

## Understanding the National Credit Act (NCA)

New legislation always introduces some uncertainty because people are not always sure who it applies to, what is covered, what has changed and so on. We compiled the 10 most important facts you, as a consumer in South Africa, should know about the NCA.

### What is the objective of the NCA?

The most important objectives of the NCA are to level the playing fields amongst all credit providers with regard to the manner in which credit is granted, how consumers are treated when applying for credit and during the relationship with the credit provider and to limit over-indebtedness by placing a responsibility on credit providers to ensure that they do not grant credit recklessly.

### What is covered by the NCA?

The NCA applies to credit agreements entered into after 1 June 2007 between a consumer and a credit provider – banks, micro-lenders, furniture stores, clothing stores, appliance stores, vehicle financiers, etc.

Credit agreements include

- Credit cards
- Mortgage loans
- Instalment agreements
- Financial lease agreements on movable assets
- Overdraft facilities on cheque accounts

### Who are included in the scope of the NCA?

All natural persons, in other words individuals, fall within the scope of the NCA. Certain juristic persons are also included – like companies, Close Corporations, Trusts (with more than three trustees), partnerships, with a turnover or asset value less than R1million.

## **What has changed in the credit granting process?**

Every credit provider will still follow its own unique credit granting process, but there are certain legal requirements which all registered credit providers must follow.

These requirements include:

- Doing a full assessment of the applicant's credit and debt repayment history;
- Doing an affordability assessment to see if the applicant will be able to afford the credit being applied for;
- Providing the applicant with a quotation and pre-agreement (see below);
- Determining if the applicant understands and appreciates the rights and obligations of the credit agreement.

## **Which documents must an applicant get?**

Once a credit assessment has been done, and the credit provider is comfortable to grant credit to the applicant, the applicant must receive a quotation and pre-agreement from the credit provider.

The format and contents of these documents are prescribed by the NCA and the purpose of these two documents is to provide the applicant with all the costs, charges, terms and conditions upfront so that the applicant can make an informed decision about the credit. The quotation is valid for 5 business days, so the applicant may "shop around" within this period for the best credit offer.

## **What is debt counselling?**

The NCA allows for debt counsellors to be registered and to assist consumers who are over-indebted, or who fear they may be over-indebted. The debt counsellor will assess the consumer's financial position and will liaise with the credit providers, or make a recommendation that the consumer is over-indebted.

Whilst a consumer is under debt review, s/he may not apply for credit.

For more information, visit the National Credit Regulator website at

[www.ncr.org.za](http://www.ncr.org.za)

## What about consumer rights?

The NCA lists a number of consumer rights, which are protected by the Act – that means that if a protected consumer right is breached, the party who breached it is committing an offence in terms of the Act.

The following are protected consumer rights in the NCA:

- The right to apply for credit;
- The right to protection against discrimination in respect of credit;
- The right to reasons for credit being refused;
- The right to receive documentation relating to the credit agreement;
- The right to receive documentation in plain and understandable language;
- The right to challenge records on the credit bureaux and to be compensated if the information is incorrect;
- The right to receive documentation in certain languages;
- The right to confidentiality.

## How does the "credit bureau amnesty" work?

Section 73 of the NCA makes it possible for certain information to be removed from the credit bureaux by 1 June 2007.

**Adverse credit information** listed on the credit bureaux by 01 September 2006 for debt less than R500 will be removed from the credit bureaux.

**Accounts which were dormant** for longer than 24 months by 01 September 2006, unless any enforcement action has been taken by the credit provider. This means that if a consumer has not paid an outstanding debt for a period of 24 months by 01 September 2006, and the credit provider has not handed the account over to attorneys (or other party) for collection or to take a judgment, then all the information relating to this account will be removed by 01 June 2007.

**Judgment information that credit bureaux receive from the courts** will be removed from the credit bureaux in the following circumstances.

- All judgment information in respect of a debt of up to **R500** that was listed on the credit bureaux by 01 September 2006 – unless the consumer has more than two unpaid judgments on his/her credit record. This means that the judgment information will be removed from the credit bureau, and it is not a pre-requisite that the debt must have been paid;
- In respect of a debt of up to **R5000**, if the judgment is older than 18 months by 01 September 2006 – unless the consumer has more than two unpaid judgments on his/her credit record. Again there is no pre-requisite for the debt to be paid in full for the information to be removed from the credit bureaux, i.e. the information should have been older than 18 months by 01

September 2006 and it will automatically be removed from the credit bureaux without application by the consumer.

**It is very important for consumers to understand that only the judgment information of the abovementioned categories will be removed from the credit bureaux and that consumers still have an obligation to repay the outstanding debt to the credit grantor as the credit grantor can still exercise his/her rights for example to repossess furniture or to garnish the consumer's salary.**

- In respect of a debt of up to **R50 000**, if the full amount was paid in full by the 1st September 2006.
- In respect of a debt of up to **R50 000** reflecting on the consumer's credit record on 1st September 2006, if the full amount is paid by the consumer between **1st September 2006 and 1st September 2007**.

For more information, visit the Credit Information Ombud website at [www.creditombud.org.za](http://www.creditombud.org.za)