

## **CURRENT LEGAL DEVELOPMENTS: THE DECLARATION OF EXECUTION OF A MORTGAGE BOND OVER IMMOVABLE PROPERTY**

**MMM Fuchs\***

### **SUMMARY**

There are strict formalities involved when a mortgagee (as holder of a real security right) wants to declare immovable property executable to satisfy outstanding debt. There are various stages in this foreclosure process that a mortgagee must comply with before he can enforce his limited real right by calling up the mortgage bond to satisfy the outstanding debt. This process can be divided into four stages: first, the pre-trial debt enforcement procedure; secondly, the determination of jurisdiction; thirdly, the calling up of the mortgage bond and the court procedure; and lastly, attachment and execution sale.

Over the past decade, foreclosure proceedings have undergone significant changes, largely owing to the *Constitution of the Republic of South Africa*, 1996 and consumer protection legislation such as the *National Credit Act* 34 of 2005.

This paper addresses recent legal developments with reference to case law and legislation with regard to the first three stages of the procedures mentioned above. Emphasis is placed on the third state: the development of the court procedure (litigation) when the mortgage bond is called up and the property is declared executable. Attachment and the execution of the property that follows will, however, are not discussed in this paper.

**KEYWORDS:** Section 129(1)(a)-notice; *Kubyana*-judgment; calling up a mortgage bond; *Sebola*-judgment; execution; pre-trial debt enforcement.

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\* Michelle M M Fuchs. LLB (UP) LLM (Unisa). Admitted Attorney and Lecturer in die Department of Trade Law, University of South Africa. E-mail: fuchsmm@unisa.ac.za. This article is based on the author's LLM(A) thesis conducted under the supervision of Professor Susan Scott titled *Die Oproepingsproses van Verbande op Onroerende Sake in die Suid-Afrikaanse Reg*.