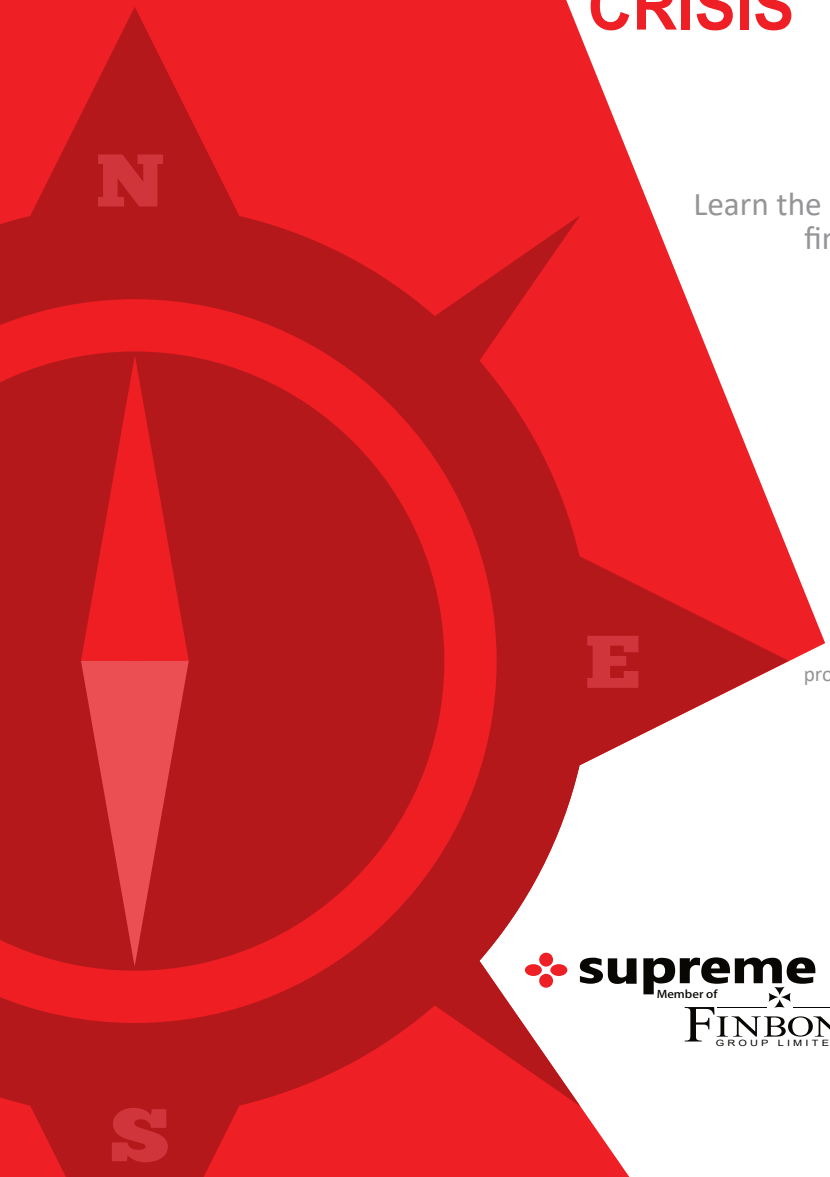
YOUR GUIDE TO BUDGETING IN TIMES OF CRISIS

Learn the secrets towards financial freedom

Ina Wilken



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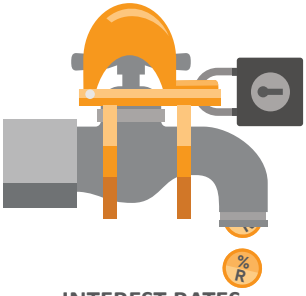
THE NATIONAL CREDIT ACT



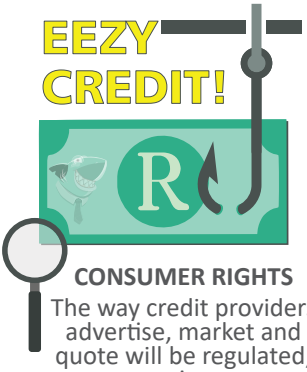
A SUPER CREDIT WATCHDOG

The **National Credit Regulator** will make sure the credit industry complies with the NCA.



INTEREST RATES

Interest rates and other fees will be regulated and controlled.



CONSUMER RIGHTS

The way credit providers advertise, market and quote will be regulated, protecting your consumer rights.



DEBT COUNSELLOR

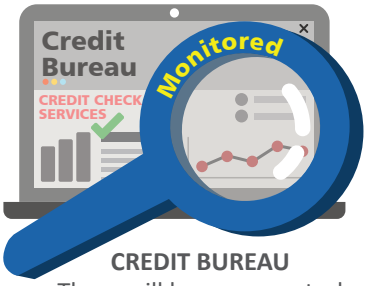
If you can't pay your debts, a debt counsellor can help you **solve** your problems.





NATIONAL CONSUMER TRIBUNAL

If a credit provider breaks the law, you can take your complaint to this **tribunal.**



CREDIT BUREAU

There will be more control on the **accuracy** of the **information** provided by credit bureaus.



PROTECTION

The NCA gives you more protection when you **borrow money**, **buy goods on credit** or **get asset finance.**



RECKLESS LENDING

Credit providers won't be able to give you credit if you can't afford it.

A GUIDE FOR
FINANCIAL PLANNING
FOR ALL SOUTH AFRICANS

HOW TO BUDGET AND SAVE AND USE YOUR MONEY WISELY

Learn the secrets towards financial freedom

INA WILKEN
Consumer Consultant
Non-Executive Director: Finbond Group Limited

Follow the easy steps set out in this book and learn the secrets of creating a life with financial security and independence.

"You can never cross the ocean untill you have the courage to loose sight of the shore"
CHRISTOPHER COLUMBUS

This book is dedicated to the millions of South African consumers and users of credit and other financial services products.

May this book empower you towards financial freedom and security.

ACKNOWLEDGEMENTS

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Preface - Ina Wilken

What a privilege to contribute to your financial well-being and education.

The years 2020/21 have created a change in our lives that no one expected. Amidst the transition of what we considered as normal to what Covid-19 created we have to remain focussed and believe in the good of people, trust in God and aspire to better our lives and the lives of our children.

This time will pass and we will look back in awe and realise that we were part of a phenomena which nobody could fore-seen. Let us go back to the basics and plan for tomorrow especially in these extreme tiring times.

From inspiring positive quotes
"Life is'nt always amazing, there will be times of trial
and times of struggle along the way but don't give up, be strong, believe in yourself and show life that you are going to make it no matter what it throws at you."

Kindest regards,

Ina Wilken
Non-Executive Director: Finbond Group Limited

1 March 2021

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INTRODUCTION

How do people obtain financial independence and freedom? How do people become wealthy?

It is seldom luck or inheritance, or advanced degrees or even intelligence that help people to build fortunes. Financial independence and wealth are more often the results of a lifestyle of hard work, perseverance, planning and self-discipline.

A wise person once said that many people die because of a lack of knowledge. This is also true for personal budgeting and money management. Many people don't make ends meet just because they don't budget and plan.

This book will equip you to do just that – plan properly.



"Make a point to continually search for a better way of doing things, even when things are going well, to ensure that a better alternative has not been overlooked and to keep your creative talents in practice."
JOHN MAXWELL



"A good financial PLAN is a ROAD MAP That shows us exactly how the choices we make today will affect our future"
ALEXA VON TOBEL



"I do not think that there is any other quality so essential to success of any kind as the quality of perseverance. It overcomes almost everything, even nature."
JOHN D. ROCKEFELLER

SECTION 1 - BUDGETING

1.1 TAKE CONTROL OF YOUR MONEY AFFAIRS!

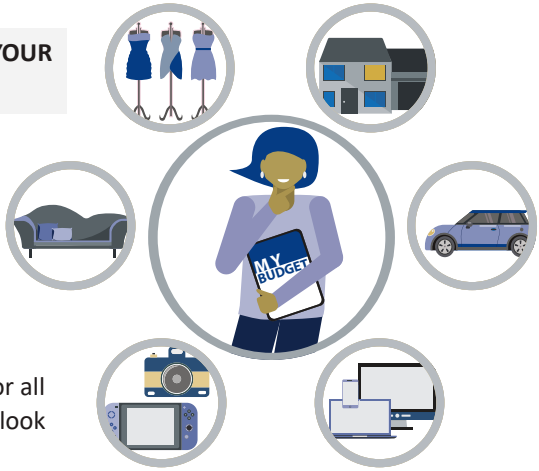
Many people have money problems in one form or another. Income does not keep up with increasing prices, someone in the family may be retrenched, unexpected events occur like illness or hospitalisation, and some of us simply overspend.

At the same time, it is so easy to get credit that we can be at risk of getting into an over indebted trap.
There are different forms of credit:

- Loans from banks
- Micro loans from micro lenders
- Accounts at retail stores, doctors, chemists
- Instalment plan- or credit agreements.

It is acceptable to use credit to help you solve a temporary problem or to buy large purchases and pay for it in monthly instalments – if you can afford the instalments. You cannot, however, carry on borrowing month after month, or take loans that you cannot afford to pay, otherwise your financial situation will just get worse.

YOU MUST TAKE CONTROL OF YOUR MONEY AFFAIRS



How do you take control?

Well firstly, you need to look at WAYS OF SAVING COSTS.

If you still do not have enough money for all your obligations, you may then need to look for OTHER SOURCES OF INCOME.

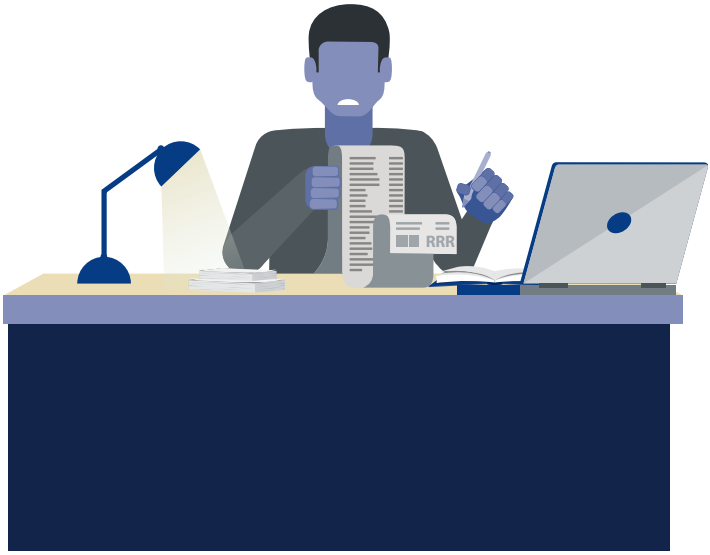
"You must gain control over your money or the lack of it will forever control you"
DAVE RAMSEY

1.2 PERSONAL BUDGETING

Many people are too scared to sit down and prepare their own budget. They are afraid of what it will tell them - like some people are frightened of medical check-ups.

The self-discipline to budget
is the first step towards financial independence.

Budgeting sounds complicated and is often seen as something that only businesses and very rich people do.
However, it's simple and very, very important for all of us.
Without a proper budget, you don't really know what is happening with your money, and your problems will probably get worse. If you don't budget properly you are less likely to be able to save anything.



"Procrastination to purposefully start saving is the beginning of not accomplishing your life's goals."
INA WILKEN

1.3 FIVE SIMPLE STEPS TO PREPARE YOUR OWN BUDGET:



Step 1

Your income

Work out the total net income that comes into your household each month:

"Net Income" means the amount of money that you take home after all deductions from your basic or gross income.

Work out your total net income by adding your salary, and that of your spouse (husband or wife or partner), and any other income you get, perhaps from a part-time job or business you run from home. If a friend or relative stays with you and pays toward household expenses or if your children are staying in your home and have part-time jobs, you must include that under the family income.

Always work on the amount of your income after tax and other deductions.

Only this net amount will be available for you to spend each month.

Exercise 1

Calculate your income

Salary

1	R	
2	R	
3	R	
4	R	
5	R	

Other sources of income

1	R	
2	R	
3	R	
4	R	
5	R	

TOTAL INCOME **R** _____



Step 2

Fixed payments

Each month there are certain payments that you have to make, otherwise serious problems may arise. For example, if you don't pay your rent you may be forced to leave your house; if you don't pay the instalment on your furniture, it could be repossessed or if you don't pay back the money you have borrowed, you could get a judgement against your name. On a second page, make a list of all these fixed monthly expenses – who/what must be paid, and what the monthly instalment is.

Also make a list of all payments that you have to make but not on a monthly basis – *(see pages 5,6 and 7)* like licences on your car or TV, school books, birthday parties, clothes and others. Consider setting aside some money each month - this will help you to start up a savings plan so that you are in a position to meet these expenses as they arise.

Always try to keep these types of expenses to a minimum. If you're having financial problems, do not take on any more commitments until things improve.

Exercise 2

Fixed payments

Rent/Bond	R _____
Rates and taxes	R _____
Insurance: home/car	R _____
Transport fees (taxi/bus/train)	R _____
Hire purchase/lease	R _____
Clothes account	R _____
School fees	R _____
Church	R _____
Loans	R _____
Licenses (TV/car/etc.)	R _____
Other	R _____
TOTAL INCOME	**R** _____

Step 3

Variable payments

Unlike fixed payments where you know exactly how much you need to set aside each month, there are certain payments that you have to make, but where you have some control as to how high or low they are. You have to eat and drink but you don't have to eat expensive meat and drink expensive wine every day.



You may need to make telephone calls, but you can take steps to control the number of calls that you make each month. You may also need water and electricity but you can control how much you use. You may not know exactly how much you spend on these items. If that is the case, keep a detailed record for a month or two until you know exactly what it is that you are spending your hard earned money on.

"Too many people, when they make a mistake, just keep stubbornly ploughing ahead and end up repeating the same mistakes. I believe in the motto, Try and try again.' But the way I read it, it says, try, then stop and think. Then try again.'"
WILLIAM DEAN SINGLETON, co-owner of MediaNews Group Inc

"The greater danger for most of us lies not in setting our aim too high and falling short; but in setting our aim too low, and achieving our mark."
MICHELANGELO

"You must gain control over your money or the lack of it will forever control you"
DAVE RAMSEY

Exercise 3

Variable payments	
Transport	R _____
Groceries	R _____
Meat	R _____
Electricity	R _____
Telephone	R _____
Repairs to home and appliances	R _____
Chemist	R _____
Doctor/Dentist	R _____
Bank charges/Micro lender chargers	R _____
Other	R _____
TOTAL INCOME	**R** _____

Step 4

Discretionary payments

Discretionary payments are for items that you would like to spend money on but you don't have to. Usually, it is in this area that there are the best opportunities for getting out of problems or saving some money. Many smokers, for example, would be amazed if they sat down and calculated just how much money they spend on their smoking habit. We all like to dress nicely, but what is the point of having smart clothes and shoes if we don't have a home to live in.

Exercise 4

Discretionary payments	
Clothes	R _____
Hairdresser/Hair products	R _____
Skin products	R _____
Alcohol	R _____
Cigarettes	R _____
Entertainment	R _____
Holidays	R _____
Birthday parties	R _____
Presents	R _____
Newspapers/books/magazines	R _____
Pets	R _____
Hobbies/Sport	R _____
Church	R _____
Other	R _____
TOTAL DISCRETIONARY PAYMENTS	**R** _____

Step 5

Your personal budget

On page 10 is a document where you can summarise the results of Exercise 1 - 4.

Think about this document very carefully after you have completed it. If your total payments exceed your total income, it tells you that you HAVE TO TAKE ACTION NOW to regain control over your financial affairs.

Options available to you are to :

Reduce the amount you spend

or

Increase your income



PERSONAL BUDGET SHEET

TOTAL INCOME	a	R

FIXED PAYMENTS

Details	Amount
1.	
2.	
3.	
4.	

	b	R

VARIABLE PAYMENTS

Details	Amount
1.	
2.	
3.	
4.	

	C	R

VARIABLE PAYMENTS

Details	Amount
1.	
2.	

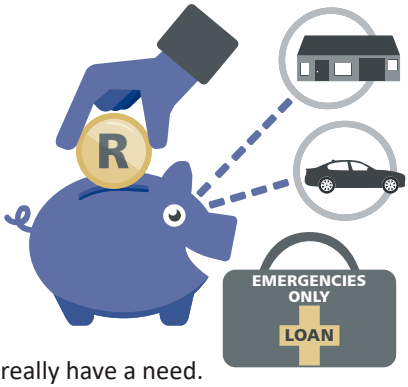
3.	
4.	

	d	**R**
TOTAL PAYMENTS [b] + [c] + [d] =	**e**	**R**
DIFFERENCE [a] - [e] =	**f**	**R**

SECTION 2 - BORROWING WISELY

2.1 BORROWING SHOULD ONLY BE OCCASIONAL

Most South Africans accept borrowing as a necessity. Because of this attitude they keep on borrowing. In America the situation is the same. In 1990 the average American family spent nearly $150 000 on car loans in their lifetime on interest only. Most Americans could retire on what they spend on car loans. It is not necessary to buy a new car every second year. It is important that credit should only be used to get around temporary problems or to buy a large purchase and pay for it in monthly instalments – if you can afford the instalments. If you carry on Borrowing month after month you will not gain financial freedom and independence.



Always remember to live below your means. This means that you should spend less than you earn. If you earn R2 000.00 per month you should spend no more than R1 950.00 **in order to SAVE**.

2.2 BORROWING SHOULD ONLY BE FOR NECESSITY

It is important that we should only borrow when we really have a need.
Do not borrow money to buy items that you don't really need and can do without.

You will be much richer if you save for what you want and buy it when you have the cash – this is because when you buy on credit, you pay interest on the money (which is charged every day on the balance) – so you pay more, and save less!

2.3 BORROWING CAN CREATE UNNECESSARY PRESSURE

Everyone would agree that living with debt is a lot more stressful than living within your budget.

It can be frustrating if you cannot do or buy everything you would like because you do not have the money. Living with the threat of losing your furniture or your home or having no food on the table is much more frustrating and stressful and is the beginning of a constant downhill battle.
This can cause many unnecessary problems in a relationship which will affect your daily lives.

2.4 BE A SMART CONSUMER

Consumer Tips

GET THE MOST FOR YOUR MONEY

BEFORE MAKING A PURCHASE OR BORROWING SOME MONEY:

- Think about what products or services you need.
- Compare brands and prices and shop around. If you borrow money, compare interest rates. Ask your friends for recommendations and look for formal comparison reports. Find out why they are dealing with a company, what they are paying and from that information you can make up your mind where you want to go for a loan.
- Compare stores. Look for a store with a good reputation and plan ahead to take advantage of sales. Find out if the company is reputable.
- Check for any extra charges such as delivery fees, installation and service charges. In the case of micro loans, it is important to check the interest rate and to beware of hidden costs.
- Read warranties/guarantees to understand what you and the manufacturer have to do if you have a problem.
- Read contract terms carefully. Make sure all blank spaces are filled in before you sign it and make sure that you understand the agreement.
- Ask the sales person to explain the store's return or exchange policy.
- Do not assume an item is a bargain just because it is advertised as a bargain.

AFTER YOUR PURCHASE OR MONEY LENDING TRANSACTION:

- Read and follow the instructions on how to use the product or service or when instalments should be paid in terms of your loan agreement.
- Keep copies of advertisements, brochures and manuals given to you when you made the purchase. Inspect the product carefully at delivery.
- Use the product only as recommended by the manufacturer in the instruction booklet/pamphlet.
- Read and understand the warranty/guarantee.
- Keep all contracts, sales receipts, warranties/guarantees, and instructions.
- If trouble develops, report the problem as soon as possible. Trying to fix the products yourself may cancel the warranty/guarantee.
- Keep a file of your efforts to resolve the problem. It should include the names of the individuals you speak to and the date, time and outcome of the conversation.
- Keep copies of all letters you send and the replies you receive. Write down the names of all businesses or people to whom you send copies of your letter.
- State the model number, serial number and brand name of the product.

REMEMBER:

- First contact the seller or service provider if you have a complaint.
- If that does not resolve your problem, contact the company head office. If your problem is still unsolved, refer to the South African National Consumer Union for the relevant organisations that can help you take up your issue with the company, free of charge.
- Taking legal action should be the last resort.

CONTRACTS

- Never sign anything you have not read or do not fully understand. If you don't understand the contract, ask someone in the know to help you.
- Never sign a contract if a lender or retailer will not let you have another person review it first.
- Be sure that all verbal promises are included in the written contract. You will not be able to rely on what the sales person said, if this is not written into the contract.
- Never sign a contract that has blank spaces. Draw lines through the spaces first.
- Be sure to ask for a copy of the contract that you have signed and keep it in a safe place.
- Only take out contracts with organisations that have a good reputation. In the case of micro lenders compare interest rates and make sure the micro lender is registered with the National Credit Regulator. Tel: 0860 627 627 or 0860 NCR NCR.



INSURANCE AND INVESTMENTS

Many consumers are being approached by various insurance brokers regarding funeral policies, pension funds, life insurance and property insurance. Investment managers also offer their services to consumers.

- The Financial Advisory and Intermediary Services (FAIS) Act protects the consumers who buy or invest in financial products.
- The furnishing of advice by a product supplier (for example an insurer), an insurance broker or an investment manager, and the rendering of intermediary services by a financial intermediary, are covered by the above Act.
- Provided they qualify, persons involved in these activities have to be licensed by the Financial Sector Conduct Authority (FSCA) and their market conduct (that means the way in which they must deal with consumers) is regulated by the Act.
- Consumers must in future make sure that they do business only with licensed financial services providers or their representatives.

The Act also provides for an ombud's office (the FAIS Ombud) to handle consumer complaints against financial services providers or their representatives. The Ombud's aim is that complaints must be resolved in a quick and informal manner at no cost to the consumer.



"Success is due to our stretching to the challenges of life. Failure comes when we shrink from them"
John Maxwell

SECTION 3 - REPAYING YOUR DEBTS

3.1 LEGAL CONSEQUENCES OF DEFAULTING ON DEBT OBLIGATIONS

If you have any problems repaying your debts, you should contact your creditor immediately. If you cannot make an alternative payment arrangement with your creditor, they can hand the matter over to a debt collector or lawyer who will take legal action against you to recover the money that you owe.

If this happens

- you may end up paying much more for the debt – in **extra interest** and in **legal charges**
- you will definitely be worse off than before and may have an adverse credit record.

For many consumers the experience of receiving legal letters and documents and visits from sheriffs/bailiffs and debt collectors is frightening and confusing. So below we set out the process that is usually followed when a consumer fails to pay a debt or to make an arrangement with the creditor. We hope this will empower you to understand what your obligations are in this situation and what your rights are if you are not treated fairly. In this section, **the changes to the legal process that became law in June 2007 when the NCA came into effect**, will be discussed. These changes aim to give consumers protection by, for example encouraging them to seek help from a debt counsellor, if they are over indebted.

3.2 FIRST STEPS – PHONE CALLS, LETTERS OF DEMAND, SIGNING DOCUMENTS OR RECEIVING A JUDGEMENT

- If you run into financial trouble the first step is to contact you service provider before they contact you in order to try and make a payment arrangement.
- Some companies will **phone** you when you default – take advantage of this and offer to pay as much as you can. Make sure that you pay what you promise – this will avoid your account being collected via the legal court process.
- You may receive a letter demanding payment or the company will send an agent to your home or workplace to deliver the **letter of demand**. Again take advantage and make a payment arrangement.
- Usually when you receive a visit, you will be **asked to sign** either
    - A Section 57 Acknowledgement of Debt – here you will sign that you know that you owe the money (the amount will be stated), and that you promise to pay monthly instalments in the amount stated. You will also sign that if you default again (do not pay) on any instalment as agreed, the creditor can take the documents you signed to court, have a judgement taken against you, and possibly get an emolument attachment order against your salary (see next page);
      OR
    - A Section 58 Consent to Judgement that you agree that judgement can be taken in court and that a deduction can be effected against your salary.
- The difference between a section 57 and 58 is that with a section 57 you have a second chance – no judgement if you keep to the payment arrangement. With a section 58, you agree to judgement immediately if you default on the payment arrangement.
- The debt collector/lawyer can also after sending you a letter of demand, and instead of sending an agent to visit you, or get you to sign a section 57/58, get the sheriff of the court/bailiff to serve a summons on you - usually at home or work or at the you provided in the contract when you signed the agreement (this is called the *"domicilium"* address).

If you receive a summons:

- You have **five (5) working days** to advise that you want to defend the case.
- If you owe the money, there is no point in defending the case – best response is to **call the attorney** and make an arrangement to pay them monthly instalments. Suggest that they do not take judgement as you will not default again – and keep to this agreement. Also put what you have agreed in writing and send them a copy (keep proof).
- If you do not owe the money, or do not agree with the amount that they say that you owe, you should give notice that you want to **defend the case**. For this, *A Notice of Intention to Defend* is attached to the back of the judgement summons. You will need to complete it, serve it at (take it to) the address provided and then once they have signed the receipt, take the original and a copy signed by the creditor to the Clerk of the Court.
- At this stage you should contact the creditor and try to resolve the matter, or you should get an **attorney** to assist you - a date will be given for the matter to be heard in court. This can be costly and the best solution is always first to negotiate a settlement or an agreement.
- With the new NCA, consumers who have **too much debt** and cannot meet all their payments, are able to go to a **debt counsellor** to help them work out a payment program even before the above legal process is followed – this will mean that as soon as you receive the letter of demand/notice that your account is in arrears, you should immediately approach your creditors or a debt counsellor.

3.3 JUDGEMENTS AND OTHER COURT ORDERS

- If you **sign** a **section 57 and then default**, or sign a **section 58**, or if you **do not respond to a summons**, the court may order judgement against you in a given amount as stated **with interest and costs**.
- The court can <u>also</u>, after judgement is granted, award any of the following orders relating to how the creditor will recover the money from you:
  - **<u>A warrant of execution against your property</u>**
    * A sheriff/bailiff will be sent to your house to list all the goods that you own (e.g. your furniture, kitchen equipment, motor car, etc.). These goods – up to the amount that you owe - will then be sold on auction unless you have the money demanded, and can pay it all. The sheriff/bailiff may not attach your beds, bedding and clothes and you may keep these.

After the items are sold, and the sheriff/bailiff is paid, the balance is forwarded to the creditor. If the sale does not yield enough to cover the debt, and you own your home, your house can also then be sold in execution. If there is a balance after the sale, the creditor can ask the court for an emolument (salary) attachment order as well.

– **An emolument (salary) attachment order**

* This is one of the most common ways that a debt is collected from the consumer after judgement is granted. Here, the court orders your employer to deduct the debt in specified instalments from your salary. It is sometimes incorrectly called a garnishee order. It is also unlawful for your employer to refuse to deduct the money – as the instruction comes from the court.

– **A garnishee order**

* Here the court orders someone (usually your bank) who owes you money to pay the creditor instead of you. So for example, if you had R5 000.00 savings in your bank account, and you owed the creditor R3 000.00, the court would order the bank to pay the R3 000.00 from your bank account to the creditor.

3.4 THE PAINFUL COSTS OF REPAYING YOUR DEBTS IN TERMS OF A JUDGEMENT

From the above, you can see that it is very costly if your account is handed over into the legal collections environment – not only do you have to pay the original debt, but now you may have to pay extra interest (it may take you longer to repay, and interest is charged every day), extra charges to lawyers, to debt collectors, to sheriffs/bailiffs if they are involved in paying money to your creditors.

- Here is an example of the costs and interest charged on a debt where the judgement taken was for R7 200.00 and where the court ordered interest at 15.5% per year: (the judgement debt is paid equally over 18 months)

Capital owing per judgement	R 7,200.00
Interest at 15.5% over 18 months	R 809.21
Legal costs - legal process - commission	R 800.00
Total costs to be paid	R 1,609.21
TOTAL TO BE PAID (including capital)	**R 8,808.21 (R489.40 x 18)**
Some attorneys also charge additional costs for every telephone call and letter on the file and this can also add up to a lot (beware that you are not overcharged by the lawyers - this can happen!)	*Note also that if the interest rate was higher, e.g. 22% or 30%, you would end up paying much more interest and other costs and for a longer time.*

- Also when a warrant of execution is issued, most often the sheriff's/bailiff's auction will result in the goods being sold for much less than they are worth and after the sheriff/bailiff takes his fees, you will probably still end up owing quite a lot of money – and be without your furniture and other items.
- So it is in your interest to **contact the creditor or lawyer** as soon as you receive notice of anything and make arrangements to pay.
- If you cannot do this for yourself, get someone who can help you or contact a debt counsellor or consumer advice office who provides assistance free of charge.

It is important that you look for free advice, *there are many out there who will offer to help, charge a fee and put you in a worse situation than you were before.*
So a small debt ends up being a huge burden.



"Never spend your money before you have it."
THOMAS JEFFERSON

SECTION 4 - CONSUMER RIGHTS AND REMEDIES IN LEGAL DEBT ACTION

There are many stories about consumers who have been badly treated by debt collectors who threaten them if they do not pay, about deductions from salaries which leave a consumer with almost no money to live on, and sheriffs/bailiffs selling goods and the consumer still having to pay most of the debt. We provide you with some general guidelines and tell you what remedies you have in these situations – but at the end of the day, you - the consumer - must stand up and assert your Consumer Rights.

4.1 GENERAL GUIDELINES

- If you owe money, always make some payment, however small and as much as you can, i.e. never pay nothing – the more you pay, the less interest you will pay in the long run.
- Especially do not have the attitude – the balance is wrong so I won't pay anything – if you owe some money you will be charged interest every day until the debt is settled in full.

- Never sign any documents in blank – if you are asked to sign a section 57 or 58, make sure that all the information is filled in – amount due, interest rate to be charged, amount of the monthly instalment, when you must start paying and how.
- Never sign a document that you do not agree with – what you sign is binding and will have consequences for you.
- Make sure that you get a copy of what you sign – this is proof and helps you to know what your obligations are.
- Always complain if you have a problem – and get help if you cannot negotiate yourself.
- Always contact the credit provider and lawyer before you take any legal action (because of the costs) – and always keep a record of who you spoke to, what time and what was discussed. Most important, record what was said in writing and send a letter or email to them (keep proof of this as you may need it in the future to solve the case).

4.2 DEFENCES - PRESCRIPTION AND *IN-DUPLUM*

Consumers have two defences in common law and under the National Credit Act that you can use if you are sued by a creditor for any sum of money. This means that the creditor is entitled to sue you for the money, but you have the right to defend yourself in court and you may be successful if the following applies:

- Generally, if the last time that you had to pay any money on the account is **more than three (3) years ago**, you can defend yourself by arguing that **the claim has prescribed**. If you raise this defence (and it is true), you will not have to pay the debt at all. (This does not apply if summons has already been issued and served on you).
- If the interest, fees and charges on an account are more than the balance due at the time that you first defaulted, you can claim that some interest, fees or charges be written off in terms of the ***in-duplum*** **principle**.

4.3 DEBT COLLECTOR'S RULES

If a debt collector charges for his/her services, they must be registered with the Debt Collectors Council and they are not allowed to:

- Use force or threaten to use force against you or your family/physically threaten you or your family.
- Give, or threaten to give information to your employer that may affect your opportunities as an employee.

- Serve you with any false legal documents.
- Present themselves as police officers, sheriffs or officers of the court.
- Spread, or threaten to spread any false information about your credit worthiness.
- Charge more than the tariff of fees which is set down by the Council.
- So if you are unhappy with the way that a debt collector treats you, or believe that they are charging too much, **complain to the Council for Debt Collectors on Tel: 012 804 9808/8483.**

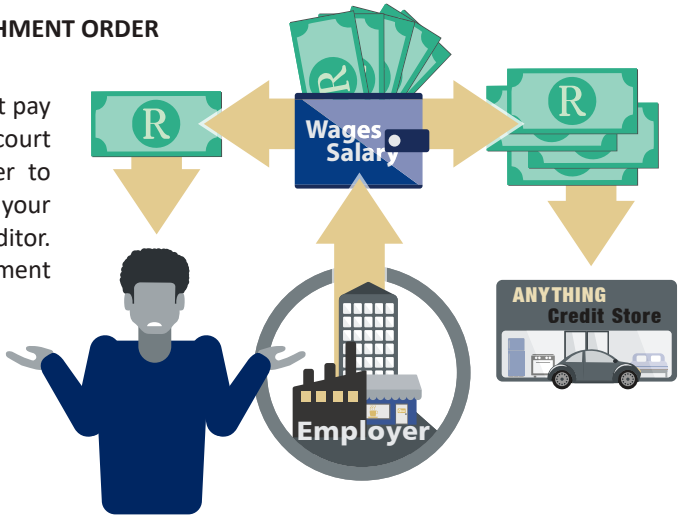
4.4 WHEN AND HOW TO HAVE A JUDGEMENT RESCINDED

If it appears that a judgement was not properly granted you can apply to court to have the judgement rescinded (cancelled). The court will only rescind the judgement if:

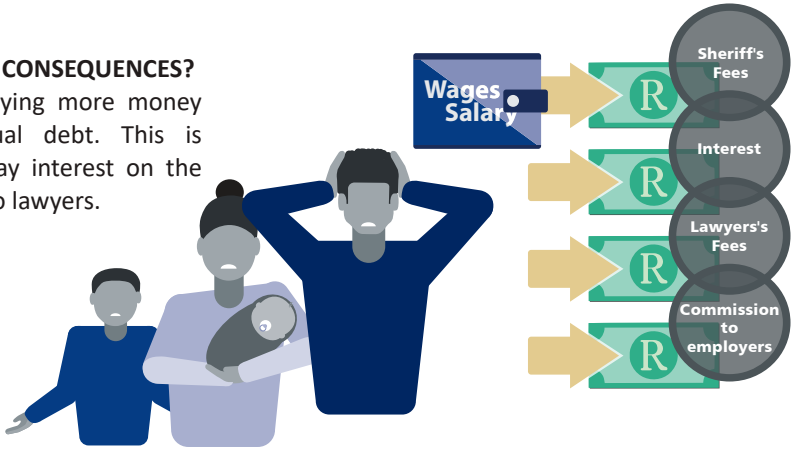
- The judgement was obtained without you being present at court (i.e. the judgement was by default), and
- You apply for the rescission within twenty (20) days after you become aware that the judgement was taken, and
- You want to defend the claim - and can set out in an affidavit why you did not defend the case originally and what your defence against the claim is.

4.5 EMOLUMENT ATTACHMENT ORDER

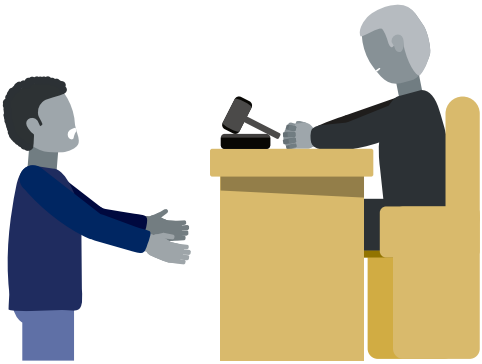
WHAT IS IT? If you do not pay the money you owe, the court can order your employer to deduct money from your salary to pay your creditor. This is called an Emolument Attachment Order.



WHAT ARE THE CONSEQUENCES?
You end up paying more money than the actual debt. This is because you pay interest on the debt and fees to lawyers.



WHAT ARE YOUR RIGHTS?
You may apply to Court to have the emolument attachment order set aside if you feel it was implemented unlawfully or you can have the amount reduced if the instalment you must pay is more than you can afford



The courts also rescind judgements if you can show that you have settled the payments and have a letter from the creditor confirming that your debt is settled and they have no objection to you having the judgement rescinded.

Usually applications are done for you by an attorney. If you want to save on these costs, you can also do it by yourself.

4.6 APPLYING TO COURT TO HAVE AN EMOLUMENT (SALARY) ATTACHMENT ORDER RESCINDED OR CHANGED

Emolument (salary/wages) attachment orders are sometimes obtained unlawfully, e.g. when you have signed an agreement to have this deduction from your salary at the same time as you apply for the loan. The court order can also be unfair if you cannot afford the instalment.

You can then apply to court to have the order set aside/changed. Your application will need to have a covering document called a Notice of Motion where you state what you want, and you will need to submit an affidavit. This will set the details of your case. If you cannot afford the payments, you will state what you can afford to pay each month and you will have to give full details of your income and expenses with proof attached (e.g. account statements, rent receipts, salary advice). The court will then look at your accounts and determine what is reasonable for you to pay.

It is in your interest to pay as much as possible as the less your instalment is, the more interest you will pay.

4.7 APPLYING TO COURT TO STOP THE SALE OF GOODS

If a sheriff/bailiff appears at your home after judgement and attaches your movable property *(see page 16)*, you can apply to court to have the execution suspended.

The court will only order this if you can prove that you can afford to pay reasonable regular instalments and/or agree to an emoluments/salary order being made against you. Again you will need to make these regular payments or the order will be reinstated and your goods will then be sold. If the attachment is unlawful or incorrect, you can also apply to have the order rescinded.

4.8 UNHAPPY WITH ATTORNEYS FEES AND CHARGES? HAVE THE ACCOUNT TAXED

There are many complaints from consumers that attorneys' fees are very high and they do not know how to check what they can charge or how to challenge them

- Creditors can also only claim, what the tariff set down in the Court rules, allows.
- There are two general tariffs for the legal costs – a standard tariff and a higher tariff which only applies if the consumer agrees or the court so orders. When you sign your contract, there will usually be a clause which says that if you default, the matter will be handed over to attorneys and you will have to pay the attorney's fees "on an attorney and client" scale. This allows the creditor to collect for more items but the amount that they can collect is still controlled.
- If you think that you may be overcharged, ask for a full breakdown statement and if you are not happy ask for the bill to be taxed at court (*negotiate* as you pay for this).
- The challenge with doing this is that it is difficult for a consumer to act on his/her own as this requires expert knowledge to challenge if it is not an amount that is clearly wrong.

4.9 UNDER ADMINISTRATION AND NOT GETTING OUT OF DEBT?

One of the major problem areas with debt is the fact that there are many people out there who advertise and offer consumers a remedy to get out of debt, but these remedies in fact mean that you pay for these services and often do not really improve your situation. Many consumers have got burnt by going under administration and paying an administrator an amount each month so that he/she can distribute the money to different creditors. Firstly, the administrators charge for their services and only a part of what you pay them is received by the creditors. At the same time, you continue to pay interest, and the balance on your debts may even go up instead of down because the creditor is receiving less than the interest that is being charged.

You should always ask the administrator for a statement of your distribution account and check with the creditors for statements from them to see what is being paid. If you find yourself in an unhelpful situation when you have relied on one of these for-profit debt intermediators, contact your creditors to see if you can make arrangements and then go to court to have the administration order rescinded – if you need help, find a consumer advice office or not-for-profit debt counsellor to help you.

THE GOLDEN RULE
Speak honestly to your creditors before a problem rises
- most of them will listen to you!

4.10 TOO MUCH DEBT?

GET HELP IN WORKING OUT A REPAYMENT PLAN

The National Credit Act allows consumers who are "**over indebted**" to get help, i.e. if you cannot meet all your credit obligations in good time. This help will mean that you can have a repayment plan worked out which may be made an order at court, and will help to ensure that you can afford to meet your monthly payments.

It will also mean that

- You will have a special listing on the bureau (which will be removed when you have met your obligations).
- **YOU CANNOT TAKE FURTHER CREDIT UNTIL YOU HAVE PAID OFF YOUR DEBTS.** An upfront fee is charged which increases your debt.

This is how the process will work:

If you are over indebted, you can get help with a repayment plan either

- by realising yourself that you need help and **you can decide to approach**
  - one of your creditors who offers to **informally** help you with a repayment plan (make sure that this is a free service);

  OR
  - a debt counsellor or dispute resolution agent or a consumer court, who will **formally** help you with such a plan (some will be for-profit and will charge a prescribed fee, others may be not-for-profit and you may only have to pay a small amount = **so make sure you know what the charges are**);

  OR
- when you **receive a letter from a creditor advising that you are in arrears** with your account, they must now advise that you can seek the help from a debt counsellor if you have any disputes or need a repayment plan. A creditor can only approach the court for judgement if you do not respond or do not file a debt counselling application within ten (10) business days (and more than twenty (20) days after you have defaulted);

  OR
- when your case gets to court and the magistrate reviews your situation, the magistrate before taking judgement, can order that your case must be reviewed by a debt counsellor.

When you meet with the debt counsellor, you will fill in a standard application form which will include details of your income, debt and expenses. The counsellor will then advise all your creditors and they will then not be allowed to start any legal action until more than sixty (60) days have passed (even then the magistrate can allow the debt review process to continue).

The counsellor will then, after analysing all the information, determine:

- if any of your loans/credit were granted **recklessly**

  i.e. if at the time you applied for credit, the creditor failed to properly assess whether you could afford to repay the debt (this assumes that all the information that you gave about your expenses and debt was correct – **if you did not fully give all the information truthfully, the credit will not be seen as reckless**).
- If the loan was granted recklessly, the counsellor will make a recommendation to the court in this regard and the magistrate will make a ruling on repayment of this debt, e.g. reduced interest/suspended payment/setting aside some of the consumer's

- if you are experiencing financial difficulty,
- prepare a repayment plan for you so that you can manage your monthly payments.

If the creditors accept the plan, the debt counsellor may obtain a CONSENT ORDER from the court. If the creditors do not all accept the plan, the debt counsellor will take the proposal to court and the magistrate will then decide whether to accept the proposal or not (your creditors will have the right to appear in court and oppose the proposal should they wish).
You may be expected to make payments to creditors via a debt payment agency – again you must check if there are charges for this.

When you are dealing with people or organisations that help you with debt plans and payment of your debts, always be careful about what they will charge for their services – as this always adds to the debt that you already have. Ask them to give you their charges and costs in writing.

Go for the option that is cheapest (of course they must be competent and know what they are doing) – if a debt counsellor is there to assist you free of charge or at very little cost, this is the best option as they are only interested in helping you, not making money for themselves (look for free advice centres or NGOs that do not operate for profit). Some creditors may offer a free debt repayment service, and this may also be a good option – but check that what they suggest is fair and reasonable. Lastly, if you cannot find either of these two options, look for a counsellor that charges – but be very careful about the fees and monitor that they are doing what they are supposed to do.

For a debt counsellor in your area, or if you have a debt counsellor that you are not happy with and **need to complain**, contact the **National Credit Regulator on Call Centre: 0860 627 627 (0860 NCR NCR)or Switchboard: (011) 554 2700/2600** or **If you wish to lodge a complaint or an enquiry, please send your email to complaints@ncr.org.za**

4.11 REPOSSESSION OF GOODS BOUGHT ON CREDIT

The National Credit Act also provides extra protection for consumers who have purchased certain goods on instalment loan, secured loan or lease and default on paying their instalments.

As of June 2007, you are now able to return the goods to the credit provider within 5 working days after you have given written notice that you are cancelling the agreement. The credit provider must then within 10 working days give you a written estimate of the value of the goods. You can then within 10 working days either keep the goods and continue with the contract or allow the creditor to sell the goods for the best possible price.

Once the goods are sold you will receive written notice with details of the sale and any amount that you may owe if there is a shortfall. This shortfall must be paid or the creditor can obtain a judgement. If you are unhappy about the sale, you should approach the creditor or get the help of a mediator or approach your provincial consumer court.



"Whatever we face, we have a choice: Will we be blocked by obstacles, or will we advance through and over them?"
RYAN HOLIDAY

SECTION 5 - UNDERSTANDING THE CREDIT BUREAUX

A further negative effect of not paying your accounts and the one that most consumers do not like is the fact that this information is recorded on credit bureaux and most consumers then find it difficult to get more credit. Here we describe how bureaux work and what you need to do to keep a good credit record.

5.1 THE PROCESS OF RECORDING CREDIT INFORMATION ON THE BUREAUX

- The new National Credit Act requires all creditors to record the details of all credit granted with one of the major credit bureaux/registers. As these organisations share information, all details about your credit record will appear on the bureaux.
- These details include your name, ID, address and payment profile (whether you are paying the instalments each month or not), any default information as well as judgements, administration orders and sequestrations (bankruptcy).
- All creditors are now required by law to check whether a consumer can afford to take credit/to make sure that a consumer will not get over indebted by the new credit given, so they must look on a bureau to check your record:
  - if your record is positive, you have been paying your debts each month and have money to spare, you are likely to get more credit
  - if you have negative information (either defaults or a judgement or an administration order), a creditor may refuse to give you more credit because of this negative record.

- So most people are recorded on the bureau – **some have positive records and some have negative records**. It is when consumers have negative records that people talk about being "blacklisted".

5.2 CONSUMER CONCERNS

- When you have a default or other negative listing and you pay up the debt, there should be a **"PAID IN FULL" status** noted on the bureau – the listing will only be deleted as shown in the table on page 8 – so do not be fooled by promises to "remove blacklistings", as the above rules must be followed.
- If you are refused credit because of a negative listing by the Credit Bureau, you have the right:
  - to be informed which bureau has listed you and be given their contact details.
  - to request to view your credit record.
- How to get a copy of your credit record
  - The bureaux are meant to protect your privacy (not show your records to others without your permission), keep accurate records (this is the responsibility of the credit providers who give the information to the bureaux) and be open and transparent to you – so you are entitled to get one (1) free copy of your credit record each year or you can buy a copy for R14,99 at www.credit4life.co.za
  - the bureaux will not give information over the phone and you need to show your ID book – this is to protect your privacy. Contact the **TRANS UNION: Tel 0861 482 482 or Experian Bureau: Tel 0861 105 665.**
- Removing negative information from credit bureaux

  Any negative information on your credit record can only be removed:
  - When the information is wrong.
  - When the set time period has expired – this will happen automatically.
  - When a judgement has been reversed in court.
  - If the company that requested the listing instructs the bureau to delete or remove the information because the listing was a mistake.

  When one of the above applies to you, negative information against your name should be removed free of charge.

5.3 WHAT TO DO IF YOU ARE INCORRECTLY LISTED

Firstly, complain to the creditor that listed you and if you have no luck, then to the bureau itself. If they do not assist, refer your complaint to the **Credit Ombud on 0861 662 837**. This ombuds office offers a free service to consumers who have issues with data on the bureaux. So there is no need to pay for a lawyer or a company that offers to help with delisting – unless you need to go to court to have a judgement rescinded.

A lot of people have been blacklisted because they have not followed personal budgeting. If you plan correctly and pay your creditors on time you will build up a good credit record again. Be sure to follow the budgeting principles set out in this book carefully and your financial situation will definitely improve.



SECTION 6 - THE DEBT TRAP AND ADMINISTRATION

The purpose of this communication is to alert the media and the public about the debt trap and the right that consumers have to information about their options, and the costs involved to be placed under administration and the cost of compounded interest.

6.1 WHAT IS THE DEBT TRAP?

Borrowers should be aware of the consequences of over indebtedness and the risks as well as the cost of opting for debt administration. The implications of over indebtedness and abuse of debt administration cannot be overemphasised.

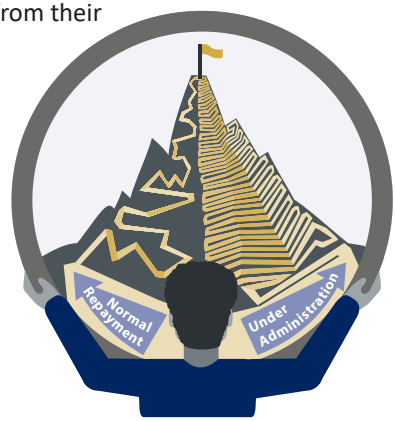
Unfortunately, some unscrupulous individuals regard over indebtedness as a moneymaking opportunity, and lure unsuspecting over indebted consumers with promises of quick solutions to “get rid of their debt”.

6.2 WHAT TO DO SHOULD YOU NOT BE ABLE TO MEET YOUR DEBT OBLIGATIONS?

- Paying cash (or using a debit card) is the cheapest option as no interest is added to the purchase price;
- Consumers can also often negotiate discounts;
- It is easier to “shop around” for the best price.

6.3 WHAT OTHER FINANCIAL MEANS ARE AT A CONSUMER'S DISPOSAL?

Section 74 of the Magistrate's Court Act allows people with no tangible assets and debts of up to R50 000.00 to apply to the courts for an administration order. The order temporarily protects debtors (consumers) from their creditors and enforces a repayment plan that enables borrowers to repay their debts and still have some money for living expenses.



Consumers should be aware that it is a costly alternative because it could cost up to R1 200.00 to obtain the administration order. Administrators then take 12,5% of the monthly payments for their services while the employers take another 5% "management fee" because they must pay the administrator the designated sum every month.

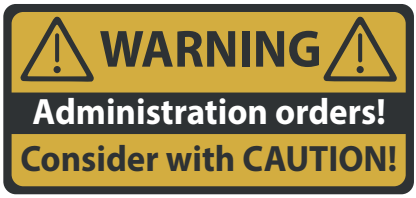
Annual interest rate	Under administration
At 28% annual interest, payment is:	Under administration, payment is:
Amount owed - R13 650.00 (at 28% p/m) Period of payment: 12 months Monthly payment: R1 317.00 Total amount repaid: R15 807.00	Amount owed: R13 650.00 Legal fees for administrative order: R14 850.00 New payment: R450 p/m Less 5% to employer: R22.50 p/m Less 12.5% to administrator: R53.43 p/m Payment to creditors: R375.00 p/m Period of payments: 109 months (over nine years) Total amount to be repaid: R49 050.00

6.4 WHAT DOES BEING PLACED UNDER ADMINISTRATION MEAN?

An administration order is a valuable option to protect and assist consumers to repay their debts orderly and affordably and enable them to re-enter the economy with dignity on discharge.

It places the management of their financial affairs in the hands of debt administrators. The administrator receives your income and, after deducting an amount to cover your living expenses, distributes the rest proportionately among your creditors. The administrator can, in terms of the Magistrate's Court Act, charge a maximum fee of 12,5% of the amount distributed to creditors.

Some administrators do not comply with this provision and charge far more than R1 200.00 to obtain the administration orders and 22,5% or even more for the monthly service fees. Some administrators do not pay over the money to the creditors and this leads to mounting debt that is never settled.



6.5 BEWARE OF ADMINISTRATION ORDERS!

Administration orders do not solve but increase Your debt problems!

- You are automatically black-listed.
- You still have to pay all your debt plus additional high costs of the administrator.
- Your good credit record and credit worthiness are lost forever.
- You will not be able to get credit or open a bank account anywhere.
- You break the law if you apply or make a loan while you are under administration.
- You will have little or no say over your personal income and finances.

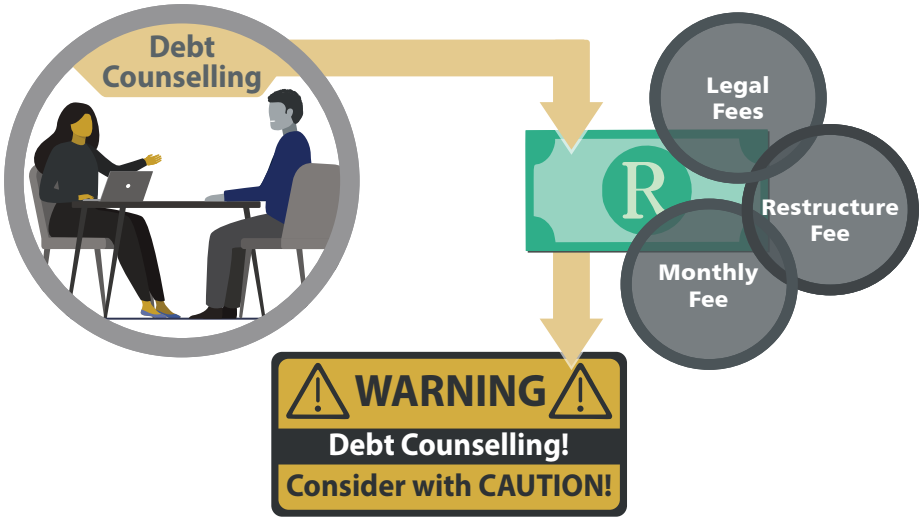
THE RIGHT THING TO DO IS TO TALK TO YOUR LENDER, WHO WILL ADVISE YOU HOW TO OVERCOME YOUR PROBLEMS IN THE BEST POSSIBLE WAY.

6.6 WHAT RIGHTS AND RESPONSIBILITIES DO CONSUMERS HAVE?

- Consumers are encouraged to investigate all alternatives before applying to be placed under administration.
- If you are over indebted, the best option is to speak directly to your creditor/s and be honest with them, making some repayment arrangements directly. This increases creditors' chances of getting their money back, and helps debtors avoid legal action and bad credit bureau records.
- If being placed under administration is the best option for you, ensure that you go to a credible person and that you are charged the legally prescribed rates.

6.7 WHAT ACTION CAN YOU TAKE

Consumers who are over-indebted and those who have been placed under administration order or considering to be placed under administration order, can contact: Debt counselling advisors registered with the NCR.



6.8 WHAT WILL HAPPEN WHEN YOU GO TO A DEBT COUNSELOR?

- Your good credit record and credit worthiness are lost and you will not be able to get credit or open a bank account anywhere until your debt has been repaid.
- You still have to pay all your debt plus additional high costs charged by the debt counselor as well as certain legal fees. Such costs include an application fee up to R50, a restructuring fee up to a maximum of R9 000, as well as a monthly fee charged at 5% of the monthly installment of the debt re-arrangement plan.
- Take control of your own financial affairs and rather talk to your credit providers as they will assist you in making arrangements to repay your debt – free of charge – and stick to the arrangements.



- Additional costs involved which will be subtracted the first month before any debt is paid.
- While under debt review the client may not apply for further credit.
- The client must comply with the instructions provided by the debt counsellor.
- Should the client act outside of these instructions, his debt review may be terminated.
- If a debt review is terminated, all protection provided by the Act will be lost.

6.9 BEWARE OF EXEMPTION CLAUSES IN CONTRACTS

WHAT IS A CONTRACT?

A contract is an agreement between two or more parties. Once the parties sign a contract; it becomes legally binding and enforceable. This means that the parties agree to the terms and conditions in the signed contract. Before signing a contract, a consumer should first read and understand every term and condition in it. In instances were a consumer does not understand a term in a contract, he/she should ask questions, ask for clarity and the contract must be explained in easily understood language.

WHAT ARE EXEMPTION CLAUSES?

An exemption clause is a clause contained in contracts exonerating the other party from any liability should he\she fail to honour the agreement or when the product agreed on does not serve the purpose for which it was acquired.

ARE EXEMPTION CLAUSES ILLEGAL?

Exemption clauses are not illegal; they are part of a legitimate contract. In circumstances were a consumer exempts him/herself and becomes negligent, he/she can be held liable. In circumstances where the service provider is found negligent in a court of law, the exemption clause will not be upheld.

6.10 WHAT ACTIONS CAN YOU TAKE AS A CONSUMER?

As a consumer you need to ensure that you take responsibility to **READ and UNDERSTAND** the terms and conditions of a contract before you sign. Remember that once you have signed, the contract it is legally binding - you have consented to the terms and conditions.

Should you require any additional information or clarification you can contact the Education Division via the customer contact centre on **Tel: 0861 843 384** (ask for the consumer help line)

OR
contact **The DTI**:
Telephone
For general queries, please contact the DTI Customer Contact Centre
National callers: 0861 843 384
International callers: +27(0)12 394 9500

Enquiries Email: contact us@thedti.gov.za

Fax:
National faxes: send to 0861 843 888
International faxes: send to +27 (0)12 394 9501

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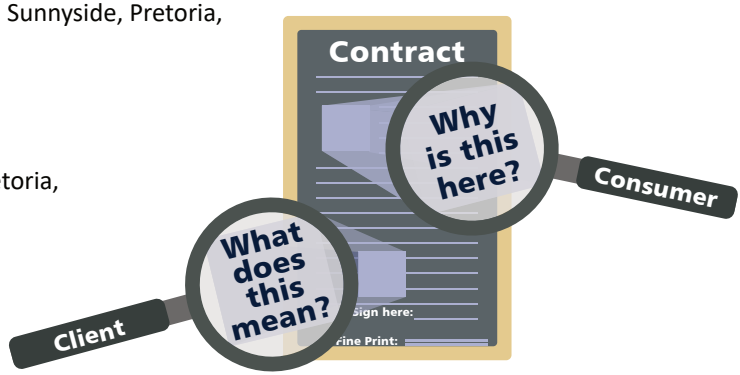
Private Bag X84.Pretoria,
Gauteng, 0001



SECTION 7 - THE CONSUMER'S RIGHT TO REDRESS

The Consumer Protection Act No.68 of 2008 came into force on the 1st April 2011. It provides for the protection of consumers whenever they purchase goods and services.

CONSUMER RIGHTS

Based on most of the United Nations Guidelines for Consumer Protection (1985) as well as the consumer good rights which was prepared by Consumers International and adopted by the United Nations in 1996.

- The right to equality
- The right to privacy
- The right to fair value, good quality and safety
- The right to choose
- The right to be informed (disclosure of information)
- The right to fair and responsible marketing
- The right to fair and honest dealing
- The right to fair, just and reasonable conditions
- The right to redress accountability to consumers

It is the responsibility of individual consumers to make sure that their rights are enforced.



7.1 THE RIGHT TO EQUALITY (TO BE HEARD)

All consumers must be treated equally. You have a right to be heard. When you're not satisfied with a product or service, approach the owner/manager with your complaint.

7.2 THE RIGHT TO PRIVACY

Direct marketing may not take place on Sundays or public holidays or outside the hours of 09:00 - 12:00 on Saturdays, and 08:00 - 18:00 on weekdays. (These hours are set by regulations, and are subject to change) You can opt out of direct marketing by notifying a council registry, which direct marketers are obliged to head.



7.3 THE RIGHT TO FAIR VALUE, GOOD QUALITY AND SAFETY

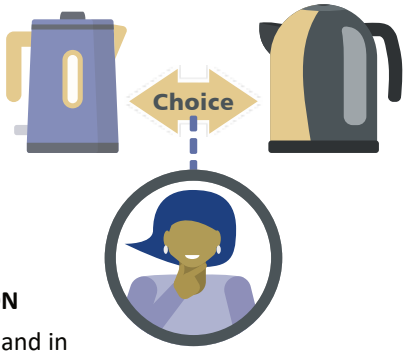
Consumers must be protected against flaws or hidden dangers in products or service that they buy. They also have the right to physical safety. Consumers must be the watchdogs of the community and be on the lookout for potentially dangerous situations.



Consumers must alert the local authorities or the relevant government departments to their problems and to where there are unsafe products.

7.4 THE RIGHT TO CHOOSE

Consumers must insist on a variety of products and goods to choose from based on personal taste, quality or price. Competition in the market place allows you to buy what suits your particular circumstances.



7.5. THE RIGHT TO BE INFORMED (DISCLOSURE OF INFORMATION)

7.5.1 THE RIGHT TO DISCLOSURE AND INFORMATION

Notices, conditions and agreements must be legible and in plain language, without technical or legalistic jargon.

If consumers do not demand redress for inferior products and services, suppliers will not know that there is a problem with the product/service and would not be able to rectify the matter.



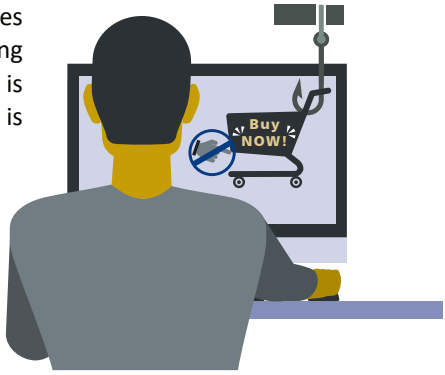
7.5.2 THE RIGHT TO CONSUMER EDUCATION

Consumers have the right to education in consumer affairs. Both the state and private sector have a role to play in this. Many opportunities are available and the on us lies on you, the consumer, to make sure that you are educated.



7.6 THE RIGHT TO FAIR AND RESPONSIBLE MARKETING

Suppliers may not market goods and services in a false or misleading manner. Bait marketing is prohibited (i.e. advertising something that is not available or at a cheaper price than is charged.)



7.7 THE RIGHT TO FAIR AND HONEST DEALING

Suppliers must not lie, conceal, exaggerate, or otherwise mislead you regarding their goods and services.

7.8 The right to fair, just and reasonable conditions

Consumers have the right to a physical environment that will enhance their quality of life such as the right to basic goods and services which guarantee survival. This includes adequate food, clothing, shelter, health care, education and sanitation

7.9 THE RIGHT TO REDRESS

When you are sold an inferior product or service, you have the right to go back to the seller and demand a replacement or a refund. In some instances, this right is protected by law and consumers can take their cases to the courts to exercise their rights to redress.

If consumers do not demand redress for inferior products and services, suppliers will not know that there is a problem with the product/service and would not be able to rectify the matter.

SECTION 8 - CONSUMER PROTECTION



8.1 NATIONAL CREDIT ACT

In 2006 a new law called **The National Credit Act** ("NCA") was passed in parliament. It gives consumers more protection

- when you borrow money,
- buy goods on credit such as furniture, or - get finance for an asset, e.g. a house or car.

It even protects consumers in cash transactions, where these accounts go into arrears.

The National Credit Act that came into effect in June 2007 and the National Credit Amendment Act of 2014, replace the Usury Act and the Credit Agreements Act, giving one framework for all aspects of credit. All credit providers must comply with this law.

8.1.1 A SUPER CREDIT WATCHDOG – THE NATIONAL CREDIT REGULATOR

The whole credit industry is supervised by a body called the National Credit Regulator (NCR). This body has the task to educate consumers and make sure that the credit industry complies with the National Credit Act.



Amongst other functions, it will:

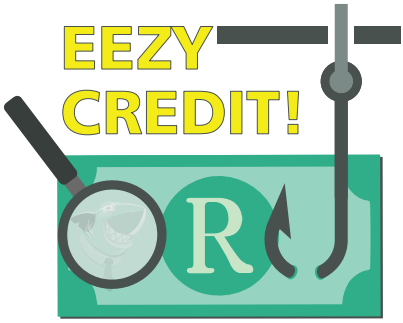
- receive complaints, investigate breaches of the law and conduct audits on credit providers, conduct research, monitor practices and report to the Minister on matters such as market conduct and consumer over-indebtedness
- raise consumer awareness through education and the dissemination of information.

All credit providers, credit bureaus, debt counsellors and all credit agreements will be required to be registered with the NCR.

8.1.2 CONSUMER RIGHTS AROUND CREDIT TRANSACTIONS

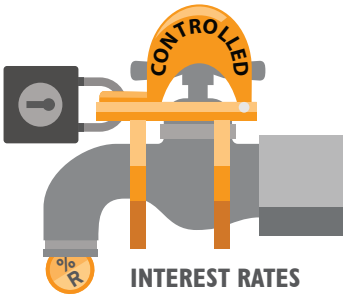
The NCA protects consumers in many ways.

For example:



- Certain practices of agents canvassing for loans will now be unlawful or restricted, e.g. door-to-door selling, canvassing at workplaces and homes without an invitation.
- Marketing practices and advertisements are also more controlled to protect consumers, e.g. credit facility limits may not be automatically increased, and negative option marketing is unlawful (" if you do not decline, we will assume you agree").
- Consumers must be given a quote, valid for five (5) days, with all the details about the loan, so that consumers can shop around and compare prices.

8.1.3 INTEREST RATES AND OTHER CHARGES AND FEES will be controlled based on a formula which is dependent on the SA Reserve Bank Repurchase (Repo) Rate ("RR" below).



- Different categories of credit will have different maximum interest rates and fee caps as follows:

	CATEGORY *The table below sets out the rate per category as per Feb 2021: https://www.lawyer.co.za/faq/Consumer%20Law.html*	**MAXIMUM INTEREST FORMULA**	**EXAMPLE:** *If the Repo Rate is 3.5%**
1	Mortgage agreement	[(RR) + 12%] p.a.	15.5% p.a.
2	Credit cards/facilities	[(RR) + 14%] p.a.	17.5% p.a.
3	Unsecured credit transactions	[(RR) + 21%] p.a.	24.5% p.a.
4	Short-term credit transactions *(loans not more than R8 000.00 and repayable in 6 months or less)*	5% per month (60% p.a.) and 3% per month for a subsequent loan in the same year	
5	Developmental credit agreements	[(RR) + 27%] p.a.	30.5% p.a.
6	Other credit agreements	[(RR) + 17%] p.a.	20.5% p.a.
7	Incidental credit agreements *(e.g. cash transactions that go into arrears, i.e. doctor's bills / clothing accounts, etc.)*	2% per month (27% p.a.)	

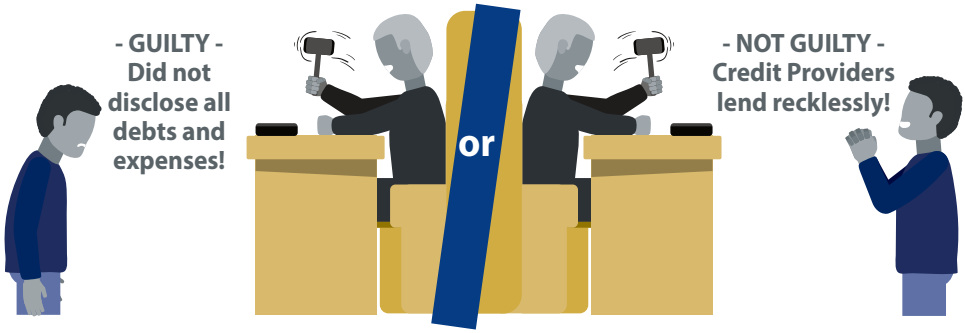
**NB: The Repo Rate as at 22/02/2021 is shown in the table. Consumers need to enquire what the Repo Rate is at the time they apply.*

- In addition to the above interest rates, **other charges** are also allowed (although regulated), e.g. initiation fees, service fees, default fees and collection costs.
- Insurance cover on loans is permitted but the charge must be reasonable and the consumer can use an existing policy as cover instead of taking out special cover for the loan. Interest must be charged monthly (unless it is a large credit agreement, over R250 000.00).
- Contracts signed must be in simple language, available in at least two languages and consumers must receive a copy.
- Consumers are entitled to a reason when credit is refused.

- All credit providers must assess whether a consumer can afford the loan, and all loans will be recorded on a register – this aims to make sure that a consumer will not become over-indebted.

8.1.4 RECKLESS LENDING

Any credit provider that gives credit without considering whether a client can afford the loan or not may be guilty of reckless lending - there will be severe penalties for this and the credit provider may even lose the right to recover the debt.



- **Most important – a consumer will not receive any protection if he/she does not fully disclose all their debts and expenses. In such cases the credit grantor will not be guilty of reckless lending.**

8.1.5 DEBT COUNSELLING



When consumers cannot pay their debts, they will have the right to go to a debt counsellor, who will help the consumers to solve their problem, e.g. restructuring/rearranging their debt repayments. This arrangement may be made an order of the court.

Credit providers must give notice to a consumer when he/she defaults advising them or has been in arrears for 20 business days, that they have the right to consult a debt counsellor. If there is no response to a notice after ten (10) business days or the credit provider does not accept a proposal from the consumer or counsellor, they can then proceed to court for judgement.

Consumers must remember: once they have signed up for debt counselling, they will not be able to apply for credit until their debt has been paid off.

8.1.6 REGISTRATION OF CREDIT PROVIDERS

All credit providers must be registered with the NCR. If a credit provider is not registered with the NCR it cannot institute a claim against a consumer for non-payment.



8.1.7 CREDIT BUREAUX are now more strictly controlled:

- to make sure that information is accurate
- to ensure that information which is incorrect is immediately removed without cost to the consumer once the consumer has lodged a complaint.

The time that a **default listing** will remain on record is also

	CATEGORIES	DESCRIPTION	PERIOD INFORMATION IS RETAINED ON THE BUREAU
1	Enquiries	Enquiries made on a consumer's record	2 years
2	Payment profile	Factual information about the payment record/profile of a consumer	5 years
3	Adverse information	Negative information about a consumer's default on payments	1 year
4	Debt restructuring	An agreement where all debts are restructured	Until a clearance certificate is issued *(when all payments are settled as agreed)*
5	Judgements		The earlier of 5 years or when the judgement is rescinded/the creditor abandons the judgement or when debt is paid-up and a credit provider furnishes the bureau with a paid-up notice
6	Administration orders		The earlier of 10 years or when the order is rescinded by court
7	Sequestrations		The earlier of 10 years or when a rehabilitation order is granted by court

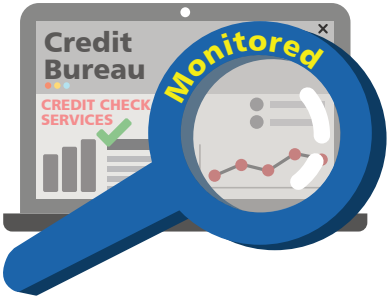
8.1.8 A CONSUMER CREDIT COURT - THE NATIONAL CONSUMER TRIBUNAL

- The regulator as well as consumers will be able to take complaints about breaches of the NCA to a special court called *The Consumer Tribunal*.
- Consumers now have their rights protected as well as having a court to go to if the credit provider does not comply with the law and does not address a consumer's complaint.
- *Remember that there are also many other ombudsmen offices and organisations that consumers can go to, to have their com-plaints addressed (see Contact Numbers in Section 9).*



8.1.9 BEWARE OF NEGATIVE LISTINGS WITH CREDIT BUREAUX

- Always make sure that you are up to date with your credit payments or have made some arrangement with your creditor.
- Businesses subscribe to credit bureaux, which supply them with all credit account information, whether positive or negative, and when you apply for new credit your application may be refused, if your credit record is negative (shows that you have too much existing debt).
- You are allowed to query a credit record report issued by such a bureau - every person is entitled to receive one free copy of their credit record per year but no information will be given to you telephonically. You will be required to supply proof of identity.
- You will have to go to
  TRANS UNION: Tel 0861 482 482
  or Experian Bureau: Tel 0861 105 665.
- A full list of credit bureaus can be found on the NCR website.
- If you want to know how long a listing remains on the credit bureau, e.g. judgements, administration, sequestration, debt re-structuring or negative/ adverse listing, please refer to the table on page 8.



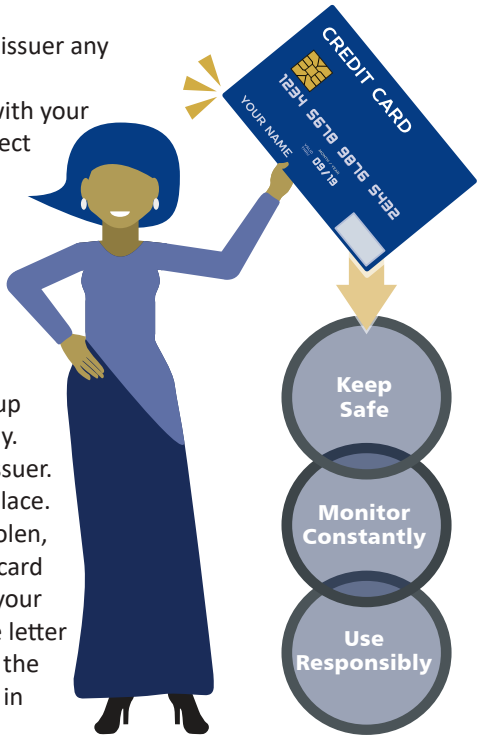
8.1.10 MICRO LENDING

Be sure that you only deal with businesses that display their registration certificate with the NCR in their offices. In the case of micro lenders, compare interest rates and be sure the micro lender is registered with the National Credit Regulator - Switchboard: **011 554 2700 / 2600** or Call Centre: 0860 627 627

8.1.11 CREDIT CARDS

- Keep a list of your credit card numbers, expiry dates and the phone number of each card issuer in a secure place.
- When selecting a card, compare the terms offered by several card issuers to find the card that best suits your needs.
- Watch your card after giving it to a clerk. Take your card back promptly after the clerk has finished with it and make sure it is yours.
- Destroy any incorrect receipts.
- Never sign a blank receipt. Draw a line through any blank spaces above the total when you sign receipts.
- Open credit card bills promptly and compare them with your receipts to check for unauthorised charges and errors.

- Report promptly and in writing to the card issuer any questionable charges.
- Written enquiries should not be included with your payment. Check the statement for the correct address to send any written enquiries. The enquiry must be in writing.
- Never give out your credit card number over the telephone unless you have initiated the call.
- Never put your card number on a postcard or on the outside of an envelope. Sign new cards as soon as they arrive. Cut up expired cards and dispose of them promptly. Cut up and return unwanted cards to the issuer.
- Leave infrequently used cards in a secure place.
- If any of your credit cards are missing or stolen, report the loss as soon as possible to your card issuer. For your own protection, follow up your phone calls with a letter to each issuer. The letter should contain your card number, the date the card went missing, and the date you called in the loss.



- Arrange for credit card misuse and loss insurance with the issuer of the credit card.

8.2 CONSUMER PROTECTION ACT - (The Consumer Protection Act, No. 68 of 2008 was signed on 24 April 2009 and promulgated on 1 April 2011.)

8.2.1 The CONSUMER PROTECTION ACT aims to:

- Promote a fair, accessible and sustainable marketplace for consumer products and services;
- Establish national norms and standards to ensure consumer protection;
- Make provision for improved standards of consumer information, to prohibit certain unfair marketing and business practices;
- Establish national norms and standards relating to consumer protection.
- Promote responsible consumer behaviour;
- Promote a consistent legislative and enforcement framework, related to consumer transactions and agreements; and
- Establish the National Consumer Commission.

Who may lodge consumer complaints?

- An individual;
- An authorized person acting on behalf of another;
- A person acting as a member or in the interest of an affected group or class; or
- A person acting in the public interest.

The Consumer Protection Act applies to the following:

- Every transaction occurring within the Republic of South Africa;
- Promotion or supply of any goods and services occurring within the Republic; and
- Goods or services that are supplied or performed in the Republic in terms of transactions mentioned in the Act.

The Act is not applicable in respect of:

Credit agreements that are subject to the National Credit Act – these are governed by the National Credit Act. However, any goods and services provided in terms of such agreements fall within the scope of the Consumer Protection Act. If, for example, there is a defect in the quality of the goods or the service is not of the required standard, the relevant provisions of the Consumer Protection Act apply. But if the problem lies with the terms or form of the agreement itself, then the relevant provisions of National Credit Act apply;

- Goods or services promoted or supplied to the State;
- Industry-wide exemption being granted to regulatory authorities;
- Services under employment contracts;
- Agreements giving effect to collective bargaining agreements; and Provide for improved standards of consumer information.
- Agreements giving effect to bargaining agreements (Section 213 of the Labour Relations Act). Prohibit certain unfair marketing and business.

Who is the 'Consumer'?

Consumers are persons to whom goods or services are marketed, who have entered into transactions with suppliers, users of particular goods or recipients/beneficiaries of services.



"It had long since come to my attention that people of accomplishment rarely sat back and let things happen to them. They went out and happened to things."
LEONARDO DA VINCI

8.2.2 What are Consumer Rights?

Consumer Rights are acknowledged worldwide and are as follows:

1. The right to consumer education
   Consumers must be able to access the knowledge and skills needed to make informed and confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them.
2. The right to disclosure and information
   Consumers must be provided with the facts needed to make informed choices and ensure their protection against dishonest or misleading advertising and labelling.
3. The right to choice
   Consumers should be able to choose from a range of products and services, offered at competitive prices, with the assurance of satisfactory quality.
4. The right to representation
   Consumer interests should be represented in the making and execution of government policy, and development of products and services.
5. The right to redress
   Consumers must receive a fair settlement of just claims, including compensation for misrepresentation, or shabby goods or services.
6. The right to safety
   From a trade and industry perspective, consumers should be protected against production processes, and products and services that are dangerous to health or life.
7. The right to a healthy environment
   Consumers should be able to live and work in an environment that is not threatening to the well-being of present and future generations.
8. The right to access of basic needs and services
   Consumers should have access to basic goods and services, such as adequate food, clothing, housing, health care, education, clean water and sanitation.

8.2.3 Where to Complain:

The Consumer Protection Act aims to promote consumer activism, by making provision for the accreditation of consumer groups tasked with lodging complaints on behalf of consumers, as well as making available support for activities, such as consumer advice, education, publications, research and alternative dispute resolution through mediation or conciliation.

As such, the Act gives rise to the establishment of the *National Consumer Commission*, a body assigned to investigate consumer complaints, as well as the *National Consumer Tribunal*, the latter of which was created by the National Credit Act in September 2006, and is responsible for the adjudication of violations and transgressions of the National Credit Act and the Consumer Protection Act.

8.2.4 Consumer Help Lines

- The DTI Customer Contact Centre: 0861 843 384
- The DTI Office of Consumer Protection (OCP): 012 394 1436/1558/1076
- DTI email: contactus@thedti.gov.za
- The DTI website: www.thedti.gov.za
  National Consumer Tribunal (NCT): **012 683 8140 / 012 742 9900**
- NCT email: Registry@thenct.org.za
- NCT website: www.thenct.org.za
- National Consumer Commission (NCC): 012 428 7000
- NCC website: **www.thencc.gov.za**



"Procrastination is the fear of success. People procrastinate because they are afraid of the success that they know will result if they move ahead now. Because success is heavy, carries responsibility with it, it is much easier to procrastinate and live on the "someday I'll" philosophy."
WAITLEY QUOTES

"Nothing in this world can take the place of persistence. Talent will not; nothing is more common than unsuccessful people with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent."
RAY KROC - Founder of McDonalds.

SECTION 9 - CONTACT NUMBERS

BANKING OMBUD
34 Fricker Road, Illovo, Johannesburg
Tel: 011 712 1800
OBS Call Centre : 0860 800 900
Email: info@obssa.co.za

OMBUD FOR LONG-TERM INSURANCE, SOUTH AFRICA
Private Bag X45, Claremont, Cape Town, 7735
Tel: 021 657 5000 or 0860 103 236
Share call: 0860 662 837
Email: info@ombud.co.za
www.ombud.co.za

OMBUD FOR SHORT-TERM INSURANCE, SOUTH AFRICA
Sunnyside Office Park, 5th floor, Building D,
32 Princess of Wales Terrace, Parktown
Tel: 011 726 8900
Share call: 0860 726 890
Email:info@osti.co.za www.osti.co.za

FAIS OMBUD
Kasteel Park Office Park, Orange Building, 2nd Floor, 546 Jochemus Street, Erasmus Kloof, Pretoria, 0048
Tel: 012 762 5000
Share call: 086 066 32 47
Email: info@faisombud.co.za
www.faisombud.co.za

MOTOR INDUSTRY OMBUD
Meiring Naude Rd, Scientia 627-Jr, Pretoria, 0184 Tel: 086 11 64672 / 010 590 8378
Email: info@miosa.co.za

OFFICE OF THE PUBLIC PROTECTOR
Private Bag X677, Pretoria, 0001
Tel: 012 366 7143
Toll Free: 0800 11 20 40 (Complaints)
Email: customerservice@pprotect.org

CREDIT OMBUD
PO Box 805, Pinegowrie, 2123
Call Centre: 0861 OMBUDS (0861 662 837)
Email: ombud@creditombud.org.za
www.creditombud.org.za

NATIONAL CREDIT REGULATOR (NCR)
PO Box 209, Halfway House, 1685
Call Centre: 0860 627 627 (0860 NCR NCR)
Switchboard: 011 554 2700 / 2600
Email:complaints@ncr.org.za www.ncr.org.za

NATIONAL CONSUMER TRIBUNAL (NCT)
Private Bag X110, Centurion, 0046
Tel: 012 683 8140 /012 742 9900
Email: registry@thenct.org.za
www.thenct.org.za

NATIONAL CONSUMER COMMISSION (NCC)
Tel: 012 428 7000
Email: complaints@thencc.gov.za
www.thencc.org.za

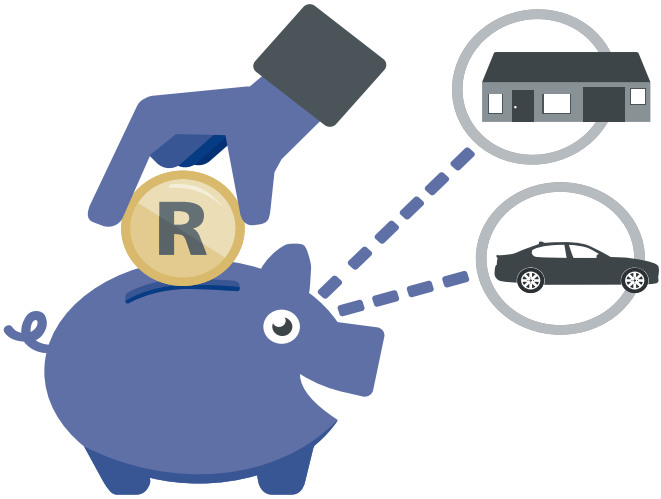
CONSUMER GOODS AND SERVICES OMBUD

SECTION 10 - STEPS TOWARDS FINANCIAL FREEDOM

SECTION 10.1 - LESSONS FROM MILLIONAIRES

In a comprehensive study done in the USA among American millionaires it was discovered that these people had the following in common:

1. They live below their means
2. They spend time, energy and money efficiently.
3. They strongly believe that financial independence is important.
4. Their parents did not support them after leaving home.
5. Their adult children are self-sufficient.
6. They are good at seeing opportunities.
7. They chose the right occupation.



"There are those of us who are always about to live. We are waiting until things change, until there is more time, until we are less tired, until we get promotion, until we settle down…..until, until, until. It always seems as if there is some major event that must occur in our lives before we begin living."
SHEEHAN QUOTES

It's not how much money you make, but how much money you keep, how hard it works for you, and how many generations you keep it for."
ROBERT KIYOSAKI

SECTION 10.2 - WHAT YOU CAN DO TO ENSURE FINANCIAL FREEDOM

1. Set financial goals and quantify them.
2. Clean debt a.s.a.p.
3. First save and then spend.
4. Savings will work for you by choosing worthy options.
5. Start small and systematically.
6. Remember to review your portfolio regularly.

NOTES

ABOUT THE AUTHOR: INA WILKEN



Ina Wilken
B.Comm(Honors)
Business Economics (UNISA)
MSc (Consumer Science) (UP)
Non-Executive Director

Ina Wilken is currently a Consumer Consultant and non-executive director of *Finbond Group Ltd*. For years now she's been acting as a "consumer activist" and talks on behalf of the man on the street by serving consumers on a number of committees and boards. Her years' involvement at the previous *SA Consumer Council* gave her the opportunity to give valuable input on behalf of consumers. Ina is and have been involved with several bodies and companies, to mention but a few:

- Finbond Group Limited (also trading as Finbond Mutual Bank) (Executive Director)
- Oil and Protein Seeds Development Trust (Vice-Chairperson) Consumer Consultant
- Pretoria Chamber of Commerce and Industry (Vice-president) Chairperson
- SA Banking Ombudsman (Director: Vice-Chairperson)
- SA Pharmaceutical Council (Board member)
- SABS Consumer Sector Board (Chairperson)
- Debt Collectors Council (Vice-Chairperson)
- Estate Agency Affairs Board (Chairperson)
- Agricultural Research Council (Member)
- Dried Fruit Technical Services (Trustee)
- Lethimvula Investment Ltd (Director)
- Netpartner Investments (Director)
- Pretorium Trust (Director)

- SA National Consumer Union (Chairperson, 3 terms; Vice-chairperson, 3 terms)
- SA Consumer Council (Assistant Director/Deputy Director/Director)
- Oil Seeds Advisory Board (Executive member: Vice-Chairperson)
- Financial Services Board: Consumer Advisory Panel (Member)
- South African Micro Lenders Association (Director)
- Finbond Property Finance Ltd (Executive director)
- Agricultural Agents Produce Council (Member)*
- SABS Standards Committee (Chairperson)
- Dairy Standard Agency Board (Director)
- Ambassadors Club 100 (Chairperson)*
- SA Cotton Board (Director)*

*Current

Ina was and is still very involved with consumers during the last 33 years, by addressing as a speaker, many forums, study groups, audiences and international conferences on consumerism and how to spend their money more effectively. She is committed to the upliftment of consumers in all walks of life and dedicates many hours to this noble cause. She has been awarded *Individual Consumer Champion* in 2005 by the Department of Trade and Industry.

Consumers have rights, but they must always remember they have a huge responsibility to see to it that their rights are adhered to and to act responsibly in order to further the voice of consumers.

supreme finance

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