



www.bankseta.org.za



TheBankSeta



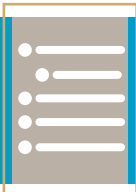
@TheBankSETA



The BANKSETA

Consumer Education

Manage my Credit
Responsibly



1.	Managing my credit	1
2.	Struggling to make payments? Take these steps	5
3.	Debt relief options: An overview	14
4.	Legal action and debt enforcement	19
5.	Disclaimer	24



Vision

To be recognised as a centre of excellence and innovation for skills development in the broader banking and microfinance sector.

Mission

To support transformation and people development through partnerships, and to enable stakeholders to advance the national and global position of the broader banking and microfinance sector.



COMPUSCAN ACADEMY
SETTING YOU ON COURSE

Designed by Compuscan Academy
www.compuscanacademy.co.za



Managing my credit

Debt is not your enemy; bad credit habits are. Use credit well and use it wisely.

When you obtain credit, whether it is a personal or home loan, a store or credit card, or an overdraft, you must take all the necessary steps to manage your use thereof wisely and responsibly. That includes knowing your credit agreement terms, making sure that your payments are made from the first payment due date, choosing the best payment option, making timely payments, paying more than the minimum whenever possible, and reviewing your statements regularly.

It is also important that you use the credit for the original purpose for which it was intended, for example if you take a loan for school fees, it should be used for school fees only, and if you have a surplus it should be paid back on the loan.

Here are some ways to use credit responsibly.

FACT #1 – Protect your asset

You should take every step possible to protect and secure the assets you have bought on credit. Remember that the value of your asset has a direct impact on the amount of your loan or credit. If you want to sell the asset to help settle the amount outstanding, the asset will need to have some value or worth. You are liable for the total debt, and whether or not the amount you recover from the sale of the asset is enough to cover such debt is your responsibility.

These are the steps you can take to ensure that your asset is protected:

1. Make sure that your existing insurance covers your asset fully. For example, if you have household insurance, make an inventory of all your items and make sure that you are covered for all valuable items. Look at the eventualities that your insurance policy covers, and see if it covers you for events such as theft, a natural disaster, and damage. So for any type of asset insurance, if you are not covered for these eventualities you could be liable to repay the credit you received to purchase the asset long after the asset is gone.
2. Examine your credit life insurance policy and know and understand what you are covered for. Read your policy carefully to see if it covers all your needs.
3. Look after your asset well as this is an investment in your future. The better you look after your asset the better you maintain its value.



LOGO

MANAGING MY CREDIT

1



LOGO

MANAGING MY CREDIT

1

Take Note

Credit providers will require you to have asset insurance for asset finance agreements. You may obtain your own insurance cover, but your loan will not be finalised until you have such cover in place.

Learn more

Whenever you purchase an item with a **balloon or residual payment plan**, it is important that you plan and save for these payments. You should understand the difference between these two payment plans so that you know what your responsibilities are in terms of settling your debt at the end of the credit agreement period. While a balloon or residual plan does allow for lower monthly repayments, you will need to make plans for a large settlement at the end of the agreement.

Let us consider a loan **amortisation** (i.e. payback) for a R300 000 balloon vehicle loan at a 12% interest rate, for which your monthly payment, without insurance, will be R5 295.82 for the next six years. At the end of the six years your balloon payment will be R64 900.68 and you will have paid R140 903.89 in interest and charges. That will mean that, although your monthly payments are only R5 295.82, you will have to pay R64 900.68 as a total sum in the last month. If you do not have this amount available, you will have to refinance your vehicle.

Balloon loan payment schedule

Year	Total payments	Total interest	Principal paid	Balance due
2015	R63 549.84	R34 433.10	R29 116.74	R270 883.26
2016	R63 549.84	R30 740.35	R32 809.49	R238 073.77
2017	R63 549.84	R26 579.31	R36 970.53	R201 103.25
2018	R63 549.84	R21 890.52	R41 659.32	R159 443.93
2019	R63 549.84	R16 607.07	R46 942.77	R112 501.16
2020	R123 549.70 (includes R64 900.68 balloon payment due in month 72 of loan)	R10 653.54	R112 501.16	R0.00

FACT #2 – Use your credit facility responsibly

Revolving credit as a credit facility – like a credit card, store card, or an overdraft facility – can be a very useful tool. That is because revolving credit allows you to use it when you need it, and it can be a necessity in today's world if, for example, you want to shop or buy an aeroplane ticket online. However, with these advantages comes the responsibility to use it wisely and safely.

Here are some tips to help you to use your credit facility more responsibly:

- Before you swipe your card, calculate the cost of your purchase. Remember that interest will be added. Determine whether you still want to buy the item at that cost, and whether you can afford it.
- Be informed, and sign up for any notification service offered by the credit provider that informs you if there is activity on your account. It will also send you payment reminders.
- Examine your credit facility statements carefully and ensure that you understand the *true cost* of your credit card purchases, that you validate your purchases, and that you keep track of your expenses.
- Always pay more than the minimum instalment when you can afford it. This will reduce the amount of interest and costs you will pay.
- This is revolving credit – available for you to use, to make payments towards, and then to use again. However, when you find yourself in financial difficulty, do not rely on your facility as a way to make ends meet.
- When you use your card, protect your pin if you have one, and check that all purchases reflected were indeed made by you. Take immediate action if you feel you are a victim of fraud.
- When you receive a replacement card, cut up your old card and sign the new one immediately.

Take Note

If your account is always at its maximum limit, this is a sign that you are overspending and you need to manage your budget and debts.



Credit Health Tips

Always monitor your account by checking your statements to ensure that all payments are reflected, and that there is no suspicious activity. If you have any queries, resolve the matter immediately by contacting your credit provider.



LOGO

MANAGING MY CREDIT

1



LOGO

MANAGING MY CREDIT

1

FACT #3 – Use a loan wisely

A loan is usually taken once-off for a particular purpose. You receive the approved amount from the credit provider, and then you need to repay the amount in instalments on a regular basis according to your credit agreement. Here are some tips to help you manage your loan wisely:

- Check your budget on a monthly basis, and revise it where necessary to help you to meet payments should you be struggling.
- Pay more than your agreed instalment whenever possible.
- Make your payments on time so as not to accrue extra interest and default fees.
- Contact your credit provider immediately if you think you will be unable to make a payment and negotiate a new arrangement with the provider.
- If you have the option to choose a payment method, select one that best suits your need and is the most convenient for you.



Credit Health Tips

Here are some ways to manage your bank account responsibly:

1. Check your statements on a regular basis, to track your payments and outstanding balance.
2. Always know your current bank balance, including uncleared amounts.
3. Pay accounts on time to avoid charges for default or late payments.
4. Avoid surcharges – for example, many banks charge you if you use another bank's ATM.

Learn more



Consider making your payments via **debit order**. Some credit providers require this as a condition of the agreement. This is basically a contract between you and a third party, in this instance a credit provider, where the provider is entitled to collect a certain amount on a specified basis from your bank account.

What are the **advantages** of paying via debit order?

- It is **convenient**.
- It provides a history and enables **traceability** of payments.
- It **removes your stress** of having to make the payment.
- It **lowers the likelihood** that you will skip a payment or withhold a payment.
- It ensures that the payment is made on the **correct day** of every month.

Although debit orders have their advantages, there are some things you should **keep in mind**:

- If a debit order is returned, perhaps owing to a lack of funds, this can cost you quite a lot in **penalties** (it might be as much as R130 for a returned item). Make sure you know what the bank's penalty fee is or always ensure you have enough funds in your bank account to cover the debit order.
- Debit orders **carry a cost**, and different banks and service providers charge different amounts for debit orders.



LOGO

STRUGGLING TO
MAKE PAYMENTS?
TAKE THESE STEPS

2



LOGO

STRUGGLING TO
MAKE PAYMENTS?
TAKE THESE STEPS

2

Struggling to make payments? Take these steps

Take immediate action if you are struggling to make payments.

When you sign a credit agreement and accept credit from a credit provider, you have entered into a **legal contract** whereby you agree to the terms and conditions of the contract. That means you agree to pay back the amount stated (the principal amount) at the specified interest and costs within the required period of time.

If you fail to pay, you are in *breach* of that contract. It is your responsibility to manage your loan effectively, and manage all your debt obligations efficiently, so that you honour your agreements.

“A debt is still unpaid, even if forgotten.” – Irish Proverb

Checklist

You are heading for **credit trouble** if **one or more** of the following situations applies to you:

- You depend on inconsistent, unpredictable income such as overtime or an extra part-time job to pay your bills, or you are always looking for extra cash by selling goods to pay your debts.
- Your expenses exceed your income and you run out of money before the end of the month.
- You borrow money from family members and friends to get through the month.
- You are repeatedly at or near the maximum credit limits on your credit or store cards and lines of credit.
- You often struggle to even make the minimum payments on any of your credit agreements.
- You regularly miss payments and find yourself falling further and further behind every month.
- You are not able to set aside any money for savings, or you often need to take money from your savings account to pay your bills.
- You regularly find yourself taking loans, or cash advances on your credit cards, to make ends meet.

There are consequences for not making regular payments. Remember that every time you skip a payment, or pay less than the minimum instalment, this is regarded as negative credit behaviour. You should also know that all credit and payment information is reported to all registered credit bureaus in South Africa on a daily, weekly, or monthly basis.

Sometimes, no matter how good our intentions are to make regular payments, unforeseen events cause us to miss a payment. When this occurs, it is important for you to be proactive and take action before you skip a payment by contacting your credit providers directly to make an arrangement that might give you some relief. By using the steps and tips given on the following pages, you can stay in charge of your credit and make it work for you.

Be proactive

When you find yourself in financial distress and are unable to meet your payment obligations, the following steps can be used to help you when you land in financial difficulties:

1. Draw up a **budget**, manage it on a monthly basis and revise it when necessary.
2. Stop increasing your debt. Talk to your family and get everyone's buy-in to start reducing debt for the family's future. Close unnecessary accounts and **limit yourself** to only a few accounts.
3. Start **tracking your expenses** – keep a record of all money that goes in and out of your accounts. Identify areas where you overspend and reduce those expenses. Identify expenses on luxury items and cut out these expenses.
4. **Add income** – sell anything you don't need and use your hobby to make some extra cash.
5. Have a credit health check-up – get a copy of your **credit report** at least once a year as a way of assessing your current financial health.
6. **Contact credit providers** to negotiate and make an arrangement for lower instalments with an extension of the term or a reduction in fees, or speak to them about the possibility of a consolidation loan. If you agree to a new payment plan, stick to it!
7. Once you have paid off one account, redistribute the money to **pay more** on another.
8. Look at your insurance products and see if you can **switch** to a cheaper option.
9. Keep your eyes on the future – sacrifices today will mean **rewards for tomorrow**.
10. Draw up a **debt checklist** as shown in the table on the next page. This can help you to prioritise your debts so that you can determine where to allocate any surplus money you have identified from your budget. You should try to pay off those debts that might bring you the greatest relief sooner, for example where legal action has been initiated or an asset will be attached and sold, or where there is a loan with a very high interest rate.

Do not hesitate to seek professional advice if you need further assistance.



LOGO

STRUGGLING TO MAKE PAYMENTS? TAKE THESE STEPS

2

Debt Checklist

Debts	Monthly repayment	Amount outstanding	Name and contact number of credit provider	Have you contacted your credit provider yet?	
				YES	NO
Priority debts				YES	NO
e.g. Bond					
Other					
Secondary debts				YES	NO
e.g. XYZ loan					
e.g. XYZ credit card					
Other					
Loan from family/ friend					

Learn more

Taking one large loan to pay off your other smaller accounts is called **debt consolidation**. This means that you can avoid having to pay a number of instalments with their associated costs, and instead you pay back only one instalment on one loan. You do however need to consider what the **total cost** of this loan over the entire period will be. This is what consolidation will mean for you:

- If you consolidate your debts, you will not be listed at a credit bureau, although the loan itself will reflect on your report.
- It means one monthly payment rather than many, which spares you the effort of servicing many debts, and keeping track of payments is therefore easier.
- It should require a lower monthly payment than all your previous instalments added together.
- It should improve your credit profile over time because you will not have so many debts or accounts reflected.
- It might mean you need to pay the loan off over a longer period than you took your original loans for.

Remember that if you take a consolidated loan you should not take any more credit as this will sink you further into debt.



LOGO

STRUGGLING TO MAKE PAYMENTS? TAKE THESE STEPS

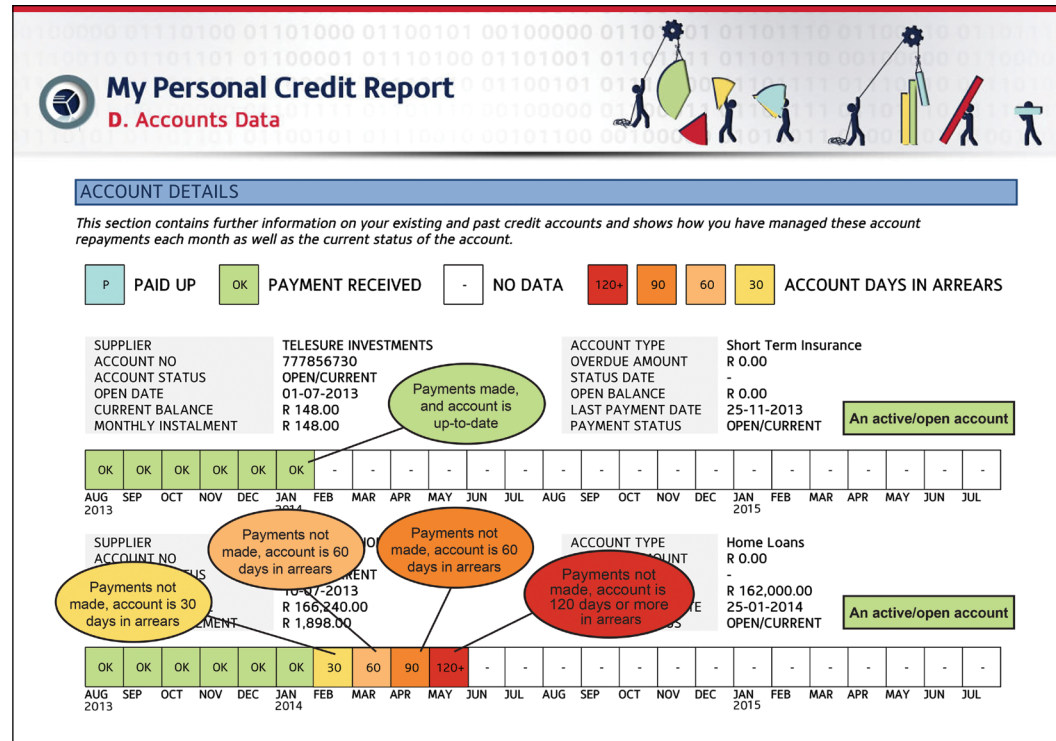
2

Take Note

Remember that every time you miss a payment, or pay less than the minimum instalment, it is regarded as negative credit behaviour. You should also know that all credit and payment information is reported to all registered credit bureaus in South Africa on a daily, weekly, or monthly basis.

That is why you should not wait for your credit provider to contact you only when you have already missed a payment. Rather be proactive: contact your credit provider when you think you might miss a payment, and you may find that your provider would be willing to accept a reduced instalment.

This example of the payment history section of a credit report shows you the impact of skipped payments, and what credit providers will see when they access your credit profile.





LOGO

STRUGGLING TO MAKE PAYMENTS? TAKE THESE STEPS

2

Every time you make a late payment, or skip a payment, there are consequences.

- **Costs and charges** are incurred and are added to your remaining balance, so you are getting deeper into debt.
- You must also remember that all missed or late payments are recorded on your credit profile, and show as negative or **adverse information** which can affect your ability to obtain new credit.
- You suffer **stress and anxiety**, which can affect your home or work life.
- **Legal action** may be brought against you, which can lead to repossession of your assets, judgements, and your salary being garnished (i.e. attached).

Learn more



You must understand the **cost of defaulting** on your credit agreements. If you had a credit card with a balance of R10 000 and an interest rate of 19% per annum, and you skipped payments for six months, you would have to **pay R988.41 in interest alone** over that six-month period because of the effect of compound interest.

You are also liable for default administration charges and collection costs.

- Default administration charges are those that a credit provider can charge you for advising you that your account is in arrears, and is the cost of sending you a Section 129 letter.
- Collection costs are those incurred by the credit provider to collect outstanding debt from you. This will include telephone calls and legal fees.

Remember that these charges and costs are then added to your total amount outstanding, and then interest is charged on that.



LOGO

STRUGGLING TO MAKE PAYMENTS? TAKE THESE STEPS

2

Overview of the collections process

Every credit provider's collection policy is different, but the generic process is as follows:

Step 1	You receive an SMS, e-mail, or telephone call. This could be as a simple reminder to make payment, to an attempt to make arrangements with you to settle the outstanding amount. Some credit providers might use a number of these.
Step 2	If you do not settle your arrears you will receive a Section 129 notice (or letter of demand) notifying you of the default and requesting you to make a payment, negotiate with the credit provider, or seek debt relief assistance from a debt counsellor, alternative dispute resolution agent, consumer court or ombudsman.
Step 3	Legal action is instituted, with a summons to appear in court or a court order to repossess or sell assets.
Step 4	You are required to make a court appearance to defend the matter, and a judgement may be issued against you.

To avoid the escalation of the process, and a negative impact on your credit profile or record, you should take action to bring your account up to date, or reach out to your credit provider who can advise you of the best way forward.

Falling behind on your payments can often lead to extra charges. This means that the amount of money you owe will increase. So it is important to take control of the arrears, and start taking responsibility for your debts as soon as you can. Defaulting on your obligations will have a snowball effect, causing rolling debt, and pushing you into a debt spiral from which it will be more and more difficult to recover.

Contacting your credit provider

When you find yourself struggling to make payments, you must contact your credit provider immediately to negotiate a new payment arrangement. You can ask for a lower instalment or interest rate or an extended repayment period. You could use a letter to do this, and an example is provided to help you. If you make an arrangement, whether it be face to face or telephonically, you should get the new arrangement in writing wherever possible, and you should keep a copy for your records.

Take Note



Remember that if your credit provider does reduce payments or grant you a payment holiday, the provider will still be adding interest and service fees every month, and you should be prepared to repay the higher payments once your financial crisis has been resolved. So you should measure the consequences of any new arrangement made carefully.



LOGO

STRUGGLING TO MAKE PAYMENTS? TAKE THESE STEPS

2



LOGO

STRUGGLING TO MAKE PAYMENTS? TAKE THESE STEPS

2

Your 1st address line
Your 2nd address line
City
Post Code
Today's date

AXYBZ Credit Provider
Accounts department

To whom it may concern
Re: Account/Ref No 123456789

I am writing to inform you of my current financial situation and that my circumstances have changed due to illness / death / loss of income / your reason. As a result of this, I unfortunately find myself in a financial crisis where I am unable to meet all my debt obligations and monthly payments, including the amount of R356.78 on account 123456789.

Included is a copy of my budget where I have indicated all basic minimum expenses and all my monthly debt repayments showing that my liabilities exceed my income. Therefore I am contacting all my credit providers to ask for reductions in my monthly instalments so that I can try and improve my current financial situation.

Therefore I humbly request the following: [CHOOSE ONE OF THE FOLLOWING]

1. A reduction of the amount of repayments to R256.78 a month starting 1 January 2015 for 6 months, without extending the original loan term through paying higher instalments in following months.
2. A reduction of the amount of repayments to R256.78 a month starting 1 January 2015, by extending the original loan term.
3. A postponement of three months from 1 January 2015 to 1 April 2015.

After 6 months we can review the budget and the repayment plan again. I hope that we can negotiate in order to find a solution that is mutually beneficial to both of us.

I really appreciate your understanding in this regard, and invite you to please contact me with any questions or information. Looking forward to receiving a positive response.

Yours sincerely
Your name
Contact number and / or e-mail

It is important to remember that this letter is an example only, and each credit provider has their own methods or processes for new payment arrangements.

Section 129 letter of demand

When you sign your credit agreement you have to choose how you would like to receive this letter in the event of default, i.e. either:

- (a) by registered mail; or
- (b) delivered to an adult person at the location designated by you, for example at your home.

You will be liable for the cost of delivery of this letter, and having it personally delivered to you will incur a higher cost than postage. After you have received the letter, you have 10 days to act on it. Should you not understand the letter of demand, you can contact your credit provider for more information. By responding to the Section 129 letter, you can protect yourself from legal action being taken against you, and from paying extra fees for a debt collector.

If you do not respond to the Section 129 letter, Section 130 of the Act says that your credit provider can take you to court to get an order to enforce a credit agreement when you have been in default under the agreement for at least 20 business days, and:

- at least 10 days have passed since you were notified of the default with a Section 129 letter and you have not responded to the notice, or you rejected the credit provider's proposals for repayment; and
- in the case of an instalment agreement, secured loan or lease, you have not surrendered the relevant property to the credit provider, for example the furniture you bought on account.

What is a Section 129 letter?

A **Section 129 letter** is a notification from a credit provider to a consumer in terms of Section 129 of the National Credit Act. If a consumer is in default the credit provider must notify the consumer of his or her default in writing. This is effectively a letter of demand. This letter will inform you of the following:

- That your account will be handed over if it is not brought up to date or settled within 10 business days.
- That you have the right to visit a debt counsellor, alternative dispute resolution agent, consumer court or ombudsman with jurisdiction with the intent to resolve any dispute or to agree on a plan to bring payments up to date.

FAQ



LOGO

STRUGGLING TO MAKE PAYMENTS? TAKE THESE STEPS

2

You should take this letter seriously as it is a precursor to legal action, and the letter is a notice from the credit provider to give you 10 business days to settle the arrears. The letter serves the following purposes:

- It serves as a request from your credit provider to approach them to try to find a way forward that works for both of you.
- It informs you of your right to approach a third party (debt counsellor or attorney) for assistance if you are unable to make payments.
- It also warns you that, should you not choose any of these options, then the credit provider has the right to take legal action.

Contact your credit providers to make an arrangement, or visit your nearest branch for a resolution. It is important to negotiate a new payment arrangement with them that suits your budget, and to **stick to the arrangement** as this will prevent the credit providers from being forced to take action against you. Remember, legally they are allowed to take legal action against you once you have skipped even one payment.

Take Note



A credit provider is legally (in terms of the National Credit Act) entitled to take legal action very quickly after your first default, as long as:

- you have been in default for 20 business days; and
- ten business days have passed since you received the Section 129 letter.



LOGO

DEBT RELIEF OPTIONS: AN OVERVIEW

3

Debt relief options: An overview

There are various ways in which you can pay off your debt. Talk to your credit provider first and see if you can agree on a way forward. When this no longer appears to be a workable option, it is time to consider alternative options.

Once you have realised that you are experiencing severe financial difficulties, it is time to make serious changes. The first thing you need to do is to stop spending or incur any further debt. It is time to stop being in denial and to face the truth about your financial health, and to revise your budget to suit your current situation.

Reach out to your credit providers for assistance. However, if you had already reached out to your credit providers for assistance and you did not keep to your new payment arrangement with them, there are further steps you can consider.

If you have a problem managing your repayments, it might be an option to combine all your loans together into a single loan. Or you might want to consider debt review or sequestration. You need to understand these options in order to make an informed decision that is right for you. It is not too late for you to help yourself and take steps towards rehabilitation.

Take Note



You should take all steps possible to avoid legal action, as this will all be at your cost. That means you will be responsible for paying the legal costs incurred by the credit provider when trying to recover the outstanding debt from you. While you do have the legal right to defend yourself if you feel you have a case, you must be sure that you have a real chance of winning.



LOGO

DEBT RELIEF OPTIONS: AN OVERVIEW

3

Debt relief option	What is it?	Why is it a good choice	Limitations
Voluntary surrender of goods	<p>For example if you have bought a vehicle on credit, you can choose to give the vehicle back when you are unable to make payments.</p> <p>The retailer will sell it and you will only be liable for the difference between what you owe and the amount recovered from the sale of the vehicle.</p>	<p>This becomes a good choice when:</p> <ul style="list-style-type: none"> you have bought the asset and you know you cannot afford to pay it back; you know you will get good value for the sale of the asset; or you have a number of luxury assets. 	<ul style="list-style-type: none"> You will no longer be in possession of the asset. You will still be liable for the difference.
Debt review or debt counselling	<p>This is a process whereby a debt counsellor helps you manage your money more effectively. This process will protect you from any possible legal action taken against you by your credit providers.</p> <p>The debt counsellor is responsible for negotiating a new repayment plan with your credit providers.</p>	<ul style="list-style-type: none"> Debt repayments are combined into an affordable monthly repayment, which is distributed among all credit providers. Debt repayment terms are extended. Interest, costs and fees of debts may be reduced. This plan allows you to still meet your obligations, but in a way that provides you with some relief. Credit providers cannot take further legal action on credit agreements subject to debt review. 	<ul style="list-style-type: none"> This process is not free, and you have to pay a once-off payment to the debt counsellor, monthly debt review fees, as well as possible legal and payment distribution agent (PDA) fees. You must keep up with the agreed repayments or your debt review will be terminated and credit providers can then take legal action. You will not have further access to credit while you are under debt review. This plan is court-based and legally binding. It does not apply to debts where legal action has already been taken by the credit provider.



LOGO

DEBT RELIEF OPTIONS: AN OVERVIEW

3

Debt relief option	What is it?	Why is it a good choice	Limitations
Debt administration	<p>This is where you get a debt administrator to arrange to pay off your debts. The administrator will apply to the court to have some of your income set aside for basic living expenses, and the rest will be used to pay off credit providers.</p> <p>Your debt instalments are reduced and the credit providers receive a debt repayment once every three months.</p>	<ul style="list-style-type: none"> If this is made an order of the court, listed credit providers cannot take further action. This plan is suitable when your total debt is less than R50 000. 	<ul style="list-style-type: none"> Administration is not an option when your debts are more than R50 000. Payments are distributed only every three months, so interest can add up. This is a long-term option, with an associated high cost. You will be excluded from receiving more credit while under administration. This plan is court-based and legally binding. The process is lengthy and takes much longer than debt counselling. The fees are 12.5% + VAT + distribution costs per month.
Voluntary sequestration	<p>You go to court with your own attorney with a petition to prove to the court that you are insolvent.</p> <p>The idea is to sell your current assets in order to pay off or lessen your current debt. This means you are declaring personal bankruptcy.</p>	<ul style="list-style-type: none"> There is no minimum debt and no upper limit. This plan is adopted when you have too much debt and where the debt has very little chance of being paid back. Most debt is discharged or written off. Debt is discharged even when not included on the petition. Interest, charges and recovery action is stopped from the petition date. 	<ul style="list-style-type: none"> You must have assets or cash in order to sequestrate. This is a court-based and legally binding remedy. This is an expensive process and costs a great deal in legal fees. Bankruptcy can adversely affect tenancy, employment, and business activity. You have to sell all your personal assets, e.g. home, car, furniture, or valuables. Sequestration is not an option unless it is in the credit providers' best interests, so you have to offer at least 15% of what you owe. Rehabilitation is only possible after a period of five years. Many petitions to the court are not granted.



LOGO

DEBT RELIEF OPTIONS: AN OVERVIEW

3

Learn more

Debt counselling is a debt relief measure created for consumers (and not for companies) under the National Credit Act. It provides consumers with a mechanism to have their debt restructured to suit their affordability. Debt counselling is defined as an intervention for **over-indebted customers** to:

- assess the consumer's state of indebtedness;
- negotiate debt rearrangement with credit providers; and
- make recommendations to credit providers and/or the magistrates' courts on behalf of the over-indebted consumer.

Debt review is a good option when you have a regular income, your debt is in excess of R50 000, and the selling of your assets is not an option. In essence, the debt counsellor has to ensure that a consumer's income is used efficiently and that his or her debt is repaid within five or fewer years (except for bonds).

The National Credit Regulator (NCR) provides the guidelines below on **fees** to be paid by the consumer.

	Value (Excluding VAT)	Frequency
1. Application fee	R50	Once off (month 1)
2. Professional debt counselling assessment	First instalment, maximum R6 000	Once off (month 1)
3. Legal fee for consent order	R750	Once off (month 2)
4. Legal fee to refer debt review application to court	R100 for National Consumer Tribunal (NCT) or amount not fixed for attorneys	Once off (month 2)
5. Aftercare fee for 24 months	5% (excluding VAT)	Monthly
6. Aftercare fee for remaining period	3% (excluding VAT), maximum R400.00 in second month	Monthly
7. Payment distribution agency (PDA) fee	Between R5 and R15 for each payment, depending on the amount of the payment, and R3 for a statement	Monthly
Total for debt counselling process	Varies	Varies
Note that the following will apply in the case of:		
Rejection from debt counselling (as you are found not to be over-indebted)	R300 (excluding VAT)	Once off
Cancellation fee (75% of professional assessment fee)		Once off



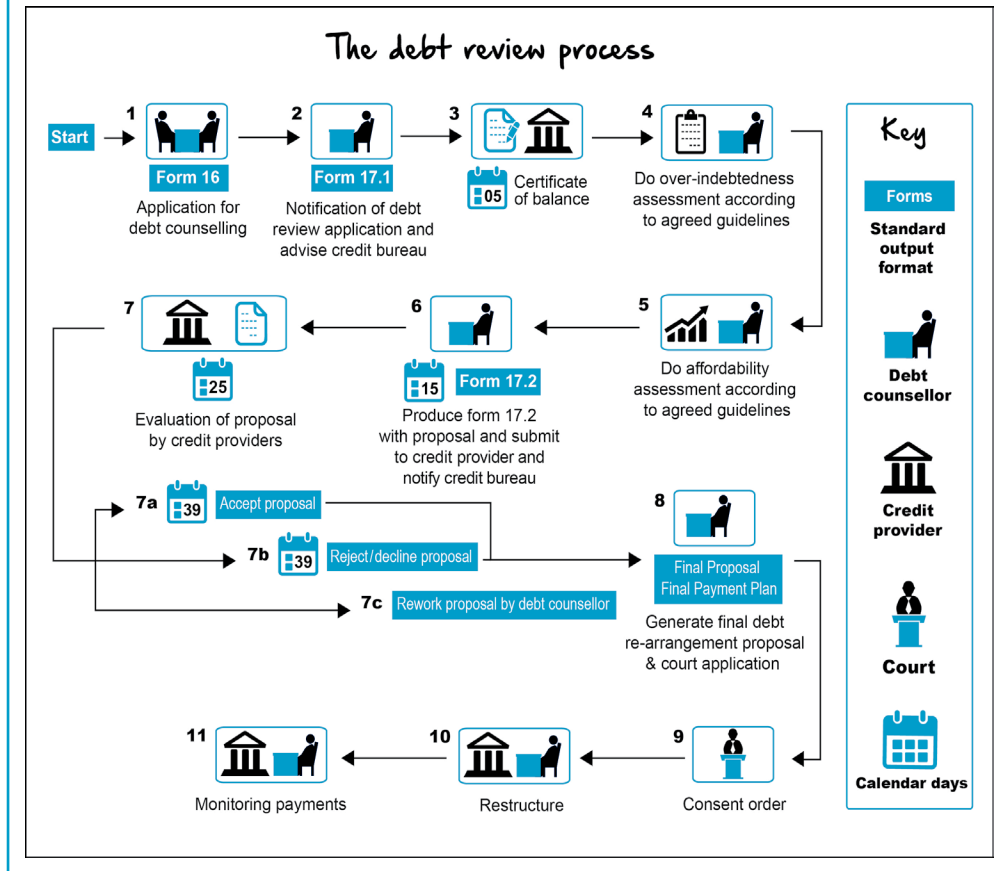
LOGO

DEBT RELIEF OPTIONS: AN OVERVIEW

3

While under debt review, you will be listed at credit bureaus and will not be able to take on any further credit until you have repaid all your debts and received a clearance certificate. Legislation requires that a debt counsellor must issue you with a clearance certificate within seven days after you have fulfilled all your obligations under every credit agreement that was subject to that debt rearrangement order or agreement, or you have demonstrated a financial ability to fulfil future obligations, like your bond repayments.

If the debt counsellor refuses to issue a clearance certificate, or no clearance certificate is issued, you may lodge a complaint with the NCR.





LOGO

LEGAL ACTION AND DEBT ENFORCEMENT

4



LOGO

LEGAL ACTION AND DEBT ENFORCEMENT

4

Legal action and debt enforcement

Legal action is a worrisome consequence of not paying your debts, and is one where you no longer have control over your own financial affairs because your credit providers have been forced to take action against you.

Once you have been in default under a credit agreement for at least 20 business days, and you have failed to take one or more of the following steps:

- no action has been taken to bring your payments up to date;
- you have not made any contact with your credit providers to negotiate a new arrangement;
- you have been unable to stick to a new payment arrangement;
- you have not responded to a Section 129 letter of demand and at least 10 business days have passed since the credit provider delivered the notice; and/or
- you have not taken any steps to get yourself out of debt, such as applying for debt review or administration; then

the credit provider can seek to recover the money by taking legal action or taking you to court. If the loan is secured, the credit provider can also obtain permission from the court to sell the asset that was provided as security and can recover any amount still outstanding after the sale.

The following paragraphs provide a summary of all legal action that can be taken against you by the credit provider when you are in default of your credit agreement. An overview of the process is shown below.



Learn more

If you do not respond to the letter of demand, the credit provider may send an agent to your home or workplace with your agreement, to ask you to sign one of the following documents:

- A Section 57 of the Magistrates' Court Act **Acknowledgement of Debt**, where you admit that you owe the money (the amount will be stated), and sign a document where you promise to pay monthly instalments of the stated amount. You also agree that if you default (do not pay) on any instalment as agreed in the Acknowledgement of Debt, the credit provider may take the signed documents to court, and take judgement against you.
- A Section 58 of the Magistrates' Court Act **Consent to Judgement**, where you agree that judgement may immediately be taken against you and that you agree to make regular payments on your judgement debt.

The difference between a Section 57 and 58 agreement is that with a Section 57 agreement you get a second chance. In other words, if you keep to the payment arrangement the creditor will not proceed with judgement against you, and your record stays clean. With a Section 58 agreement, you have agreed to the judgement because you don't want to deal with lengthy court processes, which means that judgement will stand on your record until the earlier of 5 years or until the judgement is rescinded by a court or abandoned by the credit provider. When the judgement debt is paid in full and the credit provider informed the credit bureaus of such, the judgement listing will be removed within 7 days.

Summons and judgement

Once a credit provider has decided to take legal action, and you have failed to act on a Section 129 letter of demand, instead of sending an agent to visit the consumer to sign a S57 or S58, the debt collector or lawyer acting on behalf of the credit provider can get a sheriff of the court to serve you with a court summons – usually at home or at work or at the address you provided in the original contract. If you receive a summons, you have a limited number of days to respond, and state whether you will defend the action or not. If you fail to defend the action, the credit provider may still get judgement against you for the payment of your debt or attachment of your property.

Remember that any legal action will be at your expense. Everything a credit provider does in order to enforce the credit agreement (phone calls, letters, and lawyer fees) will be charged to you. That means your debt will be increasing.



LOGO

LEGAL ACTION AND DEBT ENFORCEMENT

4

So you should only allow the matter to go to court if you feel you have a case to defend, otherwise contact your credit providers' attorney immediately and see what arrangement can be made in order to avoid judgement being taken against you.

If you decide to defend the matter, you must then decide whether or not you want an attorney to represent you, and this is a bigger cost. You can also defend the matter yourself, but this is not advisable and the legal processes can be lengthy and very difficult. You should really try to resolve the problem before it gets to the judgement stage, or accept the judgement if you owe the money.

It can cost you a lot if an account is handed over to a legal collections department. You not only have to pay the original debt, but also all the extra interest, and extra charges to attorneys, to debt collectors and to sheriffs.

Take Note

Forced sequestration is when one or more credit providers apply to the court to have you sequestrated because it is in the best interests of all credit providers. The court will then attach all assets and sell them to settle all debts.

Once a debt forms part of a sequestration, credit providers must accept whatever payment they get from the sale of your assets. They cannot take any further legal action against you to demand any payments from you on the shortfall.

Learn more

A consumer may at any time, before the credit provider has cancelled the agreement, **remedy a default** by paying to the credit provider all amounts that are overdue, together with the credit provider's prescribed default administration charges and reasonable costs of enforcing the agreement up to the time the default was remedied.

That means that where an asset, like a vehicle, has been attached, you can – if you pay the arrears – still get the asset back and have the credit agreement reinstated.

If the credit provider has cancelled the agreement, the asset can only be returned to you by settling the total debt in full.



LOGO

LEGAL ACTION AND DEBT ENFORCEMENT

4

Execution process

The execution process is the process used to collect the outstanding debt, and is usually in the form of a court order to pay back a judgement debt through an emolument attachment order (EAO) or an attachment and sale of assets to recover the monies.

Where the credit provider has received a judgement for the attachment of goods, a warrant of execution against your property will be issued as soon as possible. The sheriff, with the judgement, will be able to attach moveable property or goods and remove them to a place of storage until the assets can be sold at a public auction (sale in execution). Basically the sheriff may remove anything of value from the premises, except for some necessary property that is excluded under the Magistrates' Court Act.

- If you have a bond where the house is the security for the loan, the house will usually be attached first and sold, and you will be liable for the shortfall.
- However, for unsecured credit, like loans and credit facilities, credit providers will usually attach your home as a last resort, and rather take steps to attach or garnish your salary.
- Goods are seized and then sold at an auction.
- If the amount received from the sale is not enough to settle the account, the credit provider may proceed to recover the outstanding balance from you. The credit provider can approach the court to obtain a further execution order against you; such as an EAO or even an order to sequester your estate.

Take Note

An EAO is only served on your employer and not on you. It is important to note that an employer may not take disciplinary action against an employee because he or she has been served with an EAO. You should also note that an EAO must be issued from a court closest to where your employer runs its business.

FAQ

What is an emolument attachment order (EAO)?

This is one of the ways in which a debt is collected from the consumer after judgement is granted, and is used **only as a last resort**. The EAO is sometimes incorrectly referred to as a **garnishee order**.

Here the court orders the consumer's employer to deduct the amount owed in specified instalments from the consumer's salary and then to pay the instalments over to the credit provider. The employer is known as the emoluments attachment debtor or garnishee.

It is unlawful for the employer to refuse to deduct the money. If an employer refuses, the EAO can be executed against the employer. Your employer can charge up to 5% commission for managing the EAO.

You may apply to the court to have the EAO amended or rescinded if you can show that you are left with insufficient means to support yourself and your family.



LOGO

LEGAL ACTION AND DEBT ENFORCEMENT

4



LOGO

DISCLAIMER



May a sheriff attach property belonging to a third party on the premises occupied by the consumer?

FAQ

Property found in the possession of the consumer may be attached. There is an assumption that such property belongs to him or her. If the property belongs to a third party, written evidence in the form of an affidavit by the alleged owner, along with the documentary proof, must be supplied to the sheriff.

Learn more



Credit bureaus keep both positive and negative (adverse) information on consumers, and they make this information available to credit providers, debt counsellors, or employers when requested, and with your permission. The National Credit Act and Regulations stipulate the **retention of specific consumer information**, as well as how long adverse information can be reflected on your credit profile.

Adverse information is information relating to consumer behaviour and includes classifications such as “delinquent”, “default”, “slow paying”, “absconded”, and “not contactable”; and actions such as “handed over for collection or recovery”, “legal action”, and “write-off”.

No **adverse information** regarding a credit agreement may be retained by a credit bureau once all arrears owing under that agreement is settled. Upon settlement of the amount in arrears, the credit provider must advise the credit bureaus that the arrear amounts have been settled, and the credit bureau must update the consumer’s credit records within seven days of being notified as such.

That means if you have paid up a judgement debt, or you have settled other arrears, and it is still reflected on your credit report, you can contact a credit bureau directly to dispute the incorrect or outdated information. You may contact any of the credit bureaus on the numbers below for enquiries relating to the removal of adverse information and paid-up judgements:

- TRANSUNION – 086 148 2482
- EXPERIAN – 086 110 5665
- XPERT DECISION SYSTEMS (XDS) – 086 112 7334
- COMPUSCAN – 086 151 4131
- CONSUMER PROFILE BUREAU – 086 726 5183



All intellectual property rights, including but not limited to copyright and trademarks contained herein and in all related consumer education material and social media contents, is held by BANKSETA and may not be copied, reproduced, adapted, altered, published or distributed in any form whatsoever without the prior written consent of BANKSETA or as otherwise provided for in the rules of use determined by BANKSETA.

The information provided herein is intended to provide the user with objective information and is not intended to serve as financial, legal or other advice. BANKSETA shall not be responsible and disclaims all liability for any loss, damage (whether direct, indirect, special or consequential) and/or expense of any nature whatsoever, which may be suffered as a result of, or which may be attributable, directly or indirectly, to anything done or omitted to be done, the use of or reliance upon any information contained herein and/or in all related consumer education material and social media content.

While every effort has been made to provide accurate information, BANKSETA provides no representation or warranty, express or implied, regarding the correctness, completeness or currency of information contained herein and/or in all related consumer education material and social media contents.

OTHER CONSUMER EDUCATION BOOKLETS BROUGHT TO YOU BY BANKSETA



www.bankseta.org.za



JOHANNESBURG

Telephone +27 11 805 9661 | Facsimile +27 11 805 8348

Address: 94 Bekker Road, Thornhill Office Park, Block 22, Vorna Valley, Midrand, 1685

BLOEMFONTEIN

Telephone +27 51 406 9365 | Facsimile +27 86 667 7966

Address: Motheo TVET College Central Office, C/o Georges & Aliwal Street, Bloemfontein, 9300

LIMPOPO

Telephone +27 15 297 0199 | Facsimile +27 86 218 0124

Address: IGS Building, 7 Watermelon Street, Platinum Park, Bendor, Polokwane, 0713

EASTERN CAPE

Telephone +27 43 721 3349 | Facsimile +27 86 574 2888

Address: Waverly Office Park, Phase 4 Building, 3-33 Phillip Frame Road, Chiselhurst, East London, 5247

Postal Address PO Box11678, Vorna Valley, 1686

Call Centre 086 102 0002

Anti-Fraud Hotline 0800 205 054



ENABLING SKILLS DEVELOPMENT IN THE BANKING AND MICROFINANCE SECTOR