CIVIL AND DELICTUAL CLAIMS

Administration Orders

What is an administration order and who can apply for it? Learn more about administration orders by reading this LegalWise QuickLaw guide.

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What is an administration order?

- It is an order made by a Magistrate's Court setting out different amounts that a person ("debtor") must pay towards his/her outstanding debt with one or more persons ("creditor/s").
- An example of a repayment plan is where the debtor pays his/her outstanding debt in affordable monthly installments to each creditor.
- If a court order has been made, the debtor's estate will be placed under administration ("administration order"). This means that an Administrator is appointed who will ensure that the debtor pays the amounts due in terms of a judgment or other financial obligations.
- If the debtor is married in community of property, the joint estate will be placed under administration. This means that both the debtor and his/her spouse will be affected by the administration order.

Who can apply for an administration order?

- A debtor whose outstanding debt is less than R50 000 in total, is struggling to pay it off and does not want to undergo sequestration.

How is an application for an administration order made?

- A debtor must apply to a Magistrate's Court in the area where s/he resides, carries on business or is employed.
- The application must be made in the prescribed form, which can be obtained from the clerk of a Magistrate's Court. The form will include an affidavit made by the debtor and must be accompanied by a statement of his/her financial affairs.
- The clerk of the Magistrate's Court will provide a date by when the application will be heard.
- A copy of the application and supporting documents must be delivered to every creditor of the debtor, in person or by registered post, at least three days before the date of the hearing of the application. A creditor may object to the application or the granting of an administration order.

What must be stated in the statement of financial affairs?

- The following details of the debtor (and his/her spouse if they are married in community of property) must be contained in the statement of financial affairs:

- occupation and gross income, as well as any deductions that are made from his/her income (such as medical aid contributions);
    - the name and business address of the employer or the reason for unemployment;
- a list of assets and expenses;
- the details of any immovable property (such as a house) that is subject to a mortgage bond;
- claims in the debtor's favour, for example, if someone owes him/her money;
- money that has been saved;
- a complete list of creditors, their addresses, the amounts due to them, and how they are normally paid;
- any security and value of the security held by a creditor;
- whether a previous administration order has been granted in respect of the debtor's estate;
- details of the debtor's spouse and dependants and their relationship to the debtor; and
- the installments the debtor can afford to pay towards settlement of his/her debts.

What will happen at an administration hearing?

- The application will be heard by a Magistrate.
- Any creditors may attend the hearing and object to the debt listed in the application. If an objection is made, proof of the debt must be provided.
- The Magistrate will allow or reject the debt, or postpone the application for its consideration.

What will happen if the court grants an administration order?

- An Administrator will be appointed to enforce the administration order. This means that the Administrator must:
    - inform every creditor and the debtor's employer of the administration order;
    - draw up and lodge a complete list containing the names and amounts owed to each creditor; and
    - collect payments and distribute them among the creditors at least once every three months, unless the Magistrate's Court orders otherwise.
- The order must specify the amount the debtor must pay and the time of payment. The order may also specify whether there are any assets that the debtor must sell to settle the outstanding debt.
- The court may authorise an emoluments attachment order or a garnishee order.
- While an order is in force, no creditor may proceed with legal steps against the debtor, except in limited circumstances, for example, a mortgage bond due.
- Upon full payment of the debt:
    - the Administrator will lodge with the clerk of the Magistrate's Court a clearance certificate stating that the costs of administration and the creditors have been paid in full;

- copies of the clearance certificate are sent to the creditors and employer of the debtor; and
- an application for the administration order to be cancelled (rescinded) is made to the Magistrate's Court.

How much will an administration order cost?

- An Administrator is allowed to take up to 12.5% of the monthly payments for his/her service.
- The employer of a debtor is allowed to take a 5% management fee, because it must pay the Administrator the specified sum of money if there is an emoluments attachment order granted.
- An administration order does not stop interest from running on outstanding debt.

Glossary of terms:
ADMINISTRATOR: a person appointed by a Magistrate's Court to collect and distribute payments of the debtor amongst his/her creditors.
AFFIDAVIT: a written statement made under oath before a Commissioner of Oaths, for example, a member of the South African Police Service or an attorney.
MORTGAGE BOND: where immovable property acts as security for a bond agreement between the debtor and a financial institution, such as a bank.

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