

Determining asset ownership for litigation purposes

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Determining what assets are owned by a defendant, prior to instituting legal action, is a necessary part of due diligence in litigation. Technology has revolutionised the way in which asset searches take place, resulting in time and cost savings.



Lexis WinDeed simplifies the process of determining assets for litigators.

“An asset search will reveal the assets and liabilities of an individual or business, assisting litigators in the process of filing a civil action – or to determine assets for the purposes of a divorce settlement,” says Greg Brown, Director Data Services at LexisNexis South Africa.

Assets include real estate and other personal property such as motor vehicles, boats or works of art and may also include assets held under other entities such as family trusts, limited liability companies or partnerships that may have been used as vehicles for fraudulent asset transfers to avoid judgement or financial loss.

“Identifying properties, cars or companies owned or linked to an individual will assist litigators with a complete picture of the financial position of a respondent in a civil suit or divorce case,” says Brown. “In civil cases, the decision to proceed with litigation may be determined by knowledge gained from these reports – to ascertain whether or not the debtor is able to pay. Basically, an asset search enables a litigator to sort fact from fiction!”

Crucial information can also be ascertained from asset search reports that will impact negotiations prior to litigation. This includes establishing what the value of the claim should be as well as determining who to file against, in the case of a civil case. Deciding who to pursue – the business or the individual or both – will be clarified in the discovery of who has sufficient assets to cover damages.

In the case of the dissolution of a marriage, the type of agreement signed by marriage parties prior to their marriage determines how the assets will be divided. The assets are determined as being those owned at the time of the divorce.

“Establishing what comprises those assets and what form of marriage contract parties entered into, is the responsibility of the litigator and with an online tool such as Lexis WinDeed, South Africa’s leading search tool for individual, company and property information, this task has now been simplified,” Brown says.

For more information, visit: <https://www.lexisnexis.co.za/lexiswindeed>.

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