

SHORTFALLS AS IDENTIFIED THROUGH DESKTOP INSPECTIONS

1. **“DID YOU KNOW”** every sheriff shall immediately upon being appointed open a trust account, which should be properly described with the relevant Section, i.e. Section 22 (1) of the Sheriffs Act 90 of 1986.
E.g. Sheriff Durban East -Trust account i.t.o. Section 22 (1) of Act 90 of 1986.
2. **“DID YOU KNOW”** that the trust account cannot be opened in your personal name.
E.g. Mr. J.E Block t/a Sheriff Durban East
3. **“DID YOU KNOW”** that you are not allowed to use money in the trust account for your personal gain and/or to settle personal debt.
4. **“DID YOU KNOW”** it is your responsibility to inform the bank that they should not issue a debit or credit card for the trust account.
5. **“DID YOU KNOW”** that it is the responsibility of the sheriff to inform the bank that all bank charges for the trust account are to be levied against the business account.
6. **“DID YOU KNOW”** that it is your responsibility to ensure that the trust account opened with a banking institution is an interest-bearing trust account.
7. **“DID YOU KNOW”** that the bank charges paid by you in respect of the trust account are recovered at the end of the financial year when completing Form 4.
8. **“DID YOU KNOW”** that money held in the trust account does not form part of the sheriff's personal assets.
9. **“DID YOU KNOW”** that you cannot link your personal/business debit/credit card to the trust account.
10. **“DID YOU KNOW”** that you cannot issue cash cheques from the trust account. Every payment from the trust account must be balanced to a trust creditor.
11. **“DID YOU KNOW”** that you cannot withdraw cash from the trust account over the counter.
12. **“DID YOU KNOW”** that if a client does not have a bank account, you should request that they open one in order for you to make payment into the relevant new account.
13. **“DID YOU KNOW”** it is illegal to issue a trust cheque to a client if there is not enough money to meet the cheque in the trust account.
14. **“DID YOU KNOW”** that it is illegal to transfer funds from the trust account to family members for personal gain.
15. **“DID YOU KNOW”** all payments out of, or money received in the trust account must have a reference, case number, or the name of the parties.
16. **“DID YOU KNOW”** that all sheriffs' fees taken out of the trust account must have a case reference number or name of the parties. You are not allowed to make payment to the business account without a detailed reference.
17. **“DID YOU KNOW”** it is illegal to pay debit orders from your trust account.
18. **“DID YOU KNOW”** all payments and receipts from the trust account must have an audit trail.

19. **“DID YOU KNOW”** that all trust creditors must be paid without avoidable delay.
20. **“DID YOU KNOW”** that the trust account cannot have a negative balance at any given time.
21. **“DID YOU KNOW”** that in terms of Section 23 (1)(a) of the Sheriffs Act, you are required to keep separate accounting records and books for all transactions relating to the trust account.
22. **“DID YOU KNOW”** that a sheriff is required to ensure that all books of account and financial records in relation to the trust account shall be audited by a registered auditor (must be registered with IRBA) and not an accountant.
23. **“DID YOU KNOW”** that failure to disclose any unlawful actions in the trust account could lead to suspension and/or removal from office and you could be charged criminally.
24. **“DID YOU KNOW”** that the sheriff must pay all/any monies collected from the debtor to the attorney immediately without any avoidable delay.
25. **“DID YOU KNOW”** that it is the responsibility of the sheriff to reconcile the trust account on a daily or weekly basis, and to also have a qualified bookkeeper or an accountant to attend to the book of account and records.
26. **“DID YOU KNOW”** that all trust monies collected must immediately be banked in the trust account.
27. **“DID YOU KNOW”** that you will be personally liable to refund the trust account should you overpay trust creditors.
28. **“DID YOU KNOW”** that you cannot pay service providers from the trust account. All payments for service providers e.g. locksmith, towing companies must be paid from the business account against an invoice (return of service).
29. **“DID YOU KNOW”** that all sheriffs’ fees taken from the trust account must be taken against an invoice (return of service).
30. **“DID YOU KNOW”** that for auditing purposes you are required to keep a file with all bank statements for the trust account.
31. **“DID YOU KNOW”** that any interest earned on the trust account must be paid to the South African Board for Sheriffs in the prescribed manner (Form 4).
32. **“DID YOU KNOW”** that it is compulsory to keep all files and documents relating to movable and immovable property auction sales for auditing purposes.
33. **“DID YOU KNOW”** that in order to make payments from the trust account there has to be a deposit equal to the payment amount.
34. **“DID YOU KNOW”** that if your auditor cannot match payments against receipts in your trust account it means that you will receive a qualified audit.
35. **“DID YOU KNOW”** that where appropriate, you could be suspended and/or removed by the Minister of Justice and Correctional Services on recommendation of the South African Board for Sheriffs. You could also be charged criminally for certain actions.