings en ander fondse deur 'n administrateur ontvang, word agtereenvolgens genommer, moet die saaknommer dra waaronder die administrasiebevel geliasseer is, moet in die vorm wees deur die reëls voorgeskryf, moet deur die administrateur onderteken word, en moet ingedien word by die kantoor van die klerk van die hof, waar dit gedurende werksure kosteloos ingesien kan word deur die skuldenaar en die skuldeisers of hulle prokureurs.

(6) 'n In subartikel (5) genoemde distribusierekening is op aansoek van 'n belanghebbende onderhewig aan kostelose hersiening deur 'n regterlike amptenaar en sy beslissing is afdoende.

(7) 'n Administrateur stort alle geld wat hy van of namens skuldenaars wie se boedels onder administrasie is, ontvang—

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by the administrator or his attorney, shall be signed by the administrator or his attorney and the clerk of the court, and shall be served on the garnishee by the messenger of the court by registered post.

- (5) (a) When an emoluments attachment order or garnishee order referred to in subsection (3) has been served on the garnishee, he shall be obliged to pay to the administrator the amounts concerned as provided by the order and such payments shall constitute a first preference against the debtor's income.
- (b) The provisions of section 65J (4) to (8) shall *mutatis mutandis* apply to the emoluments attachment order referred to in paragraph (a), and in such application any reference in the said provisions to the judgment creditor shall be construed as a reference to the administrator and any reference therein to the relevant order referred to in section 65J (1) (a) or (b) shall be construed as a reference to the relevant administration order referred to in section 74 (1).

Duties of
administra-
tor.

74J. (1) An administrator shall collect the payments to be made in terms of the administration order concerned and shall keep up to date a list (which shall be available for inspection, free of charge, by the debtor and creditors or their attorneys during office hours) of all payments and other funds received by him from or on behalf of the debtor, indicating the amount and date of each payment, and shall, subject to section 74L, distribute such payments *pro rata* among the creditors at least once every three months, unless all the creditors otherwise agree or the court otherwise orders in any particular case.

(2) If any debt or the balance of a debt be less than R10, the administrator may in his discretion pay such debt in full if such action will facilitate the distribution of funds in his possession.

(3) Claims that would enjoy preference under the laws relating to insolvency shall be paid out in the order prescribed by those laws.

(4) An administrator may, out of the moneys which he controls, pay any urgent or extraordinary medical, dental or hospital expenses incurred by the debtor after the date of the administration order.

(5) Every distribution account in respect of the periodical payments and other funds received by an administrator shall be numbered consecutively, shall bear the case number under which the administration order has been filed, shall be in the form prescribed in the rules, shall be signed by the administrator and shall be lodged at the office of the clerk of the court where it may be inspected free of charge by the debtor and the creditors or their attorneys during office hours.

(6) A distribution account referred to in subsection (5) shall at the request of any interested party be subject to review free of charge by any judicial officer whose decision shall be final.

(7) An administrator shall deposit all moneys received by him from or on behalf of debtors whose estates are under administration—

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- (a) indien hy nie 'n praktiserende prokureur is nie, in 'n aparte trustrekening by 'n bank in die Republiek en geen bedrag waarmee so 'n rekening in krediet is, word geag deel te wees van die bates van die administrateur of, in geval van sy dood of insolvensie, van sy bestorwe of insolvente boedel nie;
- (b) indien hy 'n praktiserende prokureur is, in die trustrekening wat hy ingevolge artikel 33 van die Toelating van Prokureurs, Notarisse en Transportbesorgers Wet, 1934 (Wet No. 23 van 1934), hou.

(8) Indien 'n skuldenaar te eniger tyd, ondanks 'n geregistreerde aanmaning van die administrateur, 14 dae agterstallig is met die betaling van 'n paalement en stappe kragtens artikel 74I (3) nie gedoen kan word nie of sonder welslae gedoen is, of indien die skuldenaar verdwyn het, stel die administrateur die skuldeisers onverwyld skriftelik daarvan in kennis en vra hy hulle opdrag.

(9) Indien binne die tydperk in 'n in subartikel (8) genoemde kennisgewing toegelaat die meerderheid van die skuldeisers hom opdrag gee om dit te doen, of nie antwoord nie, stel die administrateur geregtelike stappe teen die skuldenaar in vir sy gevangesetting weens minagting van die hof, of doen die stappe wat nodig mag wees om die skuldenaar wat verdwyn het, op te spoor, na gelang van omstandighede.

(10) Indien binne die tydperk in 'n in subartikel (8) beoogde kennisgewing toegelaat die meerderheid van die skuldeisers hom opdrag gee om dit te doen, doen die administrateur aansoek by die hof om die intrekking van die administrasiebevel.

(11) Indien 'n administrateur versuim om 'n distribusierekening by die klerk van die hof in te dien binne een maand vanaf die tydstop waarop sy verpligting om dit te doen, ontstaan het, kan 'n belanghebbende by die hof aansoek doen om 'n bevel waarby hy beveel word om 'n distribusierekening by die klerk van die hof binne 'n in die bevel vasgestelde tydperk in te dien of waarby hy van sy amp as administrateur onthef word.

(12) Indien 'n administrateur 'n distribusierekening by die klerk van die hof ingedien het maar versuim het om binne 'n tydperk van een maand daarna 'n bedrag geld wat ingevolge daardie rekening aan 'n skuldeiser verskuldig is, te betaal, kan die hof op aansoek van die skuldeiser die administrateur beveel om binne die in die bevel vasgestelde tydperk die betrokke bedrag aan die skuldeiser te betaal en daarbenewens 'n bedrag aan die boedel van die skuldenaar te betaal wat twee maal so groot is as die bedrag wat hy aldus versuim het om aldus te betaal.

(13) Die hof kan 'n administrateur beveel om die koste van 'n aansoek ingevolge subartikel (11) of (12) *de bonis propriis* te betaal.

(14) Indien 'n skuld wat verskuldig was ten tye van die verlening van 'n administrasiebevel ten opsigte van 'n skuldenaar se boedel, na die verlening van die bevel geheel of ten dele deur die skuldenaar aan die skuldeiser betaal word anders as by wyse van betalings ingevolge die administrasiebevel, is die betaling ongeldig en kan die administrateur die bedrag wat betaal is van die skuldeiser terugvorder, tensy die skuldeiser bewys dat die betaling geskied het sonder dat hy kennis van die administrasiebevel

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(a) if he is not a practising attorney, in a separate trust account with any bank in the Republic, and no amount with which any such account is credited shall be deemed to be part of the administrator's assets or, in the event of his death or insolvency, of his deceased or insolvent estate;

(b) if he is a practising attorney, in the trust account that he keeps in terms of section 33 of the Attorneys, Notaries and Conveyancers Admission Act, 1934 (Act No. 23 of 1934).

(8) If a debtor should at any time, despite a registered letter of demand from the administrator, be 14 days in arrear with the payment of any instalment and if steps in terms of section 74I (3) cannot be taken or have been taken unsuccessfully, or if the debtor had disappeared, the administrator shall forthwith notify the creditors in writing thereof and request their instructions.

(9) If within the period allowed in a notice contemplated in subsection (8) the majority of the creditors instruct him to do so, or fail to respond, the administrator shall institute legal proceedings against the debtor for his committal for contempt of court or take such steps as may be necessary to trace the debtor who has disappeared, as the circumstances may require.

(10) If within the period allowed in a notice contemplated in subsection (8) the majority of the creditors instruct him to do so, the administrator shall apply to the court for the rescission of the administration order.

(11) If an administrator fails to lodge a distribution account with the clerk of the court within one month from the time his obligation to do so commenced, any interested party may apply to the court for an order directing him to lodge a distribution account with the clerk of the court within the time laid down in the order or relieving him of his office as administrator.

(12) If an administrator has lodged a distribution account with the clerk of the court but has failed to pay any amount of money due to any creditor in terms of such account within one month thereafter, the court may upon the application of the creditor order the administrator to pay the creditor the amount concerned within such period as may be fixed in the order and furthermore to pay to the debtor's estate an amount which is double the amount which he failed so to pay.

(13) The court may order an administrator to pay the costs of an application in terms of subsection (11) or (12) *de bonis propriis*.

(14) If any debt which was due at the time of the granting of an administration order in respect of a debtor's estate is paid in full or in part to the creditor by the debtor after the granting of the order, otherwise than by way of payments in terms of the administration order, such payment shall be invalid and the administrator may recover the amount paid from the creditor, unless the creditor proves that the payment was effected without his knowledge of the administration order, and, in

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gehad het, en daarbenewens verbeur die skuldeiser sy eis teen die boedel van die skuldenaar as die betaling geskied het op versoek van die skuldeiser terwyl hy van die administrasiebevel geweet het.

Tegelde-
making van
bates deur
admini-
strateur.

74K. (1) Indien daartoe gemagtig deur die hof, kan 'n administrateur, behoudens die bepalings van subartikel (2), 'n bate van die boedel onder administrasie te gelde maak of so 'n bate aan die verkoper ingevolge artikel 14 van die Wet op Huurkoop, 1942 (Wet No. 36 van 1942), teruggee, en by die verlening van so 'n magtiging kan die hof die voorwaardes oplê wat hy goedvind.

(2) 'n In subartikel (1) genoemde bate wat die onderwerp is van 'n ooreenkoms wat deur die Wet op Huurkoop, 1942, gereël word, word nie sonder die skriftelike toestemming van die verkoper te gelde gemaak nie.

(3) Indien 'n administrateur 'n bate aan die verkoper ingevolge artikel 14 van die Wet op Huurkoop, 1942, teruggee, betaal die verkoper die bedrag wat hy ingevolge artikel 15 van genoemde Wet aan die koper moet terugbetaal, aan die administrateur vir *pro rata*-verdeling tussen die skuldeisers, en as die koper 'n bedrag ingevolge genoemde artikel 15 aan die verkoper moet betaal, is die verkoper geregtig om 'n eis vir genoemde bedrag by die administrateur in te dien vir betaling ingevolge die toepaslike bepalings van hierdie Wet.

(4) Wanneer die hof 'n administrateur magtig om 'n bate te gelde te maak of 'n bate ingevolge artikel 14 van die Wet op Huurkoop, 1942, aan die verkoper terug te gee en die hof die periodieke betalings wat die skuldenaar ten opsigte van so 'n bate moet betaal, in aanmerking geneem het by die bepaling van die bedrag wat die skuldenaar weekliks of maandeliks kragtens die administrasiebevel moet betaal, kan die hof die betalings wat kragtens die bevel gedoen moet word, dienoooreenkomstig wysig.

Besoldiging
en uitgawes
van admini-
strateur.

74L. (1) 'n Administrateur kan, voordat hy 'n verdeling maak—

- (a) sy noodsaaklike uitgawes en 'n besoldiging vasgestel ooreenkomstig 'n tarief wat in die reëls voorgeskryf is, van die ingevorderde geld aftrek;
- (b) 'n gedeelte van die ingevorderde geld op die wyse en tot 'n bedrag in die reëls voorgeskryf, terughou om die onkoste te dek wat hy mag aangaan as die skuldenaar in versuim is of verdwyn.

(2) Die in subartikel (1) (a) genoemde uitgawes en besoldiging mag saam nie 12½ persent van die ontvangte bedrag van die ingevorderde gelde te bowe gaan nie, en sodanige uitgawes en besoldiging is op aansoek van 'n belanghebbende onderhewig aan taksasie deur die klerk van die hof en hersiening deur 'n regterlike amptenaar.

Verstreking
van inligting
deur admini-
strateur.

74M. 'n Administrateur verstrek, teen betaling van die gelde in die reëls voorgeskryf—

- (a) aan 'n skuldeiser wat daarom aansoek doen, die inligting met betrekking tot die vordering met die administrasie wat hy verlang; en
- (b) aan iemand wat daarom aansoek doen, 'n afskrif van die skuldenaar se aansoek en staat van sy sake in artikels 74 en 74A (1) genoem,

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addition, the creditor shall forfeit his claim against the estate of the debtor if the payment was effected at the request of the creditor whilst he had knowledge of the administration order.

Realization
of assets by
administra-
tor.

74K. (1) An administrator may, if authorized thereto by the court, realize any asset of the estate under administration or return such asset to the seller in terms of section 14 of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), and in granting such authorization the court may impose such conditions as it may deem fit.

(2) An asset mentioned in subsection (1) that is the subject of any agreement regulated by the Hire-Purchase Act, 1942, shall not be realized except with the written permission of the seller.

(3) If an administrator returns any asset to the seller in terms of section 14 of the Hire-Purchase Act, 1942, the seller shall pay to the administrator the amount that he is required to refund to the buyer in terms of section 15 of the said Act for *pro rata* distribution among the creditors, and if the buyer is required to pay the seller any amount in terms of the said section 15 the seller shall be entitled to lodge a claim for the said amount with the administrator for payment in terms of the relevant provisions of this Act.

(4) Whenever the court authorizes the administrator to realize any asset or to return any asset to the seller in terms of section 14 of the Hire-Purchase Act, 1942, and has, in determining the amount that the debtor shall pay each week or each month in terms of the administration order, taken account of the periodical payments to be made by the debtor in respect of such an asset, the court may amend the payments to be made in terms of the order accordingly.

Remunera-
tion and
expenses of
administra-
tor.

74L. (1) An administrator may, before making a distribution—

- (a) deduct from the money collected his necessary expenses and a remuneration determined in accordance with a tariff prescribed in the rules;
- (b) retain a portion of the money collected, in the manner and up to an amount prescribed in the rules, to cover the costs that he may have to incur if the debtor is in default or disappears.

(2) The expenses and remuneration mentioned in subsection 1 (a) shall not exceed 12½ per cent of the amount of collected moneys received and such expenses and remuneration shall, upon application by any interested party, be subject to taxation by the clerk of the court and review by any judicial officer.

Furnishing
of informa-
tion by
administra-
tor.

74M. The administrator shall upon payment of the fees prescribed in the rules—

- (a) furnish any creditor applying therefor with such information about the progress made in regard to the administration as he may desire; and
- (b) furnish any person applying therefor with a copy of the debtor's application and statement of his affairs mentioned in sections 74 and 74A.

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of van 'n lys of rekening in artikel 74G (1) of 74J genoem, of van die skuldenaar se staat van sy sake in artikel 65I (2) genoem.

Pligsversuim
deur admini-
strateur.

74N. 'n Administrateur doen die aangewese stappe om 'n administrasiebevel af te dwing, en indien hy versuim om dit te doen, kan 'n skuldeiser, met die verlof van die hof, daardie stappe doen, en die hof kan daarop die administrateur beveel om die koste van die skuldeiser *de bonis propriis* te betaal.

Koste van
aansoek om
admini-
strasiebevel.

74O. Tensy die hof anders beveel of hierdie Wet anders bepaal, word geen koste in verband met 'n aansoek ingevolge artikel 74 (1) op iemand anders as die betrokke administrateur verhaal nie, en dan wel as 'n eerste vordering teen die geld deur hom beheer.

Regsmiddels
deur admini-
strasiebevel
beperk.

74P. (1) Solank 'n administrasiebevel ten opsigte van die boedel van 'n skuldenaar van krag is, het geen skuldeiser enige regsmiddel teen die skuldenaar of sy goed vir die invordering van geld verskuldig nie, behalwe op 'n verband of op 'n skuld in artikel 74B (3) genoem of met die verlof van die hof en op die voorwaardes wat die hof oplê.

(2) 'n Hof waarin verrigtinge teen 'n skuldenaar aanhangig is ten opsigte van 'n skuld behalwe 'n skuld verskuldig kragtens 'n verband of 'n skuld in artikel 74B (3) genoem, skort by ontvangs van kennis van die administrasiebevel, die verrigtinge op, maar kan koste wat alreeds deur die skuldeiser aangegaan is, toestaan, en daardie koste kan by die vonnisskuld gevoeg word.

Opskorting,
wysiging of
intrekking
van admini-
strasiebevel.

74Q. (1) Die hof onder wie se toesig 'n administrasiebevel uitgevoer word, kan te eniger tyd op aansoek van die skuldenaar of 'n belanghebbende die verrigtinge heropen en die skuldenaar aansê om te verskyn vir die verdere ondervraging wat die hof nodig ag, en die hof kan daarop, om 'n gegronde rede aangevoer, die administrasiebevel opskort, wysig of intrek en wanneer hy so 'n bevel opskort, kan hy die voorwaardes oplê wat hy billik en redelik ag.

(2) Die hof kan te eniger tyd op die skriftelike versoek van die administrateur, met die skriftelike toestemming van die skuldenaar 'n administrasiebevel wysig.

(3) By 'n aansoek om die intrekking van 'n administrasiebevel kan die hof—

- (a) die bevel kragtens subartikel (1) intrek; of
- (b) indien dit vir die hof blyk dat die skuldenaar nie in staat is om 'n paalement te betaal nie, die bevel opskort vir die tydperk en op die voorwaardes wat hy goetvind of die paalemente wat ingevolge die bevel betaal moet word, wysig en die nodige wysigings aanbring in 'n besoldigingbeslagbevel of skuldbeslagbevel wat uitgereik is ten einde die betaling ingevolge die administrasiebevel te verseker, of genoemde besoldigingbeslagbevel of skuldbeslagbevel tersyde stel; of
- (c) die uitreiking van 'n besoldigingbeslagbevel of skuldbeslagbevel magtig om die betalings kragtens die administrasiebevel te verseker; of
- (d) 'n besoldigingbeslagbevel of skuldbeslagbevel wat uitgereik is ten einde die betalings kragtens die administrasiebevel te verseker, tersyde stel of wysig.

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(1), or with a list or account mentioned in section 74G (1) or 74J, or with the debtor's statement of his affairs mentioned in section 65I (2).

Failure by administrator to perform his duties.

74N. An administrator shall take the proper steps to enforce an administration order, and if he fails to do so, any creditor may, by leave of the court, take those steps, and the court may thereupon order the administrator to pay the costs of the creditor *de bonis propriis*.

Costs of application for administration order.

74O. Unless the court otherwise orders or this Act otherwise provides, no costs in connection with any application in terms of section 74 (1) shall be recovered from any person other than the administrator concerned, and then as a first claim against the moneys controlled by him.

Remedies restricted by administration order.

74P. (1) As long as any administration order is of force and effect in respect of the estate of any debtor, no creditor shall have any remedy against the debtor or his property for collecting money owing, except in regard to any mortgage bond or any debt referred to in section 74B (3) or by leave of the court and on such conditions as the court may impose.

(2) Any court in which proceedings have been instituted against a debtor in respect of any debt except a debt due under a mortgage bond or a debt referred to in section 74B (3) shall, upon receiving notice of the administration order, suspend such proceedings but may grant costs already incurred by the creditor, and such costs may be added to the judgment debt.

Suspension, amendment or rescission of administration order.

74Q. (1) The court under whose supervision any administration order is being executed, may at any time upon application by the debtor or any interested party re-open the proceedings and call upon the debtor to appear for such further examination as the court may deem necessary, and the court may thereupon on good cause shown suspend, amend or rescind the administration order, and when it suspends such an order it may impose such conditions as it may deem just and reasonable.

(2) The court may at any time at the request of the administrator in writing and with the written consent of the debtor, amend any administration order.

(3) Upon any application for the rescission of an administration order the court may—

- (a) rescind the order under subsection (1); or
- (b) if it appears to the court that the debtor is unable to pay any instalment, suspend the order for such period and on such conditions as it may deem fit or amend the instalments to be paid in terms thereof and make the necessary amendments to any emoluments attachment order or garnishee order issued so as to ensure payment in terms of the administration order, or set aside the said emoluments attachment order or garnishee order; or
- (c) authorize the issue of an emoluments attachment order or garnishee order to ensure the payments in terms of the administration order; or
- (d) set aside or amend any emoluments attachment order or garnishee order issued so as to ensure payments in terms of the administration order.

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(4) 'n Bevel waarby 'n administrasiebevel ingetrek word, moet in die by die reëls voorgeskrewe vorm wees en 'n afskrif daarvan word deur die administrateur deur persoonlike aflewering of per pos gestuur aan die skuldenaar en aan elke skuldeiser, wat deur die administrateur ook verwittig word van die skuldenaar se jongsbekende adres.

(5) Wanneer 'n hofbevel vir die betaling van 'n vonnisskuld in paaiement of 'n besoldigingbeslagbevel of 'n skuldbeslagbevel as gevolg van die verlening van 'n administrasiebevel verval het en die betrokke vonnisskuld by die intrekking van die administrasiebevel nie ten volle vereffen is nie, herleef daardie hofbevel, besoldigingbeslagbevel of skuldbeslagbevel ten opsigte van daardie vonnisskuld, tensy die hof anders beveel.

Admini-
strasiebevel
sluit nie
sekwestrasie
uit nie.

74R. Die verlening van 'n bevel kragtens artikel 74 (1) sluit nie die sekwestrasie van die skuldenaar se boedel uit nie.

Aangaan van
skulde deur
iemand aan
admini-
strasiebevel
onderhewig.

74S. (1) Iemand wat aan 'n administrasiebevel onderhewig is en wat, terwyl daardie bevel nog van krag is, 'n skuld aangaan sonder om te openbaar dat hy aan 'n administrasiebevel onderhewig is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met gevangenisstraf vir 'n tydperk van hoogstens 90 dae of met periodieke gevangenisstraf, ooreenkomstig die bepalinge van enige wet op gevangenis, vir 'n tydperk van hoogstens 2 160 uur, en daarbenewens kan die hof, op aansoek van 'n belanghebbende, die administrasiebevel tersyde stel.

(2) Die bepalinge van die Strafproseswet, 1955 (Wet No. 56 van 1955), met betrekking tot periodieke gevangenisstraf is *mutatis mutandis* van toepassing op periodieke gevangenisstraf ingevolge subartikel (1) opgelê.

Adres-
verandering
deur skulde-
naar wat aan
admini-
strasiebevel
onderhewig
is.

74T. (1) 'n Skuldenaar wat aan 'n administrasiebevel onderhewig is en wat van woon-, besigheids- of werkplek verander, stel onverwyld die klerk van die hof en die administrateur in kennis van sy nuwe woon-, besigheids- of werkplek.

(2) Wanneer 'n skuldenaar wat aan 'n administrasiebevel onderhewig is na 'n ander distrik verhuis, kan die hof onder wie se toesig die administrasiebevel uitgevoer word, die verrigtinge na die hof van daardie distrik oorplaas.

Verval van
admini-
strasiebevel.

74U. Sodra die koste van die administrasie en die gelyste skuldeisers ten volle betaal is, dien 'n administrateur 'n sertifikaat te dien effekte by die klerk van die hof in en stuur die administrateur afskrifte daarvan aan die skuldeisers (wat daarin ook verwittig word van die skuldenaar se jongsbekende adres) en daarop verval die administrasiebevel.

Stuiting van
verjaring.

74V. (1) In die geval van 'n skuld genoem in die in artikel 74A (1) genoemde staat, word verjaring gestuit op die datum van indiening van daardie staat en, in die geval van 'n skuld wat nie in genoemde staat genoem word nie, word verjaring gestuit op die datum van indiening van 'n eis teen die skuldenaar by die hof of die administrateur.

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(4) Any order rescinding an administration order shall be in the form prescribed in the rules and a copy thereof shall be delivered personally or sent by post by the administrator to the debtor and to each creditor, who shall also be informed of the debtor's last known address by the administrator.

(5) When an order of court for the payment of any judgment debt in instalments or any emoluments attachment order or garnishee order has lapsed in consequence of the granting of an administration order and such judgment debt has not been paid in full upon the rescission of the administration order, such court order, emoluments attachment order or garnishee order shall revive in respect of such judgment debt, unless the court otherwise orders.

Administration order no bar to sequestration.

74R. The granting of an order under section 74 (1) shall be no bar to the sequestration of the debtor's estate.

Incurring of debts by person subject to administration order.

74S. (1) Any person who is subject to an administration order and who during the currency of such order incurs any debt without disclosing that he is subject to an administration order shall be guilty of an offence and on conviction liable to imprisonment for a period not exceeding 90 days or to periodical imprisonment for a period not exceeding 2 160 hours in accordance with the laws relating to prisons and, in addition, the court may, upon application by any interested person, set aside the administration order.

(2) The provisions of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), with regard to periodical imprisonment shall *mutatis mutandis* apply to periodical imprisonment imposed in terms of subsection (1).

Change of address by debtor subject to administration order.

74T. (1) Any debtor subject to an administration order who changes his place of residence, business or employment shall forthwith notify the clerk of the court and the administrator of his new place of residence, business or employment.

(2) When any debtor subject to an administration order moves to any other district, the court under whose supervision the administration order is being executed may transfer the proceedings to the court of that district.

Lapsing of administration order.

74U. As soon as the costs of the administration and the listed creditors have been paid in full, an administrator shall lodge a certificate to that effect with the clerk of the court and send copies thereof to the creditors (who shall also be informed therein of the debtor's last known address), and thereupon the administration order shall lapse.

Interruption of prescription.

74V. (1) In the case of any debt mentioned in the statement referred to in section 74A (1), prescription shall be interrupted on the date on which such statement is lodged and, in the case of any debt not mentioned in such statement, prescription shall be interrupted on the date on which any claim against the debtor is lodged with the court or the administrator.

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(2) Indien die toepaslike verjaringstermyn van 'n in subartikel (1) bedoelde skuld, as dit nie vir die bepaling van subartikel (1) was nie, voltooi sou word voor of op, of binne een jaar na, die dag waarop die beperking in artikel 74P (1) bedoel, opgehou het om te bestaan, word die verjaringstermyn nie voltooi voordat 'n jaar na bedoelde dag verstryk het nie.

Versuim van admini- strateur om sekere plig uit te voer. **74W.** 'n Administrateur wat versuim om die plig by artikel 74J (7) aan hom opgedra, uit te voer, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R200 of by wanbetaling met gevangenisstraf vir 'n tydperk van hoogstens 6 maande."

Vervanging van artikel 77 van Wet 32 van 1944.

7. Artikel 77 van die Hoofwet word hierby deur die volgende artikel vervang:

„Hand- hawing van bestaande wets- bepalinge wat beslag- legging verbied. **77.** Behalwe wanneer kragtens artikel 65E (1) 'n bevel teen die Staat verleen mag word, word geen bepaling van hierdie Wet geag magtiging te verleen vir die inbeslagneming van enige skuld of besoldiging of enige geld of goedere wat volgens uitdruklike voorskrif van die bepalinge van enige ander wet nie vir beslaglegging vatbaar is nie."

Vervanging van artikel 106 van Wet 32 van 1944, soos gewysig deur artikel 27 van Wet 40 van 1952 en artikel 21 van Wet 19 van 1963.

8. Artikel 106 van die Hoofwet word hierby deur die volgende artikels vervang:

„Straf op verontag- saming van bevel van die hof. **106.** Iedereen wat hom skuldig maak aan opsetlike verontagsaming van, of versuim om te voldoen aan, 'n bevel van 'n hof of 'n kennisgewing wat wettig op 'n dagvaarding vir huurgeld geëndosseer is, waar- by die verwydering van meubels of besittings verbied word, is aan minagting van die hof skuldig en by skuldigbevinding strafbaar met 'n boete van hoog- stens R200 of by wanbetaling met gevangenisstraf vir 'n tydperk van hoogstens 6 maande of met so- danige gevangenisstraf sonder die keuse van 'n boete: Met dien verstande dat by die toepassing van hierdie artikel die woord 'bevel' nie 'n in artikel 65, 65E, 65G, 65I, 65J, 65K, 72, 74 of 74J bedoelde bevel in- sluit nie.

Misdryf deur beslag- skuldenaar. **106A.** 'n Beslagskuldenaar wat 'n vonnisskulde- naar wat nie 'n vertrouenspos beklee waarin hy geld, sekuriteite of ander artikels van waarde hanteer of daaroor beskik nie, ontslaan of die diens van so 'n vonnisskuldenaar andersins beëindig, omdat aan hom 'n besoldigingbeslagbevel beteken is ten opsigte van sodanige vonnisskuldenaar se besoldiging, is aan 'n misdryf skuldig en by skuldig- bevinding strafbaar met 'n boete van hoogstens R100 of by wanbetaling met gevangenisstraf vir 'n tydperk van hoogstens 3 maande.

Misdryf deur werkgewer. **106B.** 'n Werkgewer wat, nadat hy deur 'n werknemer versoek is om 'n skriftelike verklaring bevattende volledige besonderhede aangaande so- danige werknemer se besoldiging te verstrek, ver- suim of nalaat om dit binne 'n redelike tydperk te doen of wat opsetlik of nalatiglik onjuiste betrokke besonderhede verstrek, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R100 of by wanbetaling met gevangenis- straf vir 'n tydperk van hoogstens 3 maande."

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(2) If the relevant prescriptive period of a debt referred to in subsection (1), had it not been for the provisions of subsection (1), would be completed on or before or within one year of, the day on which the restriction referred to in subsection 74P (1) has ceased to exist, the prescriptive period shall not be completed until a year after the said day has elapsed.

Failure of administrator to carry out certain duty.

74W. Any administrator who fails to carry out the duty assigned to him by subsection 74J (7) shall be guilty of an offence and on conviction liable to a fine not exceeding R200 or in default of payment to imprisonment for a period not exceeding 6 months."

7. The following section is hereby substituted for section 77 of the principal Act:

Substitution of section 77 of Act 32 of 1944.

"Saving of existing laws prohibiting attachment.

77. Save where under section 65E (1) an order may be granted against the State, nothing in this Act contained shall be construed as authorizing the attachment of any debt or emoluments or any moneys or property specially declared by any law not to be liable to attachment."

8. The following sections are hereby substituted for section 106 of the principal Act:

Substitution of section 106 of Act 32 of 1944, as amended by section 27 of Act 40 of 1952 and section 21 of Act 19 of 1963.

"Penalty for disobedience of order of court.

106. Any person wilfully disobeying or neglecting to comply with any order of a court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or effects, shall be guilty of contempt of court and shall, upon conviction, be liable to a fine not exceeding R200 or, in default of payment, to imprisonment for a period not exceeding 6 months or to such imprisonment without the option of a fine: Provided that for the purposes of this section the word 'order' shall not include an order referred to in section 65, 65E, 65G, 65I, 65J, 65K, 72, 74 or 74J.

Offence by garnishee.

106A. Any garnishee who, by reason of an emoluments attachment order having been served on him in respect of the emoluments of a judgment debtor not occupying a position of trust in which he handles or has at his disposal moneys, securities or other articles of value, dismisses or otherwise terminates the service of such judgment debtor, shall be guilty of an offence and on conviction liable to a fine not exceeding R100 or, in default of payment, to imprisonment for a period not exceeding 3 months.

Offence by employer.

106B. Any employer who, having been requested by an employee to furnish a written statement containing full particulars of such employee's emoluments, fails or neglects to do so within a reasonable time, or who wilfully or negligently furnishes incorrect relevant particulars, shall be guilty of an offence and on conviction liable to a fine not exceeding R100 or, in default of payment, to imprisonment for a period not exceeding 3 months."

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Vervanging van artikel 109 van Wet 32 van 1944, soos vervang deur artikel 28 van Wet 40 van 1952 en gewysig deur artikel 24 van Wet 19 van 1963.

9. Artikel 109 van die Hoofwet word hierby deur die volgende artikel vervang:

„Vonnisskuldenaar moet verandering van sy adres aan hof meedeel.

109. (1) Iemand teen wie 'n hof in 'n siviele saak 'n vonnis gevel of 'n bevel uitgevaardig het en wat nie ten volle aan daardie vonnis of bevel voldoen het nie en alle koste waarvoor hy in verband daarmee aanspreeklik is, vereffen het nie, stel, indien hy van woon-, besigheids-, of werkplek verander het, binne 14 dae vanaf die datum van elke sodanige verandering, die klerk van die hof wat so 'n vonnis gevel het of so 'n bevel uitgevaardig het, en die vonnisskuldeiser of die vonnisskuldeiser se prokureur of, indien sy boedel onder administrasie is, die administrateur of sy prokureur skriftelik volledig en juis in kennis van sy nuwe woon-, besigheids- of werkplek.

(2) 'n Vonnisskuldeiser of administrateur kan, indien die betrokke vonnisskuldenaar versuim om aan die bepalinge van subartikel (1) te voldoen, 'n kennisgewing uitreik uit die hof van die distrik waarin die vonnisskuldenaar woon, besigheid dryf of in diens is, waarby die vonnisskuldenaar aangesê word om voor daardie hof *in camera* te verskyn om redes aan te voer waarom hy nie weens sodanige versuim ter gevangesetting verwys moet word nie.

(3) 'n In subartikel (2) genoemde kennisgewing word deur die vonnisskuldeiser of die administrateur of sy prokureur opgestel, word deur die vonnisskuldeiser of die administrateur of sy prokureur en die klerk van die hof onderteken en word deur die geregsbode op 'n wyse wat deur die reëls vir die betekening van prosesstukke in die algemeen voorgeskryf word, minstens 7 dae voor die verhoordatum daarin vermeld, beteken.

(4) By die verhoor van die verrigtinge ingevolge 'n kennisgewing in subartikel (2) genoem, kan die hof, hetsy die vonnisskuldenaar in die hof teenwoordig is of nie, na goëddunke 'n bevel uitgevaardig vir die gevangesetting van die vonnisskuldenaar vir 'n tydperk van hoogstens 30 dae, of hom vonnis om, ooreenkomstig die bepalinge van enige wet op gevangenis, periodieke gevangenisstraf te ondergaan vir 'n tydperk van hoogstens 720 uur weens sy versuim om aan die bepalinge van subartikel (1) te voldoen, en die uitreiking magtig van 'n lasbrief vir sy inhegtenisneming en gevangesetting in 'n gevangenis in die lasbrief vermeld.

(5) Die hof kan te eniger tyd om 'n gegronde rede aangevoer 'n in subartikel (4) genoemde bevel of lasbrief opskort op die voorwaardes wat die hof billik en redelik ag.

(6) Geen bevel word kragtens subartikel (4) uitgevaardig nie en geen lasbrief word kragtens daardie subartikel gemagtig nie indien die vonnisskuldenaar ten genoë van die hof bewys lewer dat hy onder die ouderdom van agtien jaar is of dat sy versuim om aan die bepalinge van subartikel (1) te voldoen, nie opsetlik was nie.

(7) Die bepalinge van die Strafproseswet, 1955 (Wet No. 56 van 1955), met betrekking tot periodieke gevangenisstraf is *mutatis mutandis* van toepassing op periodieke gevangenisstraf kragtens hierdie artikel opgelê.

(8) By verrigtinge kragtens hierdie artikel kan die hof 'n bevel met betrekking tot koste uitgevaardig wat die hof billik en redelik ag.”

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9. The following section is hereby substituted for section 109 of the principal Act:

"Judgment debtor to inform court of his address.

109. (1) Any person against whom a court has, in a civil case, given any judgment or made any order, who has not satisfied in full such judgment or order and paid all costs for which he is liable in connection therewith, shall, if he has changed his place of residence, business or employment, within 14 days from the date of every such change notify the clerk of the court which gave such judgment or made such order and the judgment creditor or the judgment creditor's attorney or, if his estate is under administration, the administrator or his attorney, fully and correctly in writing of his new place of residence, business or employment.

Substitution of section 109 of Act 32 of 1944, as substituted by section 28 of Act 40 of 1952 and amended by section 24 of Act 19 of 1963.

(2) A judgment creditor or an administrator may, if the judgment debtor concerned fails to comply with the provisions of subsection (1), issue a notice from the court of the district in which the judgment debtor resides, carries on business or is employed, calling upon the judgment debtor to appear before such court in chambers to adduce reasons why he should not be committed for such failure.

(3) A notice referred to in subsection (2) shall be prepared by the judgment creditor or the administrator or his attorney, shall be signed by the judgment creditor or the administrator or his attorney and the clerk of the court, and shall be served by the messenger of the court in the manner prescribed in the rules for the service of process in general at least 7 days before the date of the hearing mentioned therein.

(4) At the hearing of the proceedings in terms of a notice referred to in subsection (2) the court may, whether the judgment debtor is present in court or not, make an order, in its discretion, for the committal of the judgment debtor for a period not exceeding 30 days or sentence him to periodical imprisonment, in accordance with the laws relating to prisons, for a period not exceeding 720 hours, for failure to comply with the provisions of subsection (1), and the court may authorize the issue of a warrant for his arrest and committal to a prison specified in the warrant.

(5) The court may at any time on good cause shown suspend any order or warrant referred to in subsection (4), on such conditions as it may deem just and reasonable.

(6) No order shall be made under subsection (4) and no warrant authorized under that subsection if the judgment debtor proves to the satisfaction of the court that he is under the age of 18 years or that his failure to comply with the provisions of subsection (1) was not wilful.

(7) The provisions of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), relating to periodical imprisonment shall, *mutatis mutandis*, apply to periodical imprisonment imposed in terms of this section.

(8) In proceedings under this section the court may make such order with regard to costs as it may deem just and reasonable."

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WYSIGINGSWET OP LANDDROSHOWE, 1976

Wysiging van
artikel 111 van
Wet 32 van 1944.

10. Artikel 111 van die Hoofwet word hierby gewysig—

(a) deur subartikel (3) deur die volgende subartikel te vervang:

„(3) Geen verkeerde benaming van 'n persoon of plek maak die verrigtinge van die hof nietig nie, as die persoon of plek beskryf is soos hy algemeen bekend staan, en die hof kan op aansoek so 'n verkeerde benaming te eniger tyd voor of na vonnis verbeter.”; en

(b) deur die volgende subartikel by te voeg:

„(4) Indien 'n ongetroude vrou gedagvaar word vir 'n kontraktuele skuld en sy daarna binne gemeenskap van goedere trou of indien 'n getroude vrou gedagvaar word vir so 'n skuld en dit later blyk dat sy binne gemeenskap van goedere getroud is, kan die hof te eniger tyd, op aansoek, voor of na vonnis, die eggenoot van daardie vrou in die plek van die vrou as verweerder of vonnisskuldenaar stel.”.

Voorbehoud ten
opsigte van
aangeleenthede
wat ingevolge
Hoofwet geskied
het.

11. Die bepalings van hierdie Wet raak nie enige verrigtinge, kennisgewing, aanstelling, vonnis, order, bevel, lasbrief of enigiets anders wat verband daarmee het, wat voor die inwerkingtreding van hierdie Wet ingevolge 'n bepaling van die Hoofwet wat deur hierdie Wet vervang is, 'n aanvang geneem het, bewerkstellig, uitgereik, gedoen, gevel of verleen is nie, en sodanige verrigtinge, kennisgewing, aanstelling, vonnis, order, bevel, lasbrief of iets word voortgesit, afgehandel en gevolg aan gegee, na gelang van die geval, asof hierdie Wet nie aangeneem is nie.

Kort titel en
inwerkingtreding.

12. Hierdie Wet heet die Wysigingswet op Landdroshowe, 1976, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

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10. Section 111 of the principal Act is hereby amended—Amendment of
section 111 of
Act 32 of 1944.

- (a) by the substitution for subsection (3) of the following subsection:

“(3) No misnomer in regard to the name of any person or place shall vitiate any proceedings of the court if the person or place is described as commonly known, and the court may, on application, correct such misnomer at any time before or after judgment is given.”; and

- (b) by the addition of the following subsection:

“(4) If an unmarried woman is summoned for a contractual debt and is thereafter married in community of property or if a married woman is summoned for such a debt and it subsequently appears that she was married in community of property, the court may at any time, on application, before or after judgment is given, substitute the husband of such woman for such woman as defendant or judgment debtor.”.

11. The provisions of this Act shall not affect any proceedings, notice, appointment, judgment, order, warrant or anything else incidental thereto, commenced, effected, issued, made, granted or done prior to the commencement of this Act in terms of any provision of the principal Act replaced by this Act, and such proceedings, notice, appointment, judgment, order, warrant or thing shall be proceeded with, disposed of and given effect to, as the case may be, as if this Act had not been passed.

Saving in respect
of matters effected
in terms of
principal Act.

12. This Act shall be called the Magistrates' Courts Amendment Act, 1976, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Short title and
commencement.

