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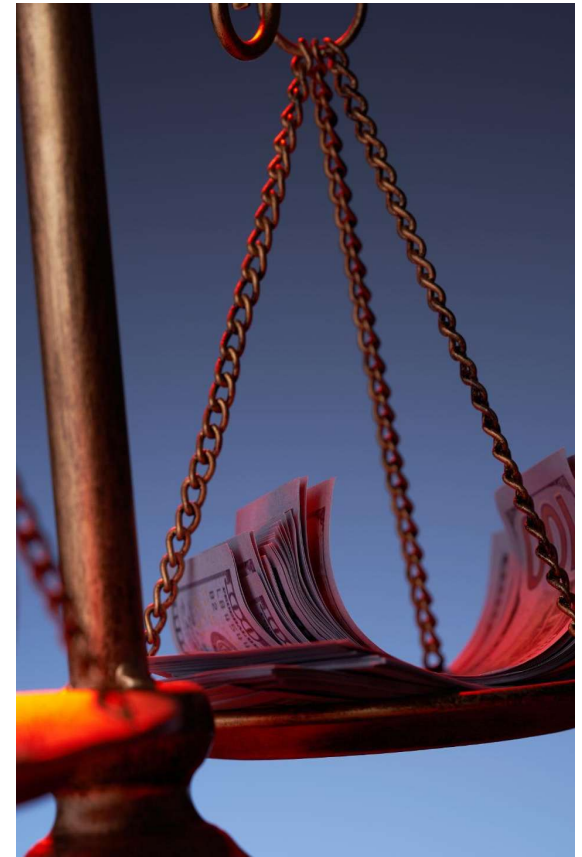
# Insolvent Deceased Estates: Legal Processes and Practical Implications

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# Solvency Assessment

1. When must this be done?
  - After your section 29 Adverts.
  - Continuous assessed up and until the distribution.
2. How is it done and what to consider?
  - The information received from heirs, financial advisors, accountants and any other third party who has financial information about the deceased.
  - Value of the assets must be determined.
  - Claims submitted to the estate, depending on the credibility, it may have to be investigated and verified.
3. What claims are considered in the process?
  - Only claims submitted to the executor OR
  - All claims of which the executor is aware although it is not yet lodged.
  - Common sense approach to be followed.
4. SARS & Other claims (maintenance)
5. Impeachable Transactions & Contributions to be considered

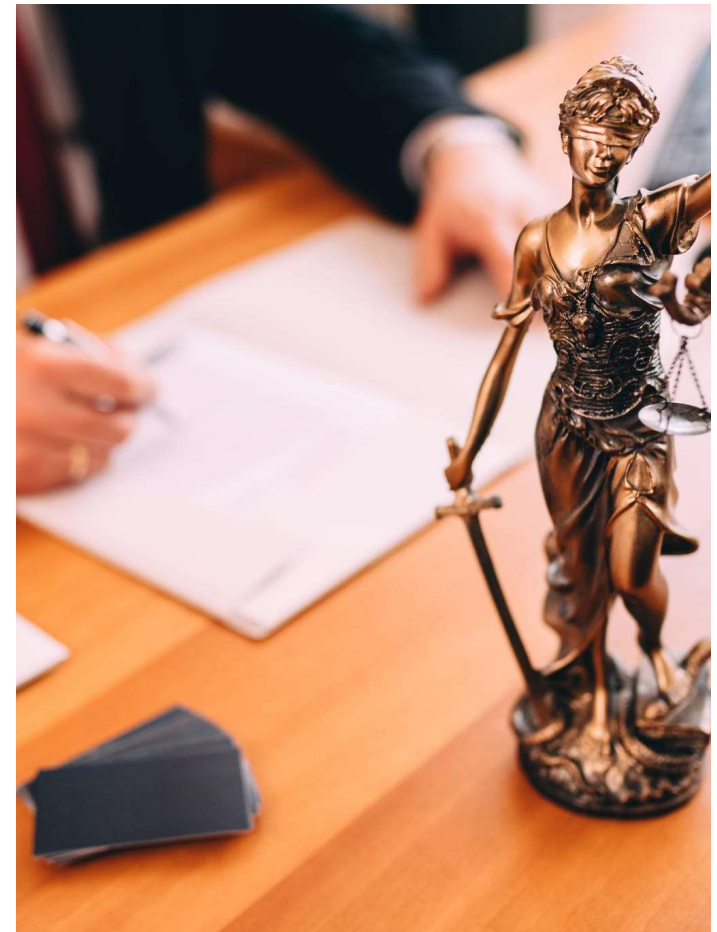


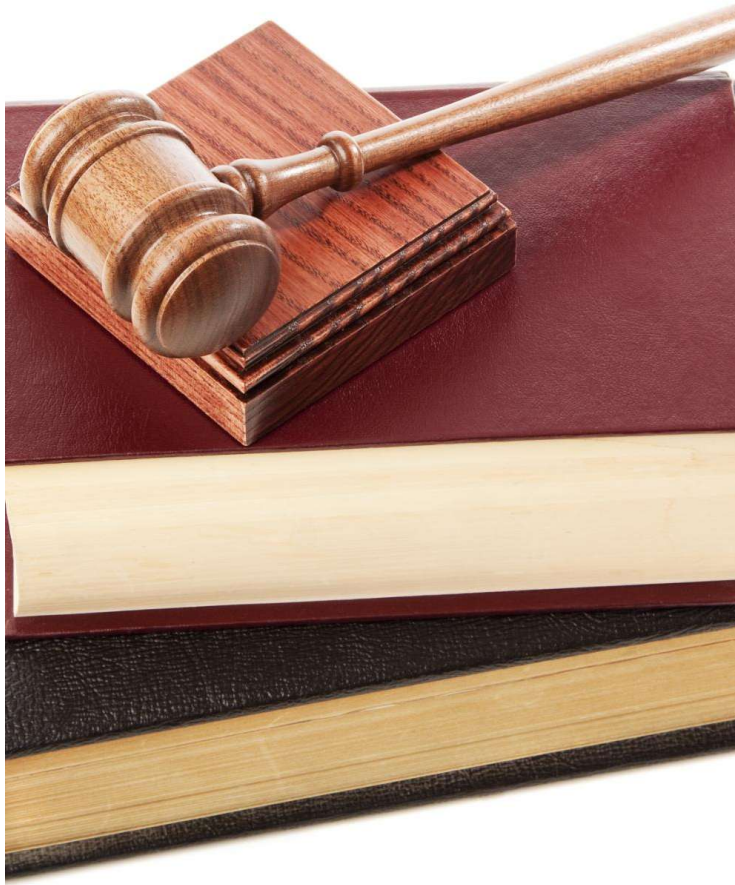
## Insolvent Estates - Section 34:

- If an estate is deemed insolvent at any point before its distribution, the executor is required to provide a written report on the estate's financial status to the creditors.
- Although it is not a requirement, but this report should detail any transactions that, based on the executor's current knowledge, might be voidable and necessitate investigations under the Insolvency Act. Include any impeachable transactions and the possibility of a contribution if applicable.
- A copy of the report must be submitted to the Master.
- The notice must inform creditors that unless a majority in both number and value instruct the executor in writing within a specified period (not less than fourteen days) to surrender the estate under the Insolvency Act, the executor will proceed to liquidate the assets.
  - Creditors with claims under R1,000 are not counted in the number.
  - Creditors holding security that a trustee could assume under s 83 of the Insolvency Act must, if requested in writing by the executor, provide a valuation of their security within the specified period. They are counted only for the unsecured portion of their claim based on this valuation. Failure to provide such valuation within the deadline means they will not be considered creditors for the purpose of instructing the executor on surrender.
- If the executor has not been instructed to surrender the estate after the notice period expires, they must notify creditors of the proposed sale's terms and conditions, providing at least 14 days' notice.
- Creditors may object to the proposed sale terms, and any such objections must be submitted to the Master. Upon reviewing the objections, the Master will issue a ruling.

## WHO CAN APPLY FOR THE SEQUESTRATION

- In terms of section 3(1) of the Insolvency Act, includes an executor of a deceased estate can apply for the surrender of the estate, however this should be read with Section 34 of the Administration of Estates Act.
- Joint estates. – An executor of a joint estate cannot surrender the joint estate without the consent of the surviving spouse but can admit that the joint estate is insolvent.
- It has been held that, where a partnership estate is surrendered as insolvent, the court is bound to accept the surrender of the estate of the deceased partner notwithstanding that the creditors desire his estate to be administered under the Act.
- Despite the procedure provided on insolvency of a deceased's estate the right of a creditor to apply to court for sequestration of the estate is safe guarded, except that a creditor cannot take proceedings for sequestration of a deceased estate until an executor has been appointed.





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## Impeachable Transactions

- What is this?
- Why is it important to consider?
- If an executor considers that investigations into certain transactions are necessary, which can only be carried out within Insolvent Estates under the Insolvency Act of 1936, this alone provides sufficient justification for the executor to apply for the sequestration of the insolvent estate, even without direction from the creditors.
- Transactions that may need to be set aside according to sections 26 to 31 of the Insolvency Act include:
  - Voidable dispositions
  - Dispositions without value
  - Voidable preferences
  - Collusive dealings

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# Sequestration Date



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## *Concursus Creditorium*

Date of sequestration for Insolvent Deceased Estates if you follow the Section 34 road to administration of the estate, is the day after your notice to creditors in terms of section 34(1) has lapsed.

It is provided that in so far as a date of sequestration is relevant for the purposes of the distribution of the insolvent estate, such date shall be deemed to be the date immediately following the date on which the period specified in the notice given by the executor to creditors has expired.

Why is this important: It provides for an enforcement mechanism for creditors to prove their claims against the insolvent estate and for an equitable distribution of the proceeds of the estate amongst creditors in accordance with pre-determined rules in the process as set out in the applicable legislation.

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# Realisation of Assets



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- The executor has not been directed by creditors to surrender the estate, they must inform the creditors in writing about the proposed method and terms of selling the assets.
  - This notification must be given for a minimum of fourteen days, after which, unless a valid objection is raised, the executor may proceed with the sale.
  - The notice does not have to follow immediately after the creditors have been informed of the estate's insolvency. While the executor is not legally required under the Act to do so, it may be advisable, depending on the situation, for the executor to consult with the creditors about the sale's terms and conditions before issuing the notice mandated by section 34(2).
  - Creditors can object to the proposed method of sale.
  - Master will consider the preferences of the majority of creditors rather than focusing solely on the objecting creditor.
  - When the executor provides comments on objections, it may be helpful to seek the views of the other creditors.
  - Anyone dissatisfied with the Master's decision may appeal or seek a review of the ruling.

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# Categories of Creditors

## 1. Secured Creditor

- Security is held by a creditor, example mortgage over immovable property, finance over a vehicle, cession of a debt.
- If a creditor has placed a value on his security when called upon by the executor, the executor may at any time within six weeks thereafter deal therewith *mutatis mutandis* in the manner provided in [s 83](#) of the Insolvency Act of 1936.

## 2. Preferent Creditor

- Employees and SARS
- Paid from Free Residue

## 3. Concurrent Creditor

- All over creditors
- Paid from the remainder of the Free Residue after Preferent Creditors were paid.

# Ranking of Creditors



**Concursus creditorum:** priorities and rights are established as of the deemed date.

- **Ranking and preferences:**

- **Encumbered assets:** costs related to preservation, realization, and appropriate administrative shares are allocated first to secured creditors according to the order of securities held.
- **Free residue:** payments proceed in the following order—funeral and death-bed expenses, Master’s fees, administrative and liquidation costs, execution costs, employee claims and statutory preferences, general notarial bonds, concurrent creditors, and interest on concurrent claims.
- **Security provisions** (s 83); rules regarding interest (s 50); costs associated with security (s 89); and procedures for distribution (ss 92–103).
- **Liquidation and distribution structure:** includes liquidation account, any trading account, distribution plan highlighting the concurrent dividend rate, and a protected-assets account if relevant.

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# Liquidation and Distribution Account



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**The account will follow the format of an Insolvent Estate L & D**

**Set out assets, free residue account, encumbered asset account, distribution account**

**Distribution will be in terms of the Insolvency Act 24 of 1936**

**Objections to the account is dealt with in terms of section 35**

**Executors Certificate must be attached**

the requisite majority in number and value of the creditors did not instruct me to surrender the estate under the Insolvency Act of 1936;

to the best of my knowledge and belief the above is a true and proper account of the liquidation and distribution of the estate and that all the assets and income collected subsequent to the death of the deceased to the date of this account have been disclosed therein.

**Account must be confirmed by the Master before distribution**

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**QUESTIONS ?**

