

DEPUTY SHERIFFS ACT
(Act No. 21 of 2024)

DEPUTY SHERIFFS (EXECUTION) REGULATIONS, 2025
(Published on 12th March, 2025)

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REGULATION

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SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Justice and Correctional Services by section 64 of the Deputy Sheriffs Act, the following Rules are hereby made —

1. These Regulations may be cited as the Deputy Sheriffs (Execution) Regulations, 2025. Citation

2. (1) A party in whose favour any judgment has been pronounced may, at his or her own risk, sue out of the office of the Registrar one or more writs for execution thereof as near as may be in accordance with Form 1 as set out in the Schedule: Writ of execution

Provided that, except where by judgment immovable property has been specially declared executable, no such process shall issue against the immovable property of any person until a return has been made of any process which may have been issued against his or her movable property, or the Registrar perceives from any return that the said person has not sufficient movable property to satisfy the writ.

(2) No process of execution shall issue for the levying and raising of any costs awarded to any party or the fees chargeable by a Deputy Sheriff until they have been taxed by the taxing master or agreed to in writing by the party concerned in a fixed sum:

Provided that it shall be competent to include in a writ of execution a claim for satisfying costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter:

Provided further that, if such costs have not been taxed and the original bill of costs, duly allocated not lodged with the Deputy Sheriff before the day of the sale, such costs shall be excluded from his account and plans of distribution.

(3) Whenever by any process of the court, the Deputy Sheriff is commanded to levy and raise any sum of money upon the goods of any person, he or she or by his or her assistant shall further proceed to the dwelling-house or place of employment or business of such person, unless the judgment creditor gives different instructions regarding the situation of the assets to be attached and there —

- (a) demand satisfaction of the writ, and, failing satisfaction;
- (b) demand that so much movable and disposable property be pointed out as he or she may deem sufficient to satisfy the said writ, and, failing such pointing out; and
- (c) search for such property.

(4) Any such property shall be immediately inventoried with sufficient detail, including serial and other identifying numbers as to enable their subsequent identification and, unless the execution creditor otherwise directs and shall be taken into custody of the Deputy Sheriff:

Provided that if there is any claim made by any other person to any such property seized or about to be seized by the Deputy Sheriff then, if the plaintiff gives the Deputy Sheriff an indemnity to his or her satisfaction to save him or her harmless from any loss or damage by reason of the seizure —

- (a) the Deputy Sheriff shall retain or shall seize, as the case may be, make an inventory of and keep the said property, and
- (b) the Deputy Sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him or her, unless he or she is excused by the Registrar from so doing for proper reason.

(5) The Deputy Sheriff shall file with the Registrar a return of any attachment made or other action taken on a process of execution, together with the inventory and shall furnish a copy of such return and inventory to the party who caused such process to be issued and to the judgment debtor.

Attachment of
property

3. (1) Where any movable property has been attached by the Deputy Sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the Deputy Sheriff, undertake in writing as near as may be in accordance with Form 2 as set out in the Schedule that such property shall be produced on the day appointed for the sale, whereupon the Deputy Sheriff shall leave the said property attached and inventoried on the premises where it was found.

(2) If the judgment debtor does not, together with a surety, give an undertaking as aforesaid, then, unless the execution creditor otherwise directs, the Deputy Sheriff shall remove the said goods to some convenient place of security, or keep possession thereof on the premises where they were seized, the expense whereof shall be recoverable from the judgment debtor and defrayed out of the levy.

(3) Where any movable property is attached as aforesaid, the Deputy Sheriff shall where practicable and subject to Order 64 of the Rules of the High Court sell it by public auction, for cash and without reserve, to the highest bidder after due advertisement by him or her in one or more newspapers and after the expiration of not less than 14 court days from the time of seizure.

(4) Where perishables are attached, they may with the consent of the execution debtor, or upon the execution creditor indemnifying the Deputy Sheriff against any claim for damages which may arise from such sale, be sold immediately by the Deputy Sheriff concerned in such manner as to him or her seems expedient.

(5) If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to the judge in the manner hereinafter provided —

- (a) where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be complete only when —

- (i) notice has been given by the Deputy Sheriff to the lessor and lessee, mortgagor and mortgagee or lessee, or person liable on the bill of exchange or promissory note or security, as the case may be,
 - (ii) the Deputy Sheriff has taken possession of the writing (if any), evidencing the lease, or the bill of exchange or promissory note, bond or other security, as the case may be, and
 - (iii) in the case of a registered lease or any registered right, notice has been given to the Registrar of Deeds;
- (b) where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when the Deputy Sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the warrant of execution; the Deputy Sheriff may, upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller, enter upon the premises where such property is and make an inventory and valuation of the said interest;
- (c) in the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid —
- (i) the attachment shall only be complete when notice of the attachment has been given in writing by the Deputy Sheriff to all interested parties, and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the Registrar of Deeds; and the Deputy Sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he or she has been unable, despite diligent search to obtain possession of the writing or documents, and
 - (ii) the Deputy Sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached; or
- (d) in the case of the attachment of stocks, shares or interest in close companies, attachment shall be effected by taking possession of the certificates evidencing ownership of such stocks, shares or interest and notice of the attachment shall be given to the Registrar of Companies, the company secretary or principal officer or other regulating authority.
- (6) Attachment of property subject to a *lien* shall be effected with necessary modifications in accordance with subregulation (3).
- (7) Where property subject to a real right of any third person is sold in execution, such sale shall be subject to the rights of such third person unless he or she otherwise agrees.
- (8) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with the Deputy Sheriff before the day of the sale in execution shall rank pro rata in the distribution of the proceeds of the goods sold, in the order of preference.
- (9) Where more than one asset has been attached, in conducting a sale in terms of the subregulation (3), the Deputy Sheriff shall halt the sale when a sufficient sum has been realised to satisfy the judgment debts and costs and shall pay over to the judgment debtor any surplus remaining after the sale of the final asset sold to reach the said total.

(10) If there should remain any surplus, the Deputy Sheriff shall pay it over to the judgment debtor, and the Deputy Sheriff shall make out and deliver to him or her an exact account in writing, of his or her costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and, if upon taxation any sum is disallowed, the Deputy Sheriff shall refund such sum to the judgment debtor.

(11) Within seven court days of the sale, the Deputy Sheriff shall compile and deliver to the Registrar, the judgment creditor and the judgment debtor a roll recording each asset sold, the price realised and the name and address of the purchaser, together with an account of the disposal of all funds realised from the sale and a record of any assets not sold and their disposition.

(12) Where an insufficient sum is realised from a sale, the Deputy Sheriff may make a further attachment or attachments on the same writ, provided that a second or subsequent sale shall not be conducted before the roll of the previous sale or sales has been prepared and delivered.

(13) A writ of execution against immovable property shall contain a full description of the nature and situation including the address of the immovable property to enable it to be traced and identified by the Deputy Sheriff; and shall be accompanied by sufficient information.

(14) An attachment shall be made by a Deputy Sheriff upon a writ as near as may be in accordance with Form 2 as set out in the Schedule.

4. (1) The mode of attachment of immovable property shall be by notice in writing by the Deputy Sheriff served upon the owner and upon the Registrar of Deeds, and, if the property is in the occupation of some person other than the owner, also upon such occupier; any such notice shall be served by means of a registered letter, duly prepaid and posted, addressed to the person intended to be served.

(2) After attachment, any sale in execution shall take place in the district in which the attached property is situate and be conducted by the Deputy Sheriff of such district:

Provided that the Sheriff in the first instance, and subject to regulation 6 (2) may on good cause shown, authorise such sale to be conducted elsewhere and by another Deputy Sheriff; upon receipt of written instructions from the execution creditor to proceed with such sale, the Deputy Sheriff shall ascertain and record what bonds, leases or other encumbrances are registered against the property together with the names and addresses of the person in whose favour such bonds, leases and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

(3) No immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless —

- (a) the execution creditor has caused notice in writing of the intended sale to be served by registered post upon the preferent creditor if his or her address is known and, if the property is rateable, upon the local authority concerned, calling upon them to stipulate within 10 court days of a date to be stated a reasonable reserve price, or to agree in writing to a sale without reserve; and has provided proof to the Deputy Sheriff that the preferent creditor has so stipulated or agreed; or
- (b) the Deputy Sheriff is satisfied that it is impossible to notify any preferent creditor in terms of this subparagraph of the proposed sale, or such creditor having been notified has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) within the time stated in such notice.

(4) The Deputy Sheriff may by notice served upon any person require him or her to deliver up to him or her all documents in the person's possession or control relating to the debtor's title to the said property.

(5) The Deputy Sheriff shall appoint a day and place for the sale of such property, such day being, except by special leave of the Sheriff, not less than one month after service of the notice of attachment.

(6) The execution creditor shall, after consultation with the Deputy Sheriff, prepare a notice of sale containing a short description of the property and improvements thereon, its situation and street number if any, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the Deputy Sheriff with as many copies of the notice as the latter may require.

5. (1) The Deputy Sheriff shall indicate two suitable newspapers circulating in the district in which the property is situated and require the execution creditor to publish the said notice once in each of the said newspapers and in the *Government Gazette* not later than 14 court days before the date appointed for the sale and to furnish him not later than the day prior to the date of the sale with a copy of each of the said newspapers and with the number of the *Gazette* in which the notice appeared.

Notification of execution

(2) Not later than 10 court days prior to the date of the sale, the Deputy Sheriff shall forward by registered post, a copy of the notice of sale to every other judgment creditor who has caused the said immovable property to be attached and to every mortgagee or lessee thereof whose address is known.

(3) Not less than 10 court days prior to the date of sale, the Deputy Sheriff shall affix one copy of the notice on the notice board of the District commissioner of the administrative district in which the property is situate and one copy at or as near as may be to the place where the said sale is actually to take place.

6. (1) The conditions of sale shall, not less than 28 court days prior to the date of the sale, be prepared by the execution creditor as near as may be accordance with Form 3 as set out in Schedule and shall be submitted to the Deputy Sheriff to settle them; the execution creditor shall thereafter supply the Deputy Sheriff with two copies of the conditions of sale, one of which shall lie for inspection by interested parties at his or her office.

Conditions of sale

(2) Any interested party may, not less than seven court days prior to the date of the sale, upon 24 hours' notice to the execution creditor, and the bond or lease holders, apply to the Sheriff for any modification of the conditions of sale, and the Sheriff may make such modification thereon as to him or her may seem meet.

(3) The execution creditor may appoint an attorney to attend to the transfer of the property when sold in execution.

(4) Immovable property attached in execution shall be sold by the Deputy Sheriff or by an auctioneer appointed by him or her at the direction of the judgment creditor by public auction, and a record shall be kept of each of the highest bidders up to four, and of their highest bids:

Provided that should an auctioneer be appointed the fees and commissions recovered by the Deputy Sheriff and the auctioneer from the proceeds of the sale shall not in aggregate exceed those provided for in the Deputy Sheriffs Regulations.

(5) If the purchaser fails to carry out any of his or her obligations under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the Deputy Sheriff after due notice to the purchaser, and the property may at the option of the judgment creditor and with the written consent of the Registrar be offered to the next bidder in line and so on by the Deputy Sheriff, or may again be put up for sale by public auction, and the purchaser shall be responsible for any loss sustained by reason of his or her default, which loss may, on the application of any aggrieved creditor whose name appears on the Deputy Sheriff 's distribution account, be recovered from him or her under judgment of the judge, pronounced summarily on a written report by the Deputy Sheriff after such purchaser has received notice in writing that such report will be laid before the judge for such purpose; and if he or she is already in possession of the property the Deputy Sheriff may, on seven court days' notice, apply to a judge for an order ejecting him or any person claiming to hold under him or her therefrom.

(6) Subject to subregulation (5), the sale shall be without reserve and the property shall be sold to the highest bidder.

(7) The Deputy Sheriff shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him shall be as valid and effectual as if he or she were the owner of the property.

(8) The Deputy Sheriff shall not pay out to the creditor the purchase money until transfer has been given to the purchaser, but upon receipt thereof he or she shall forthwith pay to the Sheriff all moneys received in respect of the purchase price.

(9) The Deputy Sheriff shall, as soon as possible after the sale and in any event within 14 court days thereafter, prepare in order of preference as hereinafter provided a plan of distribution of the proceeds and shall forward a copy of such plan to the Sheriff; and immediately thereafter the Deputy Sheriff shall give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for 14 court days from the date mentioned at his office and at the office of the Sheriff and unless such parties signify in writing their agreement to the plan, such plan shall so lie for inspection.

(10) After deductions from the proceeds of the costs and charges of execution the following shall be the order of preference —

- (a) the claims of preferent creditors ranking in priority in their legal order of preference and thereafter; and
- (b) the claims of other creditors whose writs have been lodged with the Sheriff in the order of preference laid down in the Insolvency Act.

Interested parties

7. (1) Any interested person objecting to such plan shall, within four court days of the expiry, of the period, give notice in writing to the Deputy Sheriff and all other interested persons of the particulars of his objection and shall bring such objection before a judge for review on 10 court days' notice to the Deputy Sheriff and the said persons.

(2) The judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order, including an order as to costs.

(3) If —

(a) no objection is lodged to such plan;

(b) the interested parties signify their concurrence therein; or

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

the Sheriff shall on production of a certificate from the conveyancer that transfer has been given to the purchaser and on the request of the Deputy Sheriff payout in accordance with the plan of distribution; if the address of a payee is not known, the amount due to him shall be paid into the Guardian's Fund established under the Administration of Estates Act.

(4) In this regulation, the Sheriff may perform any function of a Deputy Sheriff.

8. Any person who contravenes the provisions of these Regulations commits an offence and is liable to the penalties provided for in the Act. Penalties

SCHEDULE

**Form 1
FORM OF SECURITY
(reg. 2)**

In the High Court of the Republic of Botswana

In the matter between;

..... Plaintiff

and

.....Defendant

WHEREAS by virtue of certain writ of the High Court of Botswana dated theday of, 20....., issued at the instance ofagainst..... of....., the Deputy-Sheriff seized and laid under attachment the under-mentioned articles, namely:

Now, therefore, we, the said and of at..... (occupation) as surety for him, bind ourselves severally in solidum, hereby undertaking to said Deputy Sheriff or his cessionaries, assigns or successors in office, that the said goods shall be not be made away with or disposed of, but shall remain in possession of the saidunder the said attachment, and be produced to the said Deputy Sheriff (or other person authorized by him to receive the same) on the.....day of....., 20..... (the day appointed for the sale), or on any other day when the same may be required in order to be sold, unless the said attachment shall legally be removed, failing which I, the said..... hereby bind myself, my person, goods and effects, to pay and satisfy the sum of..... (estimated value of the effects seized) to the said Deputy-Sheriff, his cessionaries, assigns or successors in office, for and on account of the said.....

IN WITNESS whereof, we, the saidand have hereunto set our hands on thisday of, 20.....

.....
Judgment Debtor Surety

.....
Deputy-Sheriff

Form 2
WRIT OF ATTACHMENT-IMMOVABLE PROPERTY
(reg. 3)

In the High Court of the Republic of Botswana
.....Civil Case No.....

In the matter between:
..... Plaintiff
and
.....Defendant

To the Deputy Sheriff for the district of.....

WHEREAS you were directed to cause to be realised the sum of in satisfaction of a judgment debt and costs obtained by against the said in this court on the day of, 20

AND WHEREAS your return stated (here quote the Deputy Sheriff's return on the writ against movables).

NOW, therefore, you are directed to attach and take into execution the immovable property of the said being (here again the description of the property) to cause to be realised therefrom the sum of together with the costs hereof and of the prior writ amounting to and your charges in and about the same, and thereafter to dispose of the proceeds thereof in accordance with regulation 13, rule 17.

For which this shall be your warrant.

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

.....
Registrar of the High Court
.....
Plaintiff's attorney
(Address)

Form 3
CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY
(reg. 6)

In the High Court of the Republic of Botswana

In re:

..... Plaintiff
and

.....Defendant

The property which will be put up to auction on the day of, 20,
consists of

The sale shall be subject to the following conditions:

1. The property shall be sold by the Deputy-Sheriff ofat
to the highest bidder without reserve/with a reserve price of
2. The sale shall be for Pula, and no bid for less than one Pula shall be accepted.
3. If any dispute arises about any bid the property may be again put up to auction.
4. If the auctioneer makes any mistake in selling, such mistake shall not be binding on any
of the parties, but may be rectified. If the auctioneer suspects that a bidder is unable to
pay either the deposit referred to in condition 6 or the balance of the purchase price he
may refuse to accept the bid of such bidder, or accept it provisionally until the bidder
has satisfied him that he is in a position to pay both such amounts. On the refusal of a
bid under such circumstances, the property may immediately be again put up to auction.
5. The purchaser shall, as soon as possible after the sale, and immediately on being
requested by the, sign these conditions and if he has
bought qua qualitate, state the name of his principal.
6. (1) The purchaser shall pay a deposit of 10 per cent of the purchase price in cash on
the day of sale, the balance against transfer to be secured by a bank or building society
guarantee, to be approved by the plaintiff's attorney, to be furnished to the Deputy
Sheriff within days after the date of sale.
(2) If transfer of the property is not registered within one month after the sale, the
purchaser shall be liable for payment of interest to the plaintiff at the rate of six per
cent per annum and to the bondholder at the rate of
per cent per annum on the respective amounts of the award to the plaintiff and the
bondholder in the plan of distribution as from the expiration of one month after the sale
to the date of transfer.
7. If the purchaser fails to carry out any of his obligations under the conditions of sale, the
sale may be cancelled by a judge summarily on the report of the Deputy-Sheriff after due
notice to the purchaser, and the property may again be put up for sale; and the purchaser
shall be responsible for any loss sustained by reason of his default, which loss may, on
the application of any aggrieved creditor whose name appears on the Deputy Sheriff's
distribution account, be recovered from him under judgment of the judge pronounced
summarily on a written report by the Deputy-Sheriff, after such purchaser has received
notice in writing that such report will be laid before the judge for such purpose; and if he
is already in possession of the property the Deputy-Sheriff may, on seven days' notice,
apply to a judge for an order ejecting him or any person claiming to hold under him
therefrom.
8. The purchaser shall pay auctioneer's charges on the day of sale and, in addition, transfer
dues, costs of transfer, and arrear of rates, taxes and other charges necessary to effect
transfer, upon request by the attorney for the execution creditor.
9. The property may be taken possession of immediately after payment of the initial
deposit, and shall after such deposit be at the risk and profit of the purchaser.

10. The purchaser may obtain transfer forthwith if he pays the whole price and complies with condition 8, in which case any claim for interest shall lapse, otherwise transfer shall be passed only after the purchaser has complied with the provisions of conditions 6 and 8 hereof.
11. The Deputy-Sheriff may demand that any buildings standing on the property sold shall be immediately insured by the purchaser for the full value of the same, and the insurance policy handed to him and kept in force as long as the whole price has not been paid: and if he does not do so, the Deputy-Sheriff may effect the insurance at the purchaser's expense.
12. The property is sold as represented by the title deeds and diagram, the Deputy Sheriff not holding himself liable for any deficiency that may be found to exist and renouncing all excess. The property is also sold subject to all servitudes and conditions specified in the deed of transfer.
13. The execution creditor shall be entitled to appoint an attorney to attend to transfer.

DATED at this day of, 20

.....
Deputy-Sheriff.

I hereby certify that today the in my presence the herein before mentioned property was sold for to

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

MADE this 11th day of March, 2025.

RAMAOTWANA N. RAMAOTWANA,
Minister of Justice and Correctional Services.