

REQUIREMENTS OF THE COURT

The decision of *Lourens et Uxor* 1986 (2) SA 291 (C) sets out guidelines that the courts generally appeared to have followed with regard to applications in terms of section 21(1) of the Matrimonial Property Act No. 88 of 1984.

The case lays out the following guidelines:

1. Notice of the applications must be given to the Registrar of Deeds in terms of s 97 (1) of the Deeds Registries Act 47 of 1937.
2. The draft notarial contract which it is proposed to register must be annexed to the application.
3. Notice of intention to make the application must also be published in the Government Gazette and one English and one Afrikaans newspaper at least two weeks before the date on which the application will be heard.
4. The date upon which the application will be heard must be specified in the published notice, setting out what steps an objector to the order sought must take and where the application and draft contract can be inspected.
5. In addition, at least two weeks' prior notice of the application must be given by certified post to all creditors, whether actual or contingent. A list of such creditors, verified by affidavit, shall be included in the application and proof that such notice has been given to them must be provided by an affidavit to which are annexed the relevant certificates of posting.
6. Sufficient information regarding the assets and liabilities of the couple concerned must be set out in the application to enable the Court to judge whether or not there are sound reasons for the proposed change and whether or not any other person will be prejudiced by the proposed change.
7. It should also be stated whether or not either of the applicants has been sequestered in the past and, if so, when, and in what circumstances. The case number of any rehabilitation application must be furnished.
8. It should also be stated whether or not there are any pending legal proceedings in which any creditor is seeking to recover payment of any alleged debt due by the couple or either of them.
9. Care must be taken to motivate fully the proposed change in the existing matrimonial property system. Applicants must explain why no other person will be prejudiced by the proposed change. In any event, the order sought, and the contract which it is proposed to register, shall contain a provision which preserves the rights of pre-existing creditors.
10. The application must disclose where the parties are domiciled and, if they are not resident there when the application is made, where they are resident. If there has been a recent change in domicile or residence it should be disclosed so that the

Court can consider whether the application has been brought in the appropriate forum and/or whether or not additional notice of the application should be given. Ordinarily the application should be brought in the Court in whose area of jurisdiction the parties are domiciled and ordinarily resident.