



SOUTH AFRICAN LAW CENTRE

Legal Services | Promotion of Excellence in Legal Studies
(Non-Profit Organisation Registration No.: 2010/008904/21)
VAT Registration No.: 4680287671

INFORMATION SHEET: VOLUNTARY SEQUESTRATION aka “VOLUNTARY SURRENDER”

Purpose of sequestration

Sequestration allows you to start a new beginning without any debts. Where you cannot afford to pay your creditors, directly or via the debt review process, then sequestration may be your solution. Consumer's looking to exit debt review or administration can also consider sequestration as an option.

Do I qualify for sequestration?

If you are unable to pay your debts but have sufficient assets that can be liquidated leaving a sufficient residue after the payment of secured creditors as well as the costs of the liquidation of your estate, then you are likely to qualify for sequestration.

The court must also be satisfied that the sequestration of your estate is in the interest of your creditors and to the advantage of your creditors. Traditionally, a dividend of at least 10 cents in the Rand for concurrent creditors is seen as advantageous to creditors. Recent case law has however moved the threshold higher in that it has been ruled in 2010 that a dividend of at least 20 cents in the Rand is advantageous to creditors.

Effect of Sequestration

- Your assets and liabilities vest in the insolvent estate which is placed in the hands of the Master of the High Court until a Trustee is appointed. Once a Trustee is appointed, the insolvent estate then vest in the Trustee.
- Your creditors must submit their claims to the insolvent estate.
- Your debt is written off and any pending legal proceedings that have may have been initiated by any of your creditors are halted. For example, once the notice of the surrender of



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your estate is published, any assets that have been attached under a writ of execution shall not be sold.

- You cannot incur further debt or be a director in a company until you are rehabilitated.
- Any immovable property you own will be sold to pay your creditors.
- You will not be able to get credit until you are rehabilitated as the fact that you are sequestrated will be recorded on your credit report.
- Once the sequestration order is granted, creditors cannot attach your salary by way of an emolument attachment order (also known as a “garnishee”) and any “garnishee” on your salary is cancelled upon the granting of the sequestration order.

How it works in practice

- An application is made to the court to surrender your estate so that it can be wound up. How your estate is wound up is governed by the Rules and Regulations set out in the Insolvency Act 24 of 1936.
- A sequestration application can only be made if you are financially able to pay the dividend contribution to your creditors upfront or over a maximum period of 18 months. Where you are financially unable to pay the dividend contribution upfront, we will provide you with detailed specific information based on the total amount of your dividend contribution and your affordability as to how you can arrange to pay the dividend contribution on a monthly basis.
- A sufficient amount towards the dividend contribution amount must be paid before bringing the sequestration application. Such assistance generally requires that you sign a direct debit mandate for the monthly dividend contribution amount that you will be paying, and that this



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debit instruction is honoured for a period of at least 3 months. Your dividend contribution payments are held in trust and as such are protected and covered by the Fidelity Fund of the Law Society of South Africa.

- Once a sufficient dividend has been received, notice of your intention to apply for the sequestration of your estate must be published in the Government Gazette. Publication of this advertisement is tantamount to a provisional sequestration order in that once it is published, creditors cannot attach your assets and where your assets have been attached any ensuing sale of execution is halted.
- Where you are paying off the dividend contribution, letters from our office will be sent to all your creditors advising them that your estate is in the process of being sequestrated and you can and must refer such creditors directly to us and you must not agree to sign any documentation with such creditors (unless we have advised you otherwise) and you must not make any payments to any creditor as you may be deemed in law to be preferring one creditor above your other creditors.
- Your creditors will also be given notice of the advertisement in the Government Gazette.
- Once you are sequestrated and the Master of the High Court has appointed the Trustee of the insolvent estate, the dividend contribution shall be transferred to the insolvent estates account which is opened by the Trustee upon his or her appointment to oversee the winding up of your estate.



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Rehabilitation after Sequestration - How to exit sequestration

To exit sequestration, the insolvent can apply for a rehabilitation order. This effectively puts an end to the sequestration process. Alternatively, the insolvent is automatically rehabilitated after 10 years. Rehabilitation is possible in one of the following instances:

After acceptance of composition

If the insolvent has obtained a certificate from the Master stating that creditors have accepted a composition in terms of which payment has been made or security given for the payment of not less than 50 cents for every rand of every claim proved or to be proved, then the insolvent can apply to be rehabilitated. This application can be made once the certificate is obtained.

After the lapse of 4 years

An insolvent can generally only apply to be rehabilitated after the lapse of 4 years from the date of the sequestration of his estate unless the Master gives a recommendation that the insolvent be rehabilitated before the expiry of the 4 year period.

If no claim is proved

If no claim has been proved against his estate and if his estate has not been previously sequestrated, and if he has not been convicted of any fraudulent act in relation to the existing insolvency, he may apply after the expiry of 6 months from the date of sequestration.

After full payment of all proved claims

Section 124(5) of the Insolvency Act allows for the insolvent to apply to be rehabilitated after the claims of all creditors, whether secured, preferent or concurrent, have been settled in full.