



D.I.Y.

Credit Repair toolkit

How to fix your credit record and improve your creditworthiness



Your complete credit bureau clearance guide



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record and improve
your creditworthiness



Your complete credit
bureau clearance guide

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D.I.Y. Credit Repair Toolkit

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About the South African Law Centre

The South African Law Centre, a non-profit organisation, was founded by well-known consumer law activists and Attorneys of the High Court of South Africa, Nicky Campbell and Stephen Logan. Its aim is to foster legal education and development by cultivating a society that has easy access to a better understanding of the laws that govern it. In advancement of its goals, the South African Law Centre has hosted seminars on various legal topics, such seminars having been presented throughout South Africa to industry and legal professionals (www.salawcentre.org.za).

About the main Author – Nicky Campbell

Nicky is often featured in the media and speaks regularly about credit legislation and consumer matters at seminars and workshops. Having obtained her BA.LLB degree *summa cum laude* from Rhodes University, Nicky went on to complete her Master's degree at the University of Cambridge. Today, Nicky runs a niche law practice focusing on consumer issues and corporate compliance and is seen as one of the leading consumer law experts in South Africa.

Nicky authored "*A Guide to the Consumer Protection Act for Attorneys*" for the Law Society of South Africa and is currently assisting its Legal Education and Development division with the development of a compliance matrix for attorneys. She has also assisted Lexis Nexis with the update of its Butterworths Forms and Precedents and contributed to the Law Society's Guide on the National Credit Act. Her titles include "*A Guide to the National Credit Act*" (Lexis Nexis), "*The Credit Guide: Managing Your Money with the National Credit Act*" (Juta) and she is currently commissioned to write "*The Consumer Protection Guide*" (Juta).

About the contributing Author – Stephanie Genia Boyce

Stephanie is an attorney with just over thirty-four years of experience in civil, criminal and consumer law. Having worked as a lecturer at UNISA, Stephanie went on to complete her articles at Edward Nathan Friedland Mansell and Lewis, now Edward Nathan Sonnenbergs. Today, Stephanie works as a freelance practising attorney of the High Court of South Africa and also assists the University of Johannesburg's Law Clinic on a pro bono basis with litigation work. She read for her Bachelor of Arts and Baccalaureus Procuracionis degrees and went on to complete her LLB degree at UNISA. Stephanie is fluent in English, Afrikaans, French, German and Latin.

The South African Law Centre wants to make the laws that govern us more transparent and accessible to the man on the street. The result of this desire is the launch of a new initiative in the form of a “DIY Law Series”™ that gives the man on the street the “tools” and the “kits” he or she needs when dealing with specific legal issues.

About the DIY Credit Repair Toolkit

The first in the DIY Law Series™ is the DIY Credit Repair Toolkit™ that recognises that there is no reason why you cannot simply fix your own credit record and that doing this would not cost you anything but your time. Free credit repair is an option people should be encouraged to take as enlisting the services of a lawyer is not always essential.

The DIY Credit Repair Toolkit™ will allow you to successfully repair your own credit record as it provides you with clear and simple guidelines on how to fix it. There are no tricks to repairing your credit record – only knowledge of the process and how it works.

Features of the DIY Credit Repair Toolkit include:

- ✂ Accounts you have to pay and those accounts you do not have to pay
- ✂ How to deal with debt collectors and debt harassment
- ✂ Obtaining your credit record
- ✂ Interpreting and understanding your credit record
- ✂ How to correct incorrect information on your credit record
- ✂ How to remove or remedy negative adverse listings, also known as default listings, from your credit record
- ✂ How to rescind a magistrate court judgment and remove it from your credit record
- ✂ The instances when an administration order can be set aside
- ✂ What you need to know if you have a High Court judgment listed on your credit record
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- ✂ What to do when you have fallen behind on payments for your home or motor vehicle
- ✂ What you need to know when standing surety for someone
- ✂ Why has your credit application been declined?
- ✂ Cancelling your credit agreement before it expires
- ✂ How to deal with the sheriff of the court

Although every possible attempt has been made to ensure that all documentation contained herein is legally binding and in accordance with the South African legal statutes and regulations, the South African Law Centre will not be held responsible for any loss by any party, for any reason, arising from the use of any information contained herein. It is important that users of any of our toolkits keep in mind that, although our toolkits are designed to provide practical insight into legal issues, the law in itself is fluid and dynamic. The circumstances to which it is applied will invariably vary from case to case and such variation may result in the user having to obtain further legal assistance. Users of any of our toolkits are welcome to directly contact the South African Law Centre for further guidance and assistance.

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YOUR DIY CREDIT REPAIR TOOLKIT™

1. WHAT IS MY RIGHT TO APPLY FOR CREDIT?

You have the right to apply for credit. This right is given to every adult person, juristic person and association of persons. *(Section 60 of the National Credit Act)*

2. WHY HAS MY CREDIT APPLICATION BEEN DECLINED?

Your credit application can be declined on reasonable commercial grounds that are consistent with the credit provider's customary risk management and underwriting practice.

(Section 60(2) of the National Credit Act)

This might be, for instance, if you cannot afford the credit that you have applied for. Your credit application can also be declined due to negative information contained in your credit record. Such negative information is colloquially referred to as "blacklistings". There is no "black list", only negative information contained in your credit record.



CAUTION Check your credit records for any negative information that may be affecting your right to apply for credit.

3. AM I ENTITLED TO REASONS IF MY CREDIT APPLICATION HAS BEEN DECLINED?

You have the right to request the reasons that your credit application has been declined. The credit provider must let you know the dominant reason that your credit application has been declined. *(Section 62 of the National Credit Act)*

You also have the right to request reasons in the following instances:

- ✦ You are given a lower credit limit than you applied for;
- ✦ Your credit limit under an existing credit facility is reduced;
- ✦ Your credit card or any other renewable credit facility that you have expires and the subsequent renewal of your credit card or credit facility is declined;
- ✦ You are refused an increase in your credit limit for an existing credit facility that you have;
- ✦ The interest rate charged on your credit facility is higher than you expected to pay.

(Section 62(1)(a) – (d) of the National Credit Act)



CAUTION Your “right to reasons” does not oblige the credit provider to give you copies of your credit records. You need merely be advised that your credit application has been declined due to negative listings contained in your credit records. Further, the credit provider is not automatically obliged to give you reasons as to why your credit application has been declined – you must specifically request such reasons from the credit provider!

4. WHAT IF I DO NOT HAVE A CREDIT SCORE?

If you have never made use of credit, you will not have a credit score. Before the National Credit Act became law, you could be denied credit merely on the basis that you do not have a credit score and therefore do not have a track record of being a responsible borrower. Today, a credit bureau is not allowed to draw a negative inference about, or to issue a negative assessment of, your creditworthiness on the basis that the credit bureau does not have any consumer credit information about you. *(Section 70(2)(h) of the National Credit Act)*

5. WHAT IS A CREDIT RECORD?

A credit record is sometimes called a credit profile. Your credit record or profile represents your credit history. When printed, it can be called your credit report. Credit records contain personal information about you, any accounts you may have and how well you pay your accounts.



CAUTION Credit providers take your credit record into account when processing any credit application you may make

6. HOW DO I GET MY CREDIT RECORD?

You have the right to obtain a copy of your credit record from each registered credit bureau once a year at no cost or charge. *(Section 72(1)(b)(aa) of the National Credit Act)*

To get your credit records you must contact the credit bureaux who may require a copy of your ID book, passport or driver’s licence. You may also be required to fill out a form giving the credit bureau permission to release the information to you.



Credit Bureau Contact Details

Transunion ITC

Tel: 0861 88 64 66
Email: queries@transunion.co.za
Disputes can be emailed to
legal@transunion.co.za
Website: www.mytransunion.co.za

XDS

Tel: 0860 937 000
Fax: (011) 484-6588
Disputes can be emailed to
disputes@xds.co.za
Website: www.onlinexds.co.za

Experian

Tel: 0861 105 665
Fax: (011) 707-6700
Email: consumer@experian.co.za
Website: www.experian.co.za

Compuscan

Tel: 0861 51 41 31
Fax: (021) 413-2424
Email: info@compuscan.co.za
Website: www.compuscan.co.za

7. WHICH CREDIT BUREAU SHOULD I CONTACT?

It is advisable that you get your credit records from at least two or three credit bureaux, as the information contained in your credit records could differ amongst the different credit bureaux.

8. MAY I BE CHARGED FOR MY CREDIT RECORD?

Companies can act as agents. With your permission, they may directly obtain your credit records from credit bureaux on your behalf. These companies may charge for this service. Many consumers use such companies for the sake of convenience.

9. WHAT IS CONTAINED IN MY CREDIT RECORD?

Your credit record may contain any of the following information:

- ✦ Your identity number
- ✦ Your full names
- ✦ Your contact details
- ✦ Past and current addresses
- ✦ The number of children that you have
- ✦ Your marital status
- ✦ Your educational qualifications
- ✦ Your employment, professional or business history
- ✦ How well or how badly you pay your accounts
- ✦ Any current or previous credit agreements that you have or have had
- ✦ Whether you are under debt counselling

- ✦ Any credit applications that you have made
- ✦ Whether any of your creditors have taken enforcement against you
- ✦ Your past and current income
- ✦ Your assets, debts and any other matters relating to your financial means, prospects and obligations.

10. WHAT INFORMATION CANNOT BE RECORDED ON MY CREDIT RECORD?

The following information may not be reflected on your credit record:

- ✦ Race
- ✦ Medical history or status
- ✦ Religion or thought, belief or opinion
- ✦ Political affiliation
- ✦ Sexual orientation, except to the extent that such information is self-evident from the record of your marital status and list of family members
- ✦ Membership of a trade union, except to the extent that such information is evident from the record of your employment information

(Regulation 18(3) of the National Credit Act)

11. CAN A CREDIT PROVIDER ACCESS MY CREDIT RECORD WITHOUT MY PERMISSION OR INSIST THAT I OBTAIN A CREDIT RECORD?

A credit provider must obtain your permission before accessing your credit records. Credit bureaus may only report or release your consumer confidential information (which includes your credit record) to you or to any other person that you have given permission to receive it. Without your permission, a credit bureau may only report or release your credit record as directed by an order of a court or the National Consumer Tribunal or to the extent permitted or required by other national legislation or provincial legislation.

(Section 68(1)(b) of the National Credit Act)

Further, a credit provider may not require or insist that you obtain or request your credit report from a credit bureau when processing your credit application or making a financial assessment.

(Section 72(2) of the National Credit Act read with Regulation 18)

12. WHAT IS MY RIGHT TO DISPUTE INCORRECT INFORMATION ON MY CREDIT RECORD?

You have the right to dispute incorrect or unknown information that is contained in your credit record. *(Section 72 of the National Credit Act)*



CAUTION At first glance, you may think that some information is incorrect as you have settled the account and yet the listing still reflects what appears to be an outstanding or default amount on the account! An account may remain listed on your credit record even once the account is settled and the listing may continue to reflect the original default amount. For instance, where the listed account reflects as being a judgment listing, the fact that you settle the account in full does not result in the removal of the listing from your credit record. Even the judgment credit provider cannot request or demand that the credit bureaux remove the listing from your credit record. Similarly, an account listed as being a “bad debt that has been written off” does not necessarily mean that you do not have to pay the debt and that the listing should not remain on your credit record for the prescribed listing period!

Some Examples of Valid Disputes

- ✦ You did not receive any written notification prior to the listing of a default on your credit record (such notice must be given to you at least twenty business days prior to the listing being placed on your credit record).
- ✦ The account listed on your credit record has prescribed.
- ✦ You have settled an account listed as a default on your credit record and the respective listing has not been updated to reflect that the account is settled.
- ✦ Your payment profile or account history has not been updated in the last sixty days.
- ✦ Your credit record shows that an enquiry has been conducted on your credit record and you did not give your consent to such an enquiry.

13. HOW DO I DISPUTE INCORRECT INFORMATION ON MY CREDIT RECORD?

The dispute process is as follows:

1. Submit details of your dispute to the credit bureau concerned. It is advisable that you contact the credit bureau initially to establish what their respective dispute process is as the administrative process differs slightly amongst the credit bureaux.
2. The credit bureaux may require a certified copy of your ID document and a copy of any Financial Intelligence Centre Act (FICA) documentation.
3. The credit bureaux have twenty business days to look into your dispute and this is done at no charge or cost to you.

(Regulation 20(2) of the National Credit Act)

4. During the investigation period, the information you have disputed is flagged on your credit record, meaning that, should you apply for credit during this period, credit providers will be able to see that there is a dispute on your credit record, but they will not be able to view the disputed information.
5. If, after the twenty-business-day period has lapsed, the credit bureau has not found any credible evidence in support of retaining the challenged information on your credit record, the challenged information must be removed from your credit record.
6. If credible evidence in support of retaining the challenged information on your credit record exists, you must be given a copy of such evidence.
7. If credible evidence in support of retaining the challenged information exists, then the challenged information will be reinstated on your credit record.

14. WHAT IF I AM DISSATISFIED WITH THE OUTCOME OF A DISPUTE?

Where you are not happy with the outcome of a credit bureau's investigation into your dispute, you can refer the matter to the National Credit Regulator for investigation.

(Section 72(4) of the National Credit Act)



Referring your Complaint to the National Credit Regulator

To lodge an ordinary complaint about a credit provider or a credit bureau, send details of your complaint via email to complaints@ncr.org.za.

Debt counselling complaints can be emailed to dccomplaints@ncr.org.za.

It is advisable to detail any complaint you make to the NCR in the prescribed form, namely Form 29 included in our templates.

For complaints or commendations about poor or good service delivery by NCR personnel you can email service@ncr.org.za

Call centre –

0860 NCR NCR (0860 627 627) or (011) 554-2600

PHYSICAL ADDRESS:

127 – 15th Road
Randjespark
Midrand



Template – Referral to National Credit Regulator (Form 29) **Page 42**

You can also refer your dispute to the Credit Information Ombudsman for further investigation. The Credit Information Ombudsman assists consumers and businesses that are negatively affected by credit information, including people who feel that they are incorrectly or unfairly “blacklisted”. The Credit Information Ombudsman can negotiate a settlement or make a ruling and their decision is binding on the credit provider and the credit bureaux.



Referring your Complaint to the Credit Information Ombudsman

Send your complaint:
via post:
Postnet Suite 444
Private Bag 1
Jukskei Park
2153

Physical Address:
Fernridge Office Park
5 Hunter Street
Ferndale
Randburg

Email – ombud@creditombud.org.za
Call centre – 0861 OMBUDS (0861 662837)



CAUTION Should the credit provider, credit bureau or National Credit Regulator be of the opinion that your challenge of any particular information is frivolous, unfounded or unreasonable, an application may be made to the National Consumer Tribunal to limit your right to challenge information held by any credit bureau. Such an application is likely to be made where you have a history or pattern of challenging information that is subsequently found to be correct and credible. *(Section 72(6) of the National Credit Act)*

15. ARE THERE LISTINGS THAT CAN AFFECT MY CREDIT APPLICATION?

The following types of listings can result in your credit application being declined:

- ✦ Negative payment profile information
- ✦ Judgments – Magistrate Court or High Court judgments
- ✦ Trace Alert or collection listings
- ✦ Default, also known as adverse, listings
- ✦ Notice listings such as an administration order or a sequestration order or a notice of rehabilitation or a debt counselling/debt review notice
- ✦ Collection information
- ✦ Enquiry History



CAUTION Check your credit record to see whether any of the above listings reflect against you. Remember, it is the type of listing that will determine the course of action you must take to remedy the negative listing.

16. WHAT IS NEGATIVE PAYMENT PROFILE INFORMATION?

Any payments that you miss on any of your accounts will be negatively reflected on your credit record. Credit data is not restricted to negative data. Accounts that you pay on time will reflect positively on your credit record. This positive and negative payment history is called payment profile information and is also often referred to as Credit Providers' Association (CPA) data.

17. WHAT ARE DEFAULT LISTINGS OR ADVERSE LISTINGS?

Credit providers may submit negative credit data, known as adverse or default information, concerning your consumer behaviour to the credit bureaux. This negative credit information would be recorded on your credit record as an “adverse” or “default” listing.

Different Types of Adverse Information

- ✦ A subjective remark on your credit record. For example, information such as “not contactable”, “absconded”, “slow paying”, “delinquent” or “default”.
- ✦ An enforcement classification if the listing relates to collection action taken by a credit provider. For example, information such as “handed over for collection or recovery” or “written off”, or “legal action taken by a credit provider”.

(Regulation 19(4) of the National Credit Act)

18. WHAT ARE MAGISTRATE COURT JUDGMENT LISTINGS?

When you are in default with your payment obligations to a credit provider, the credit provider may have a summons issued. If you do not respond to the summons, the credit provider is likely to request the court to issue a judgment against you. The judgment, being an order of court, can then be used to force you to make payment to the credit provider.

19. WHAT IF I WAS NOT AWARE THAT JUDGMENT WAS TAKEN AGAINST ME?

A creditor can take judgment against you even if you do not physically attend court on the day the judgment is granted.

If you do not understand why judgment has been taken against you, and the credit provider is not able to give you credible evidence in support of the judgment, you may contact the clerk of the court concerned to request copies from the court file. You will need to know the name of the court in which the judgment was granted as well as the case number



CAUTION Credit providers can only seek judgment within three years from the date when you defaulted on the account, unless you admit liability or make payment, thereby giving them another three years in which to seek judgment from the date of admission of liability. The limitation on how long creditors can wait before seeking judgment is set out in the Prescription Act 68 of 1969 and is commonly referred to as the “defence of prescription”. Credit providers often take judgment against consumers to ensure that the defence of prescription is not later raised by the consumer as a judgment is valid and legally enforceable for thirty years. The thirty year period is calculated from the date on which the judgment was made an order of court.

20. WHAT ARE NOTICE LISTINGS?

A notice listing can either relate to an administration order or a sequestration order or a notice of rehabilitation.

An administration order granted against you will reflect on your credit record and negatively influence any credit applications that you make. Similarly, if your estate has been previously sequestrated, a notice of sequestration will reflect on your credit record and this too will have a negative impact on your right to apply for credit. The fact that you may have been rehabilitated after being sequestrated is also noted on your credit record.



CAUTION In practice, credit providers may negatively view your credit application even in light of the notice of rehabilitation being recorded on your credit record.

21. WHAT ARE TRACE ALERT LISTINGS?

A trace alert listing may be placed on your credit record by a credit provider who has asked to be notified when any updated contact information is added to your credit record because the credit provider has not been able to contact you due to out-dated contact information that they have on record for you.

22. WHAT IS AN ADMINISTRATION ORDER LISTING?

You may apply to court to be placed under administration if your debts are less than R50 000 (*Section 74 of the Magistrates' Court Act 32 of 1944*). An administrator will then be appointed to collect from you an affordable amount of money at regular intervals and such amounts will be distributed to the various creditors encompassed in your administration order.

23. WHAT IS A SEQUESTRATION NOTICE?

You or any of your creditors can apply to court for your estate (that is, everything you own and owe) to be sequestrated. For your estate to be sequestrated, the court must be satisfied that sequestration of your estate will be to the benefit of your creditors and that the sequestration will result in your creditors being paid at least ten cents of every Rand owed.

The effect of sequestration is that your estate is declared insolvent and your creditors must accept payment of whatever your assets fetch in settlement of your debts.



CAUTION Whilst under sequestration, your legal capacity is affected and you require the permission of your court-appointed trustee in order to enter into most transactions.

24. WHAT IS A REHABILITATION NOTICE?

In certain instances, if your estate has been sequestrated, you can apply to court to be rehabilitated. If the rehabilitation application is granted, a notice of rehabilitation will reflect on your credit record.



CAUTION It is advisable that you enlist the services of a lawyer if you intend to make an application to court to be rehabilitated.

25. WHAT IS COLLECTION INFORMATION?

The fact that any of your accounts may have been handed over to debt recovery agents for collection may be recorded on your credit record. This information may include additional information such as “did the consumer pay”, “have they absconded”, and so on.

26. HOW DOES MY ENQUIRY HISTORY BUILD?

Every time you apply for credit you give consent to the credit provider to view your credit record. This is shown as an “enquiry” on your credit record.



CAUTION A large number of credit applications by the same person in a short space of time could mean that the person is applying for credit that he or she cannot afford, or that the person is trying to commit fraud. A large number of enquiries on your credit record can therefore negatively impact on any credit applications.

27. WHAT IS A DEBT COUNSELLING NOTIFICATION?

If you are under debt review or debt counselling, this will be recorded on your credit record. This debt counselling notation will negatively affect any credit application you may want to make.



CAUTION Whilst under debt counselling you are, in fact, not allowed to enter into any new credit agreements.

28. HOW LONG DOES NEGATIVE INFORMATION REMAIN ON MY CREDIT RECORD?

Should you decide that you do not want to process the removal of any negative listings from your credit record, you can merely wait for the listings to be automatically removed from your credit record. After the passage of a minimum period of time negative listings will be automatically removed from your credit record, even in instances where you have not settled the accounts.

In other words, every negative listing on your credit record remains on your credit record for a limited period. This limited period is known as the data retention period and is calculated from the date on which the relevant order was given or the date on which the event occurred.

(Regulation 17(1) of the National Credit Act)



CAUTION As the data retention period varies depending on the type of listing in question, you should first check when the data retention period for any negative listing on your credit record is due to expire. You may not need to proceed with any credit repair where the listing is due to fall off shortly. Keep in mind that it takes approximately two to three months to rescind a judgment and process the removal of the respective listing from your credit record.

DATA RETENTION PERIODS FOR LISTINGS ON YOUR CREDIT RECORD

TYPE OF LISTING	MAXIMUM PERIOD
ADVERSE LISTING – subjective classifications. E.g. “delinquent”, “default”, “slow payee”, “absconded” or “not contactable”	1 year
ADVERSE LISTING – enforcement action classifications. E.g. “handed over for collection or recovery”, “legal action” or “write off”	2 years
DEBT RESTRUCTURING	Until a clearance certificate is issued
JUDGMENTS	5 years, or earlier if the judgment is rescinded or, in some cases, abandoned
ADMINISTRATION ORDERS	Maximum of 10 years, or earlier if rescinded by a court
SEQUESTRATIONS	Maximum of 10 years, or earlier if a rehabilitation order is granted
LIQUIDATIONS (only applies to corporations and companies)	Unlimited period
REHABILITATION ORDER	5 years
ENQUIRIES	2 years
PAYMENT PROFILE	5 years
DETAILS AND RESULTS OF DISPUTES LODGED	18 months
ANY OTHER INFORMATION	2 years



CAUTION Most adverse or default information listings are of an enforcement nature and remain on one’s credit record for a two-year period.

29. WHAT SHOULD I KNOW BEFORE I SETTLE ACCOUNTS THAT ARE LISTED ON MY CREDIT RECORD?

Where you do not dispute any information on your credit record and you want to repair your credit record by remedying any negative listing on it, the first step is to consider whether you are legally obliged to pay the account.

29.1

Accounts that you are not legally obliged to pay

You are not legally obliged to pay an account that has prescribed. An account is said to have prescribed if the credit provider has not taken judgment against you and you have not signed any acknowledgement of debt pertaining to the account in question. In addition, you must not have tendered any payment in the last three years towards the account. If all of the aforementioned criteria are met, then the account is deemed to have prescribed in law and, as such, you are not legally obliged to repay the account.



CAUTION We strongly advise that you always scrutinise any debt you are called upon to pay to see whether you are in fact legally obliged to repay the debt. Generally, if a creditor does not start civil proceedings to recover a debt within three years from the date of your last payment, you may have a complete defence against the claim. This complete defence is known as the defence of prescription and it is important to remember that the courts will not enforce a debt that is deemed to have prescribed in terms of the Prescription Act 68 of 1969. If you sign an acknowledgement of debt relating to the debt in question, or you tender any payment towards the debt, then you will not be able to rely upon the defence of prescription as you will be deemed to have interrupted prescription and thus will be liable to repay the debt.

If someone demands payment from you in respect of a debt that is older than three years, you must demand to see either proof of judgment, or evidence that you signed an acknowledgement of debt in the last three years.

If the above does not apply, and you are in fact legally obliged to pay the account, then you must consider whether you are in fact financially able to pay the account.

29.2

Obtaining the current outstanding amount

To obtain the current outstanding balance in respect of any account, you should contact the credit provider or the credit provider's attorneys of record. Such details may often be included in your credit record or, if not, you can try and obtain the contact details from the credit bureaux.



CAUTION Remember that the balance listed as outstanding on your credit record is not necessarily the current outstanding balance. The current outstanding balance is likely to be more if you have not made any payments towards the account since the date of listing. Included in the current outstanding balance will be interest, legal fees and charges.

29.3 ***Your right to obtain a statement detailing the settlement amount***

A credit provider must deliver, without charge to the consumer, a statement of the amount required to settle a credit agreement. The credit provider is obliged to deliver the statement to you within five business days and the statement may be delivered orally or in person, or by telephone, or in writing, either to the consumer in person or by SMS, mail, fax or email or other form of electronic communication. *(Section 113 of the National Credit Act)*



CAUTION The settlement amount detailed in the statement you receive is valid and binding for a period of five business' days after the delivery of the statement to you. Further, a statement in respect of a credit facility is not binding to the extent of any credit to that account, or charge made to the account after the date on which the statement was prepared.

29.4 ***What to do when you dispute details on a statement of account***

You have the right to dispute all or part of any credit or debit detailed in the statement of account that you receive. *(Section 111 of the National Credit Act)*

To dispute any debit or credit in the statement, you must deliver a written notice of your dispute to the credit provider. The credit provider must then give you a written notice explaining the disputed entry in reasonable detail or confirm that the statement was in error either in whole or part and set out the revised entry.



CAUTION A credit provider may not begin enforcement proceedings on the basis of a default arising from the disputed entry until the credit provider has processed your notice of dispute and explained the disputed debit or credit in the statement given to you.

29.5 ***I am struggling to obtain a statement of account***

If a statement is not delivered to you within five business' days, you may apply to the National Consumer Tribunal for an order compelling the credit provider to provide the statement of account. The National Consumer Tribunal may also determine the amounts in relation to which the statement was sought and may make any appropriate order to correct the statement that gave rise to the dispute. *(Sections 114 and 115 of the National Credit Act)*



National Consumer Tribunal

National Consumer Tribunal
Tel: (012) 683-8140
Fax: (012) 663-5693
Email: Registry@thenct.org.za
Website: www.thenct.org.za

When you intend settling any account, it may be worth your while to look into whether the creditor will accept a reduced settlement amount as a final settlement of the account. Many creditors will accept a reduced amount as they at least receive a percentage of what you owe them.

When negotiating a reduced settlement amount, you must inform the creditor that you are having trouble paying the full outstanding amount that the creditor now claims, but that you are willing and able to pay a “lump sum” amount, provided they accept the amount as final settlement of the account. Further, you should advise the creditor that you do not have any other resources at your disposal and that the “lump sum” amount is all that you can afford.

Should the credit provider accept the reduced settlement amount, you should immediately ask for confirmation of their acceptance in writing. Without an agreement in writing, you may find that paying over the “lump sum” amount does not result in closure of the account, but that you have, in fact, still to pay the remaining balance in the future. For instance, if judgment has been taken in respect of an account that you settle, you will still have to make a rescission application to have the judgment listing removed from your credit record before the data retention period for that listing expires. In such an instance, the credit provider may refuse to consent to the rescission of the judgment where the account has been settled by way of a compromised or reduced settlement amount and may require that you pay the difference between the settlement amount you paid and the full amount that was outstanding at the time of your settlement of the account in question!



CAUTION When settling an account in respect of which a judgment has been granted, you must obtain the credit provider’s undertaking that they will consent to the rescission of the judgment upon your paying a reduced settlement amount. Certain credit providers have a policy whereby they do not consent to the rescission of a judgment where the judgment relates to an account that has been settled by way of a reduced settlement amount.

The *in duplum* rule is entrenched in our common law and provides that interest stops running when the unpaid interest equals the outstanding capital. Section 103(5) of the National Credit Act takes the *in duplum* rule further in that it specifies that not only does interest stop running when the unpaid interest equals the outstanding capital, but that initiation fees, service fees, credit insurance, default administration charges and collection costs, as well as interest, should not exceed the unpaid balance of the principal debt under the credit agreement as at the time that the default occurs.



CAUTION Before you settle any account, check to see whether the *in duplum* rule as entrenched in the National Credit Act has not been violated. In a nutshell, once you are in default with an account, you never have to pay back more than double the unpaid capital borrowed, even if interest and other charges have been added to the unpaid capital amount.

30. CAN I GET A DEFAULT LISTING REMOVED?

You can demand the removal of a default listing from your credit records in the following instances:

30.1 *You did not receive written notification from the creditor*

A credit provider that intends to submit details of your default on any account to the credit bureaux must give you at least twenty business days' written notification of their intention to do so. *(Section 72(1) read with Regulation 19 of the National Credit Act)*

In turn, you have the right to request a copy of such information upon receiving the credit provider's written notification. If you did not receive any written notification prior to the listing being placed on your credit record, you can lodge a dispute with the credit bureau, calling upon the credit bureaux to remove the default or adverse listing from your credit record.



Template – Dispute Letter to send to the credit bureaux
Page 45

30.2 *The default listing relates to an account that has prescribed*

Where a creditor has not taken judgment against you in respect of an account that you have not paid in the last three years and you have not signed any acknowledgement of debt pertaining to the account, then the account is deemed to have prescribed. A prescribed account is legally unenforceable and, as such, you are not legally obliged to pay the account. (See paragraph 29.1 that deals with accounts that you are not legally obliged to pay).

In terms of Regulation 19(5) of the National Credit Act, prescribed information may not be submitted to a credit bureau and must therefore not reflect on your credit record.

For example, if you opened an account with Edgars on 1 April 2000, and last made payment on the account on 1 November 2005, the debt would have prescribed or lapsed on 1 November 2008, meaning that any time after 1 November 2008, you can raise the defence of prescription as a means by which you can refuse to pay the debt.



Template – Dispute Letter to send to the credit bureaux
Page 47

31. HOW DO I UPDATE A DEFAULT LISTING OR ADVERSE LISTING?

If you settle an account that is listed as a default on your credit record and the listing cannot be removed prior to the expiry of the data retention period (as per paragraph 30.1), you can nevertheless insist that the credit provider who has placed this listing on your credit record updates the listing to reflect that you have paid the account.



CAUTION Having the listing updated to reflect that the account has been paid improves your creditworthiness to a certain extent, but is not a guarantee that the default listing will not be taken into account by future potential credit providers and negatively affect any credit applications that you make.

32. HOW DO I REMOVE A MAGISTRATE COURT JUDGMENT LISTING?

Prior to the expiry of the maximum data retention period for a judgment listing, a judgment listing can only be removed from a credit record if a rescission application is made to the very same court that granted the judgment. The court will rescind the judgment, provided that the credit provider who took the judgment against you consents to the rescission of the judgment.



CAUTION You can also rescind a magistrate court judgment on the basis that the judgment was erroneously sought by the credit provider against you or that the court granted the judgment in error. You would have to set out grounds to establish either of the aforementioned by way of an affidavit in which you fully set out the grounds. In this instance, it may be advisable for you to consult a lawyer who can then evaluate the unique circumstances of your case.

Basic Information you need to know before you put your rescission application together

32.1

Where do I submit my rescission application?

Once you have settled the judgment debt and obtained the required court documentation detailed herein, you must submit your rescission application to the court that initially granted the judgment against you.

32.2

How do I find out the name of the court that granted the judgment against me?

This information is contained in your credit report under “judgment” information.



CAUTION If you are uncertain as to the name of the court, or perhaps the name of the court or the case number differs in the credit records you have obtained, you can obtain confirmation of the name of the court and/or case number from the judgment creditor or their attorneys. Alternatively, you may contact the Clerks of the courts concerned and give them your case number and ask to confirm the details.



**Contact South African Law Centre for
the Magistrate Court Contact Details**

PHONE: +27 (0) 11 367-0695

FAX: (011) 467-3708

WEBSITE www.salawcentre.org.za

PHYSICAL ADDRESS: Prism Office Park,
Building 1, Ruby Close, Fourways

POSTAL ADDRESS: Postnet Suite 459,
Private Bag X1, Melrose Arch, 2076,
South Africa

32.3

How do I find out the case number under which the judgment was granted?

Once again, this information is contained in your credit report. You can also obtain this information from the judgment creditor or their attorneys.

32.4

Who is the Applicant/Defendant?

The person who intends to apply to court to have the judgment rescinded is the applicant/defendant and is typically the person against whom the judgment was granted. In other words, where you are rescinding a judgment that has been taken against you, the applicant/defendant is you!

32.5

Who is the Respondent/Plaintiff?

The credit provider who took the judgment against you is the respondent/plaintiff in your rescission application. The credit provider may sign the consent to rescind the judgment as the respondent/plaintiff. Alternatively, the credit provider's attorneys of record may sign the consent as representatives of the respondent/plaintiff.



CAUTION Where the consent is signed by the credit provider's attorney of record, you must ensure that the attorney of record states clearly in the consent that he or she is still the credit provider's attorney of record and that he or she has the mandate and authority to sign the consent on behalf of the credit provider.

32.6

Who is the Respondent/Plaintiff when I am rescinding a body corporate judgment?

Any trustee of the body corporate can be the respondent/plaintiff in your rescission application, meaning that you can request one of the trustees of the body corporate concerned to sign the consent notice. Alternatively, you can request the attorneys that represent the body corporate to sign the consent on behalf of the respondent.



CAUTION In some instances, the court may require documentation confirming that the person who signs the consent as a trustee is in fact a trustee of the body corporate concerned. It may therefore be advisable for you to obtain the consent from the attorneys of record, that is, the actual attorneys that acted for the body corporate.

32.7

Who is the Respondent when I am rescinding a judgment taken by a company?

A managing director or company secretary, provided that they stipulate in the affidavit that they are duly authorised to sign the consent and have knowledge of the matter, may sign the consent to the rescission of the judgment. Alternatively, the consent to the rescission of the judgment can also be signed by the company's attorney of record.

32.8

What happens if the court file containing details of my judgment listing is missing?

Where the court file is missing, the clerk of the court may then request you to open a duplicate court file in order for your rescission application to be heard. To open a duplicate court file, you may need to lodge an affidavit in support of opening a duplicate court file with the clerk of the court. Speak to the clerk of the court concerned and establish what the requirements are to open a duplicate court file in that particular court.



CAUTION The clerk of the court may require that you give the court a copy of the summons that the credit provider previously issued against you, as well as a copy of the sheriff's return of service, the latter confirming that the summons was served on you. The aforementioned documentation may be obtained from the credit bureaux as they often store this documentation. Alternatively, you may be able to get the documentation from the credit provider's attorney of record.

33. HOW DO I PUT MY RESCISSION APPLICATION TOGETHER?

A rescission application consists of the following essential documentation:

- ✂ Notice of Motion and service page if required
- ✂ Applicant's founding affidavit
- ✂ A consent notice or consent affidavit
- ✂ Draft court order

33.1

Notice of Motion

This should be seen as being the "covering letter" of the application in that it forms the first page of the application. The notice of motion contains information such as when the application will be heard in court, as well as what the application is about. It is signed either by you or by your attorneys, should you decide to utilise the services of an attorney to attend court on your behalf.

If service has been waived in the respondent/plaintiff's consent, then you need not deliver a copy of your rescission application to the respondent/plaintiff and need merely to submit your rescission application to the clerk of the court. If service has not been waived in the respondent/plaintiff's consent, then you must deliver a copy of your rescission application to the respondent/plaintiff.



Template – Notice of Motion
Page 51



CAUTION Where service has not been waived, please contact South African Law Centre for the appropriate Notice of Motion and further guidance and assistance.

33.2

Founding Affidavit

The applicant/defendant is the person who signs the founding affidavit. The founding affidavit contains provisions that confirm that the applicant/defendant has settled the respondent/plaintiff's claim and that the respondent/plaintiff consents to the rescission of the judgment.



Template – Applicant's Founding Affidavit
Page 52

33.3

What if my judgment was taken against me and another person

Where the judgment has been taken against you and another party, and you would like to have the judgment rescinded for all parties, then it is necessary for the other parties to complete a confirmatory affidavit. The judgment is then rescinded against the other party in the same rescission application that you submit to the court.



CAUTION Any additional party to the rescission application must then sign a confirmatory affidavit confirming, in a nutshell, the contents of your affidavit. Any additional party would be referred to as the "second applicant/defendant."



Template – Confirmatory Affidavit
Page 54

33.4

Consent Notice

This notice is often referred to as a "Section 36(2) notice" and is signed by the respondent/plaintiff, or the respondent/plaintiff's attorneys of record.



CAUTION Some courts require the original consent notice, whereas other courts merely require a copy of the consent notice. It is advisable that you present original documentation to the court as far as possible.



Template – Respondent/Plaintiff’s Consent Notice (Letter)
Page 56

Some courts may not accept the consent in letter format and may require that the respondent/plaintiff consents to the rescission of the judgment by signing a consent notice in affidavit format. For instance, the Johannesburg Magistrate Court’s practice is to require that the consent notice be in affidavit format.



CAUTION A failure to provide consent in the court’s required format may result in your rescission application being dismissed and this can delay the rescission process.



Template – Respondent/Plaintiff’s Consent Notice (Affidavit)
Page 58

33.5

Draft Court Order

The next document you must prepare is the draft court order. This court order is referred to as a “draft” as it is only issued by the court once the judgment is rescinded. A draft court order is issued when it is signed by the Magistrate who rescinds the judgment or when the draft court order is signed by the clerk of the court concerned.



Template – Draft Court Order
Page 60



CAUTION It is important to take a copy of the draft court order with you on the day you attend court to have the judgment rescinded as it is this court order that you will send to the credit bureaux in order for the judgment listing to be removed from your credit records.

33.6

How do I commission my documentation?

A commissioner of oaths is entitled to administer an oath and is the person before whom the applicant/defendant must sign the founding affidavit.

33.7

How does the service and filing of my rescission application work?

Once you have all the required documentation together, you must check whether the respondent/plaintiff’s consent notice contains a waiver of service. Where service is waived, you do not need to serve the rescission application on the respondent/plaintiff. In other words, you do not have to “serve the application” on the respondent/plaintiff and merely need to submit your rescission application to the clerk of the court. Submitting your rescission application to the clerk of the court is known as “filing your application” at court.

Your judgment will be rescinded on the date that the clerk of the court allocates to your application. This date is given to you when you file your application at court.

You must physically appear in court on the date that the clerk of the court allocates to the hearing of your rescission application.

You must ensure that you are appropriately dressed to appear in court. A magistrate may refuse to hear your rescission application if you are not dressed appropriately. Appropriate dress code for men is “jacket and tie” and women must also be dressed conservatively and neatly.



CAUTION It is advisable that you have proof of your identification in your possession on the day you appear in court as the court may refuse to hear your rescission application without proof of your identification.

You must send the issued court order to the credit bureaux, thereby advising the credit bureaux of the fact that the judgment has been rescinded. The credit bureaux then have twenty business days (calculated from when they receive the court order) to process the removal of the judgment listing from your credit record.



Template – Rescission of Magistrate Court Judgment Checklist
Page 61



CAUTION It is advisable that you send the rescission court order to at least ITC, Experian and XDS so that the listing can be removed from your credit data held by the respective credit bureau. Never assume that the listing only reflects on one particular credit record obtained from one credit bureau as it often happens that the judgment listing is reflected on your credit records held by various other credit bureaux.

34. HOW DO I REMOVE A HIGH COURT JUDGMENT LISTING?

A High Court judgment can only be rescinded in limited circumstances. It is important that you keep this in mind when you intend to remove a High Court judgment listing from your credit record. You may contact South African Law Centre for further guidance and assistance in determining the merits of your case.



CAUTION A Magistrate Court judgment can be rescinded where the applicant/defendant obtains the respondent/plaintiff's consent. In the High Court, the fact that the respondent/plaintiff consents to the rescission of the judgment is not the basis upon which the High Court will rescind the judgment.

Some examples of instances when a High Court judgment can be rescinded:

34.1 ***You have a bona fide defence to the judgment creditor's claim and you have good reasons as to why you defaulted***

If you have a *bona fide* defence to the respondent/plaintiff's claim and have good reasons as to why you defaulted with payments to the respondent/plaintiff, then you may have sufficient grounds to rescind the judgment.



CAUTION A failure to set out a *bona fide* defence to the actual claim of the judgment creditor may result in the High Court dismissing your rescission application. For instance, in *Lazarus v Nedcor Bank* and *Lazarus v ABSA Bank* 1999(2)SA782 (W) the High Court dismissed the applicants rescission applications albeit that the applicants had the respective consent letters from the judgment creditors.

34.2 ***The judgment was sought or granted in error***

A High Court judgment can be rescinded where it can be established that the judgment was sought or granted in error. For instance, you had reached a payment arrangement concerning the repayment of the account with the respondent/plaintiff or their attorneys' of record prior to the judgment being granted against you and you did, in fact, subsequently perform in terms of such a payment arrangement. The payment arrangement or agreement detailing the payment arrangement need not have been in writing as a verbal agreement can also be relied upon.

34.3 ***Special circumstances existed prior to the judgment being taken against you and the judgment creditor was aware of such circumstances***

When you fell into arrears with the account in respect of which the judgment has been granted, you may have contacted the respondent/plaintiff, or their attorneys of record, to explain any special circumstances in your case. If the respondent/plaintiff undertook or led you to believe that legal proceedings would be halted and that no judgment would be granted against you due to your special circumstances, then you may have grounds to rescind the judgment. For example, your High Court judgment may relate to property you previously owned and that was subsequently sold and such sale came to the attention of the respondent/plaintiff prior to the actual date on which the judgment was granted. If this was in fact the case, then it is arguable that the respondent/plaintiff should not have proceeded to take judgment against you.



CAUTION The above list is not exhaustive and you are strongly advised to contact South African Law Centre for further guidance and direction as to the prospects of your High Court judgment being successfully rescinded and subsequently removed from your credit record.

35. HOW DO I REMOVE A DEBT COUNSELLING NOTIFICATION?

You must request your debt counsellor to give you a clearance certificate. This clearance certificate must then be sent to the credit bureau so that the fact that you are under debt counselling can be removed from your credit record.



Template – Clearance Certificate (Form 19)
Page 63

36. HOW DO I REMOVE AN ADMINISTRATION ORDER LISTING?

Before the expiry of the data retention period for your administration order listing (see section 28, which sets out the data retention periods for each type of listing on your credit record), an administration order can be rescinded and subsequently removed from your credit record in the following instances:

36.1

On the basis that you have paid up your debts

If you have paid up your administration order, in other words you have settled all the debts that were subject to the administration order as well as your administrator's fees, you can apply to the court that granted the administration order to have the administration order rescinded, that is, set aside. You will then need to send the court order evidencing the rescission of the administration order to the credit bureaux in order for the administration order listing to be removed from your credit record.



CAUTION Paying off the administration order does not automatically result in the removal of the administration order listing from your credit record. If you have paid off your administration order, then request a "section 74U certificate" from your administrator in order to rescind the administration order. The section 74U certificate is issued in terms of the Magistrates' Court Act and is given to you by your administrator. A "section 74U certificate" basically states that the debts that were subject to the administration order have since been paid up.

36.2

On the basis of your financial circumstances having improved

If your financial circumstances have improved since the time you were placed under administration, you may apply for the rescission of the administration order. This rescission application would be made in terms of section 74Q of the Magistrates' Court Act.



CAUTION In order to show the court that your financial circumstances have improved, we advise that you look at your current monthly income versus your current monthly expenses and see whether you have a surplus amount that is greater than the amount that the court initially ordered you to pay to your administrator.

37. I HAVE RECEIVED A DEMAND OR SUMMONS FOR PAYMENT ON AN ACCOUNT. WHAT MUST I DO?

If you receive a summons concerning a debt and you cannot afford to pay it, do not simply ignore it (see paragraph 29.1, which deals with accounts that you are not legally obliged to pay). The summons you receive will tell you how many days you have to respond.



CAUTION If you are legally obliged to pay the account, you then must look at making arrangements to pay the money claimed by the creditor or consult an attorney if need be. Should the credit provider refuse to accept the payment arrangement you propose, you must inform the court that you intend to defend yourself. You will then have to file a notice of intention to defend.

Should you receive a summons concerning a debt that has prescribed, we advise that you defend the matter on the basis that the debt claimed against you has, in fact, prescribed. Should you fail to do so, judgment may be awarded against you as the court may be incorrectly persuaded that the claim has not prescribed. However, should you want to settle a debt that has in fact prescribed, then ethically, you can do so. You can make payment of the debt and fulfil your payment obligations without interrupting prescription, provided you make any payment towards the debt “without prejudice” and without admitting liability.

38. HOW SHOULD I DEAL WITH DEBT COLLECTORS?

As of 11 August 2003, all debt collectors, whether they are employed by a company or operate individually, have to register with the Debt Collectors Council. Therefore, if you doubt the credibility of a debt collector, you may confirm whether that debt collector is registered with the Debt Collectors Council.



Council for Debt Collectors

West Wing, Ground Floor
Rentmeester Park
74 Watermeyer Street
Val de Grace, Pretoria

Telephone: (012) 804-9808
Facsimile: (012) 804-0744
Email: info@debtcol-council.co.za
www.debtcol-council.co.za

38.1

How do debt collectors generally work?

Debt collectors are tasked with collecting money that is owed and are usually not interested in the debtors' circumstances. As soon as your account has been handed over to them, they will take steps to recover the money owed to the credit provider concerned. Debt collectors are usually paid a percentage of the amount collected and it is therefore essential to their collection business that they recover as much as possible from you.

38.2

What are my rights in the debt collection process?

It is important that you verify any claim that a debt collector may make against you. After all, you have a legal right to a statement of the amount claimed (see paragraph 29.3 that deals with your right to obtain a statement of account) and such a statement must detail how the amount owing is calculated. Should the debt collector refuse to send you a copy of a statement or loan document, you can lodge a complaint with the Debt Collectors Council.

If you are dissatisfied with an account for payment that a debt collector gives you, you may request that the clerk of the magistrate's court or a committee of a provincial law society tax assess the statement of costs, interest and payment claimed, at the prescribed fee of R20.



Contact South African Law Centre for the Magistrate Court Contact Details

PHONE: +27 (0) 11 367-0695

FAX: (011) 467-3708

WEBSITE www.salawcentre.org.za

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Provincial Law Societies of South Africa

Law Society of the Northern Provinces (Gauteng, North-West, Mpumalanga and Limpopo)

Tel: (012) 338-5800

Fax: (012) 323-2606

Email: info@lsnp.org.za

Website: www.northernlaw.co.za

Law Society of the Free State

Tel: (051) 447-3237/8

Fax: (051) 430-7369

Email: prokorde@fs-law.co.za

Website: www.fs-law.co.za

Cape Law Society

Tel: (021) 443-6700

Fax: (021) 443-6751/2

Email: cls@capelawcos.law.za

Website: www.capelawsoc.law.za

KwaZulu Natal Law Society

Tel: (033) 345-1304

Fax: (033) 394-9544

Email: info@lawsoc.co.za

Website: www.lawsoc.co.za

South African Board for Sheriffs

Tel: (021) 462-3209

Fax: (021) 462-2099

Email: contact@sheriffs.org.za

Website: www.sheriffs.org.za

38.3

How do I lodge a complaint against a debt collector?

A complaint to the Debt Collectors Council must be in the form of a written affidavit and must state the date, time and particulars of the incident in question, the name of the debt collector and the name of any witnesses to the incident in question. Within fourteen days of receiving the complaint, the Debt Collectors Council must inform the debt collector concerned of the complaint. The debt collector then has five days within which to respond to the complaint.

38.4

What debt collection practices are unacceptable?

Debt collectors are acting illegally if they:

- ✂ commit assault, intimidation, trespassing and harassment;
- ✂ use physical force against you or to enter your property;
- ✂ block access to your premises;
- ✂ trespass on your premises after you have asked them to leave, or return after you have told them they are not permitted on your premises;
- ✂ embarrass or intimidate you through other people;
- ✂ engage in misleading conduct;
- ✂ pretend unpaid debts are a criminal offence involving the police or possibly jail;
- ✂ provide you with false notices designed to look like court documents;
- ✂ threaten that they are going to tell other people about your situation;
- ✂ use abusive, racist or obscene language designed to demoralise or humiliate you;
- ✂ attempt to tire you out by phoning you more than two or three times per week, late at night or very early in the morning;
- ✂ contact you at work, even though you have asked that you not be contacted at work and have, in fact, given alternative contact details to the debt collector.

39. WHAT IF I HAVE FALLEN BEHIND ON PAYMENTS ON MY HOME?

Once you fall behind on your bond payments, the bank will usually notify you of this within a few days. The credit provider must give you written notification of your default and propose that you refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombudsman with jurisdiction. *(Section 129 of the National Credit Act)*

The aim of you referring the credit agreement to any of the above-mentioned parties is so that any dispute under the credit agreement can be resolved, or a repayment plan can be put into place, in terms of which the payments under the credit agreement will be brought up to date.



CAUTION It is advisable that you contact the bank as soon as you fall behind on payments on your home. Remember, if you cannot rectify the arrears immediately, you may speak to the bank about making alternative payment arrangements.

40. WHAT IF I HAVE FALLEN BEHIND ON PAYMENTS ON MY CAR?

Where you have fallen behind on payments on your motor vehicle, you may return the motor vehicle to the credit provider in order that the motor vehicle is resold and the amount received from the sale is credited to your account with the credit provider. This is known as “voluntary surrender” of the motor vehicle and is a right given to consumers who are party to a lease, instalment sale agreement or a secured loan. *(Section 127 of the National Credit Act)*



CAUTION In certain instances, you may unconditionally withdraw your notice to terminate the agreement. If the notice is not withdrawn, the motor vehicle will be sold and your account will be debited or credited with the amount of money realised by the sale minus expenses reasonably incurred by the credit provider in selling the motor vehicle. You may, however, not re-instate the credit agreement if the motor vehicle has already been sold pursuant to an attachment order or where the motor vehicle has already been sold pursuant to you surrendering the motor vehicle.

The credit agreement also cannot be re-instated where the credit provider has officially terminated the agreement by giving you at least ten business days’ notice of the fact that the credit agreement has been cancelled.

Where you do not give the credit provider notice of your intention to voluntarily surrender the motor vehicle, the motor vehicle may only be repossessed through court action. This usually results in the motor vehicle being sold on auction to recover the debt and often the payments received for the motor vehicle on auction do not cover the full amount that is outstanding and due to the credit provider. In such an instance, you will remain liable for the balance of the shortfall. The credit provider is then likely to request that you enter into a payment arrangement in terms of which you undertake to settle the shortfall that resulted from the sale of the motor vehicle.



CAUTION Prior to the credit provider actually cancelling the credit agreement in respect of the motor vehicle, you can at any time re-instate the credit agreement by paying to the credit provider all amounts that are overdue, together with the credit provider’s permitted default charges and reasonable costs of enforcing the credit agreement up to the time of reinstatement of the credit agreement. *(Section 129(3) of the National Credit Act)*

41. I HAVE BEEN ASKED TO STAND SURETY FOR SOMEONE. WHAT SHOULD I KNOW?

By standing surety for someone, you indirectly take on a debt in as much as you agree to take on the responsibility of that person’s debt repayment. This is reflected on your credit record, regardless of whether the person you stand surety for is paying the debt as agreed. As such, a suretyship can affect your own credit record and your own ability to apply for credit in future. Because of this, it is advisable to ensure the debt you intend to stand surety for is within your own credit management parameters.

Further, should the person you stand surety for fail to make the required payments to the credit provider, the credit provider has the right to take legal action against you. This will then also be reflected on your credit record and will not necessarily reflect on the credit record of the person for whom you stood surety.



CAUTION It is important to ensure that the person you stand surety for is able to repay the debt in the first instance.

42. WHAT DO I NEED TO KNOW WHEN CANCELLING MY CREDIT AGREEMENT BEFORE IT EXPIRES?

Consumers may cancel credit agreements at any time, provided they pay off the entire debt owed when they do so. You may do so with or without giving the credit provider advance notice of your intention to prematurely cancel the credit agreement. You may also prepay the debt without any notice to do so being given to the credit provider. A credit provider is not allowed to charge you a penalty for any advance payment. *(Section 125 of the National Credit Act)*

The credit provider has to accept any advance payments, provided they are made before payment is due. Such payments must be credited for the day of payment and need to go toward the following, in this order:

- ✦ To satisfy any due or unpaid interest charges
- ✦ To satisfy any due or unpaid fees or charges, and
- ✦ To reduce the amount of the principal debt.

43. WHAT IF I HAVE BEEN A VICTIM OF ID FRAUD?

You must report any suspected fraud to the Southern African Fraud Prevention Services (SAFPS). You must also register lost or stolen ID books and passports with SAFPS. SAFPS offers a free protective registration service which allows you to report any lost or stolen ID books or passports. This protects you from becoming a victim of impersonation that can result in accounts being opened in your name and subsequently listed on your credit record, thereby impairing your creditworthiness.



South African Fraud Prevention Services (SAFPS)

Tel: (011) 867-2234
Email: safps@safps.org.za.
SAFPS helpline number is
0860 101 248

44. WHAT DO I NEED TO KNOW WHEN DEALING WITH THE SHERIFF?

When you fall behind in any of your repayments to a creditor, the creditor concerned may institute legal proceedings against you for the recovery of the debt. Such legal proceedings may culminate in a sheriff having to serve (that is, deliver) the legal process on you. Such legal process may include a summons, notice, warrant or any other court order. In some instances, the legal process may instruct the sheriff to attach any property you have in realisation of the debt now claimed against you.

The sheriff is an impartial, independent official of the court and is appointed by the Minister for Justice and Constitutional Development. Sheriffs are regulated by the South African Board for Sheriffs and you can lodge a complaint against a sheriff in terms of section 44(1) of the Sheriffs Act 90 of 1986 with the South African Board for Sheriffs. Complaints must be in writing in a form of an affidavit by you and you should set out the name of the sheriff against whom the complaint is laid, the name and address of his office and full details of the misconduct of the sheriff. Any supporting documentation, such as witnesses' statements, may also be attached to your affidavit.



South African Board for Sheriffs

Tel: (021) 462-3209

Fax: (021) 462-2099

Email: contact@sheriffs.org.za

Website: www.sheriffs.org.za

Some examples of improper conduct that may lead to disciplinary action against a sheriff include assault (threatened or verbal); bribery, corruption, theft or dishonesty; an act of sexual harassment and intimidation or victimisation.

When approached by a sheriff, you have the right to request proof of identification. Keep in mind that a debt collector, unlike a sheriff, cannot attach or remove any of your goods. A sheriff, on the other hand, can attach and remove any of your property in realisation of a creditor's claim against you. You may prevent the attachment and subsequent sale of any of your property by making payment to the sheriff. Where you pay any monies to a sheriff, you must obtain a receipt and ensure that the original and copies of the documents reflect your payment.



CAUTION Remember that the sheriff must treat you with dignity at all times and may not attach and remove any essential items such as food, bedding, beds or your clothes. Sheriffs are also obliged to explain the contents of any legal process that they deliver to you.

45. CAN I BE DENIED A JOB ON THE BASIS OF MY CREDIT RECORD?

If you work in the financial services industry or hold a position of trust, a prospective employer may decline your employment application on the basis of a poor credit record. The position you are applying for must require trust and honesty or may involve the handling of cash or finances.

(Section 70(2)(g) of the National Credit Act read with Regulation 18(4)(c))



CAUTION Your credit record cannot be used to deny you employment in fields other than those listed above.

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HOW TO USE THE TEMPLATES

We advise that you exercise extreme caution when using any of our templates. If you are in doubt when using any of the templates included here, you may contact the South African Law Centre directly for guidance and further assistance.

Please note that page numbers and headings have been left off the template pages in order that you might photocopy them and fill them in, if you so wish.

NCR Form 29: NATIONAL CREDIT REGULATOR

COMPLAINT INITIATION FORM

(Initiating a complaint to the National Credit Regulator in terms of section 136 of the National Credit Act)

Complaint Initiation Form

1. Name of Complainant: _____

2. ID/CIPRO reg. No: _____

3. Date: _____

4. Address: _____

5. Tel: _____

5.1 Institution to which the complaint relates: _____

5.2 Branch (if relevant): _____

5.3 Person representing institution: _____

6. Short description of complaint. Add pages if required: _____

7. I confirm that I want the National Credit Regulator to consider my complaint.

8. I understand that:

- The National Credit Regulator will handle my complaint according to the requirements of the National Credit Act 2005.
- Confidential information may be considered by the National Credit Regulator in the process of handling my complaint.
- The National Credit Regulator may need to communicate with other organizations in respect of the complaint in question and may need to exchange information in this regard.

9. Should the National Credit Regulator require me to provide a statement under oath in respect of information contained in this form, I will do so.

Date: _____ Place: _____

Name of signatory: _____

Signature of call centre operator in the event of the complaint being initiated by a telephone call.

Signature: _____

KEY GUIDE TO USING TEMPLATE 2

A	The date on which I submit the letter to the credit bureau
B	The email address or fax number to which I send my dispute letter
C	My full names as reflected on my ID document
D	My Identity number
E	The name of the creditor who has placed the listing on my credit record
F	The date the listing was placed on my credit record

Case Study

Jane Doe checks her credit records and finds that she has a default listing on her ITC report for an account from Sporty Wholesalers. Having read the DIY Credit Repair Toolkit, especially section 30.1, which deals with a consumer's right to be notified prior to a creditor submitting information of any default to the credit bureau, Jane Doe decides to dispute the listing on her ITC report on the basis that she did not receive any written notification. This is the letter Jane Doe sends to ITC.

2. SAMPLE DISPUTE LETTER SENT TO THE CREDIT BUREAU WHERE THE CREDITOR DID NOT GIVE JANE DOE WRITTEN NOTIFICATION PRIOR TO PLACING THE DEFAULT/ADVERSE LISTING ON HER CREDIT RECORD

Date: 5 July 2012

A

By email/by fax: legal@transunion.co.za

B

Dear Sir/Madam,

Re: My Credit Record – Jane Doe

C

Identity number: 7607180800085

D

Default/adverse listing – Sporty Wholesalers

E

Date of Listing: 28 May 2012

F

The above matter refers. Please find attached hereto a copy of my ID document.

On 28 May 2012, **F** Sporty Wholesalers **E** placed the abovementioned default listing on my credit record.

In terms of section 72(1) of the National Credit Act 34 of 2005, Sporty Wholesaler **E** should have advised me prior to the submission of such negative information to the credit bureau. In fact, Sporty Wholesalers **E** failed to advise me that any such adverse listing would be recorded against me. I have since contacted Sporty Wholesalers **E** in an attempt to obtain proof that I was in fact advised in terms of section 72(1) and Regulation 19 of the National Credit Act. Sporty Wholesalers **E** has failed to provide me with proof of any such correspondence/notification.

In light of the above, I request that you investigate the matter and remove the default listing in the absence of proof that I was advised that the account in question would be negatively listed on my credit record.

Yours faithfully,

Jane Doe

C

Date: _

By email/by fax: _

Dear _

Re: My Credit Record: _

Identity number: _

Default/adverse listing details: _

The above matter refers. Please find attached hereto a copy of my ID document.

On _
placed the abovementioned default listing on my credit record.

In terms of section 72(1)(a) of the National Credit Act 34 of 2005, _
should have advised me prior to the submission of such negative information to the credit
bureau. In fact, _ failed to advise me that any such adverse listing
would be recorded against me. I have since contacted _ in an attempt
to obtain proof that I was in fact advised in terms of section 72(1)(a) of the National Credit
Act. _ has failed to provide me with proof of any such correspondence or
notification.

In light of the above, I request that you investigate the matter and remove the default listing in
the absence of proof that I was advised that the account in question would be negatively listed
on my credit record.

Yours faithfully,

KEY GUIDE TO USING TEMPLATE 3

A	The date on which I submit the letter to the credit bureau
B	The email address or fax number to which I send my dispute letter
C	My full names as reflected on my ID document
D	My Identity number
E	The name of the creditor who has placed the listing on my credit record
F	The date the listing was placed on my credit record

Case Study

Jane Doe checks her credit records and finds that she has a default listing on her Experian credit report for an account from Dream Furnishers. Having read the DIY Credit Repair Toolkit, namely section 29, dealing with a listing relating to a prescribed account and “accounts that I do not have to pay”, Jane Doe decides to dispute the listing on her Experian credit report on the basis that the account has prescribed. This is the letter Jane Doe sends to Experian.

3. SAMPLE DISPUTE LETTER SENT TO THE CREDIT BUREAUX WHERE THE LISTING RELATED TO A PRESCRIBED ACCOUNT

Date: 5 July 2012

A

By email/by fax: consumer@experian.co.za

B

Dear Sir/Madam,

Re: My Credit Record – Jane Doe

C

Identity number: 7607180800085

D

Default/adverse listing – Dream Furnishers

E

Date of Listing: 17 June 2012

F

The above matter refers. Please find attached hereto a copy of my ID document.

On 17 June 2012, **F** Dream Furnishers **E** placed the abovementioned default listing on my credit record.

In terms of Regulation 19(5) of the National Credit Act 34 of 2005, prescribed information may not be submitted to a credit bureau. The abovementioned listing in fact relates to a prescribed account and should therefore not be reflected on my credit record.

The abovementioned account has prescribed in terms of the Prescription Act 68 of 1969 as judgment has not been taken against me and I have not made any payments, nor signed any acknowledgement relating to the account in question in the last three years.

In light of the above, I request that you investigate the matter and remove the default listing in the absence of proof that the account has not prescribed.

Yours faithfully,

Jane Doe

C

Date: _

By email/by fax:

Dear _

Re: My Credit Record: _

Identity number: _

Default/adverse listing details: _

The above matter refers. Please find attached hereto a copy of my ID document.

On _ - placed the abovementioned default listing on my credit record.

In terms of Regulation 19(5) of the National Credit Act 34 of 2005, prescribed information may not be submitted to a credit bureau. The abovementioned listing in fact relates to a prescribed account and should therefore not be reflected on my credit record.

The abovementioned account has prescribed in terms of the Prescription Act 68 of 1969 as judgment has not been taken against me and I have not made any payments towards the account in the last three years, nor have I signed any acknowledgement relating to the account in question.

In light of the above, I request that you investigate the matter and remove the default listing in the absence of proof that the account has prescribed.

Yours faithfully,

GUIDE TO USING TEMPLATES 4 – 10

Most of the court template documentation will require that you fill in the name of the court, the case number, the applicant's full names and ID number as well as the full names of the plaintiff.

The above information is typically inserted into the top of the first page of the court documentation templates.

KEY GUIDE TO USING TEMPLATES 4 – 10

A	Name of the court in which the judgment was granted
B	The area where the court is located (this is usually the same as A)
C	My full names as reflected on my ID document
D	My Identity number
E	The name of the creditor who has placed the listing on my credit record
F	The date the listing was placed on my credit record

Extract from a sample court document template

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF JOHANNESBURG **A**

HELD AT JOHANNESBURG **A**

CASE NO: 127/2012 **B**

In the matter between:

Jane Doe **C**

Applicant/Defendant

ID No: 7607180800085 **D**

And

THE BODY CORPORATE FOREST VIEW **E**

Respondent/Plaintiff

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _

HELD AT _

CASE NO: _

In the matter between:

Applicant/Defendant

ID No: _

And

Respondent/Plaintiff

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that application will be made to the above Honourable Court on _ at 9:00, or so soon thereafter as the application may be heard for an order in the following terms:

1. Rescinding the judgment which was granted against the Applicant under the above case number, in terms of Section 36(2) of the Magistrates Court Act 32 of 1944, as amended by Act 55 of 2002;
2. Leave to amend this application for Rescission if required by the above Honourable Court, in which case notice thereof will be given to the Respondent, and;
3. Further and/or alternative relief.

KINDLY TAKE NOTICE THAT the Respondent has consented to the Rescission of the said Judgment.

DATED AND SIGNED AT _ ON THIS THE _ DAY OF _ 20 .

TO: THE CLERK OF THE CIVIL COURT

APPLICANT

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _

HELD AT _

CASE NO: _

In the matter between:

Applicant/Defendant

ID No: _

And

Respondent/Plaintiff

APPLICANT'S FOUNDING AFFIDAVIT

I, the undersigned, _

declare under oath as follows:

1. I am the Applicant in the above matter and the facts herein contained are within my own personal knowledge and to the best of my belief true and correct.
2. The Plaintiff's claim is settled herein.
3. I annex hereto an Affidavit from the Respondent's duly authorised representative consenting to this application for rescission of the judgement herein. I humbly request the above Honourable Court to accept the Respondent's written agreement to this application for rescission. I confirm that due to the existence of this judgment, and the fact that said judgment is reflecting on my credit record, I am unable to obtain any finance and/or credit facilities.
4. I confirm that I shall not defend the case herein after the rescission of the judgment and that I shall not initiate any other legal proceedings relating to the case herein after the rescission of the judgment has been granted.
5. I confirm that I shall not seek a cost order against the Respondent or any of its subsidiaries and shall bear all costs relating to the rescission application herein.

6. In the circumstances I humbly request the above Honourable court to grant the application for rescission as prayed.

DEPONENT

I hereby certify that the Deponent/s has/have acknowledged that he/she/they know/s and understand/s the contents of this affidavit, which was signed and sworn to before me at
- on this the _ day of _
201_ and that the provisions of the regulations contained in Government Notice R1258 dated 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _

HELD AT _

CASE NO: _

In the matter between:

First Applicant

Second Applicant

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

do hereby make oath and say :

1. I am the 2nd Applicant and the _ of the 1st Applicant in this matter.
2. The facts herein contained are within my personal knowledge and are to the best of my belief true and correct, except where expressly otherwise stated herein.
3. I have read the affidavit of the 1st Applicant and confirm the contents thereof insofar as it relates to me.

DEPONENT

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _

HELD AT _

CASE NO: _

In the matter between:

Applicant/Defendant

ID No: _

And

Respondent/Plaintiff_

CONSENT TO RESCISSION OF JUDGMENT IN TERMS OF SECTION 36(2)

TO: THE CLERK OF THE COURT

KINDLY TAKE NOTICE THAT the judgment debt herein is settled. We accordingly agree that the judgment granted against the Applicant herein be rescinded and consent to the bringing of an Application for Rescission, which will accordingly not be opposed.

KINDLY TAKE FURTHER NOTICE THAT the Application may be set down for any future date without any notice thereof and without service of the Application being given. The Respondent waives all time limits required in terms of the Rules and condones the late filing of this Application.

KINDLY TAKE FURTHER NOTICE THAT the Applicant indemnifies the Respondent against any claim for payment of any costs and/or any claim resulting hereof.

DATED AND SIGNED AT _

ON THIS _

DAY OF _

201_.

RESPONDENT

OFFICE/DEPARTMENT STAMP

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _

HELD AT _

CASE NO: _

In the matter between:

Applicant/Defendant

ID No: _

And

Respondent/Plaintiff

RESPONDENT'S AFFIDAVIT AGREEING TO RESCISSION

I, the undersigned,

hereby declare under oath as follows:

1. I am the Respondent's representative and the content of this matter falls within my personal knowledge and is true and correct.
2. I am duly authorised to make this affidavit on behalf of the Respondent.
3. We waive service of the application for rescission and condone the late filing of the application for rescission.
4. We confirm that the Applicant has settled the account to our satisfaction.

5. We agree that the judgement herein be rescinded and consent to the bringing of the application for the rescission of the judgement herein.

DEPONENT

I hereby certify that the Deponent/s has/have acknowledged that he/she/they know/s and understand/s the contents of this affidavit, which was signed and sworn to before me at
- on this the _ day of _
201_ and that the provisions of the regulations contained in Government Notice R1258 dated 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF _____

HELD AT _____

CASE NO: _____

In the matter between:

Applicant/Defendant

ID No: _____

And

Respondent/Plaintiff _____

ORDER OF RESCISSION OF JUDGMENT

The above honorable court ordered on _____ that the judgment previously granted against the defendant hereby be rescinded.

TO: THE CLERK OF THE CIVIL COURT

10. RESCISSION OF A MAGISTRATE COURT JUDGMENT CHECKLIST

1. Applicant's Full Name:

2. Applicant's ID Number: _____
3. Second Applicant's Full Names (if applicable)

4. Second Applicant's ID number (if applicable) _____
5. Respondent's Full names:

6. Name of the Court that granted the judgment:

7. The case number under which the judgment was granted:

8. Notice of Motion: For me to complete (tick)
9. Applicant's Affidavit: To be completed by me (tick)
10. Respondent's Consent Letter: To be completed by the creditor who took the judgment against me (tick)
11. Respondent's Consent Affidavit: To be completed by the creditor who took the judgment against me (tick)
12. Draft Court Order: To be issued by the Clerk of the Court on the day my judgment is rescinded (tick)
13. How many copies of my rescission application do I need? This depends on whether you must serve (that is, deliver a copy of your rescission application to the Respondent). Check the consent notice as to whether you must deliver a copy of the application. Typically, words to the effect that the "respondent waives service of the application" means that you do not have to serve (that is, deliver) a copy of the rescission application on the Respondent. Where service has not been waived, you must make two copies of the rescission application – a copy for the Respondent and a copy for yourself. The original rescission application will be placed in the court file by the clerk of the relevant court. Number of copies _____

13. Filing your rescission application at court entails taking the copies of your rescission application, as well as the original application, to the clerk of the relevant magistrate court. This is known as “filing” your application.

When you file your application, you will also be advised of the date on which you must return to court to have your rescission application heard by the magistrate.

Application filed on: _____

Hearing will be on: _____

14. Deliver a copy of your rescission application with the allocated date on which your rescission application shall be heard reflecting to the Respondent.

This is known as “serving” your application and it is only necessary where the Respondent has not waived service as per checklist point 12.

15. Send a copy of the court order to the credit bureaux: For me to do (tick)
16. Confirm removal of listing from my credit record after twenty business days: For me to do (tick)

11. CLEARANCE CERTIFICATE (FORM 19)

NCR Form 19: NATIONAL CREDIT REGULATOR

CLEARANCE CERTIFICATE ISSUED IN TERMS OF SECTION 71(2)(B)(I) OF THE NATIONAL CREDIT ACT 34 OF 2005

Name of Debt Counsellor: _____

NCR Registration No: _____

Contact telephone number: _____

This is to certify that the following consumer:

Full names and surname of consumer: _____

Identity Number: _____

Court/Tribunal Number: _____

Has discharged all his/her obligations in terms of the debt re-arrangement order granted by the Court/Tribunal on _____ (insert date of order) in terms of section 86(7)(c) of the National Credit Act 34 of 2005.

The debts set out hereunder have been settled in full:

Name of credit provider	Date of last payment	Full amount settled

Signed at (place) _____ on this (day) ___ of (month) _____ of (year) ____.

Debt counselor _____ (Signature)

In this book you can learn:

Which accounts you have to pay, and which not

How to deal with debt collectors and debt harassment

What you can do about "blacklistings"

What you can do about default/adverse listings

How to correct incorrect information on your credit record

Why your credit application has been declined and what to do about it

How to remove a judgment from your credit record

How to remove an administration order listing

How to become ITC clear



Main author:

Nicky Campbell is often featured in the media and speaks regularly about credit rating and consumer protection at seminars and workshops. Having obtained her BA.LLB degree from Rhodes University, Nicky went on to complete her Master's degree at the University of Cambridge. Today, Nicky runs a niche law practice focusing on consumer law and estate planning and is one of the leading consumer law experts in South Africa.

Nicky authored "A Guide to the Consumer Protection Act for Attorneys" for the Law Society of South Africa and is currently involved in legal education and development division with the development of a national curriculum for attorneys.

Contributing author:

Stephanie Genia Boyee is an attorney with just over thirty-four years of experience in civil, criminal and consumer law. Having worked as a lecturer at UNISA, Stephanie went on to complete her article at Edward Nathan Friedland Maitland and Lewis, now Edward Nathan Sonnenlagers. Today, Stephanie works as a freelance practicing attorney of the High Court of South Africa and also runs the University of Johannesburg Law Clinic on a pro bono basis with litigation work. She read for her Bachelor of Arts and Bachelor of Laws degree and went on to complete her LLB degree at UNISA. Stephanie is fluent in English, Afrikaans, French, German and Latin.

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