

GUIDELINES FOR THE WITHDRAWAL FROM DEBT REVIEW as per NCR circular 002/2015 issued in February 2015

INTRODUCTION

The National Credit Act ("the Act") introduced debt review as a debt relief measure for over-indebted consumers. This is a **statutory process which is only conducted by registered debt counsellors**. The process to withdraw or terminate debt review by the consumer or debt counsellor is not specified in the Act; however the credit industry has in the past years developed a voluntary withdrawal process and a Form 17.4 to facilitate the withdrawal process either by a consumer or DC. The application of this voluntary withdrawal process was overturned by the judgment granted in the case of Rougier v Nedbank which provided clarity on whether a debt counsellor has the statutory power to withdraw or terminate debt review. In terms of this judgment **any act by a debt counsellor to terminate or withdraw debt review is beyond the statutory powers of a debt counsellor as espoused in the Act, therefore the conduct is prohibited**. Following an intensive review process of this judgment and its impact by the Credit Industry Forum(CIF), the NCR is pleased to announce that the paper developed by the CIF has been signed off and is issued as guidelines to be applied by all industry participants effective immediately. These guidelines replace the use of Form 17.4. Please take note that amendments to the Act, its regulations or case law supersede provisions made in these guidelines and will when necessary be amended.

COMPLIANCE

Credit Providers, Credit Bureaus and Debt Counsellors are requested to comply by consistently applying these guidelines. Non-compliance with these guidelines should be reported to the NCR.

GUIDELINES

1. WHEN CAN A CONSUMER EXIT DEBT REVIEW PROCESS?

Section 71(2)(b)(i) of the Act initially made provision for consumers to only exit debt review through issuance of a clearance certificate after they have paid all their re-arranged debts in full. The effect of this provision is that in instances where a home loan formed part of the debt review application, consumers have to remain under debt review for the duration of the home loan term even after settling re-arranged short term debts. This provision has change upon proclamation of the National Credit Amendment Act (NCAA) under section 71(1) as follows:

A consumer whose debts have been re-arranged in terms of Part D of this Chapter must be issued with a Clearance Certificate by a Debt Counsellor within seven days after the Consumer has –

- (a) Satisfied all the obligations under every credit agreement that was subject to that debt re-arrangement order or agreement in accordance with that order or arrangement; or
- (b) Demonstrated:
 - (i) financial ability to satisfy the future obligations in terms of the re-arrangement order or agreement under-
 - (aa) a **mortgage agreement** which secures a credit agreement for the purchase or improvement of immovable property; or
 - (bb) any **long term agreement** as may be prescribed;
 - (ii) that there are no arrears on the re-arrangement contemplated in subparagraph (i);and
 - (iii) that all obligations under every credit agreement included in the re-arrangement order or agreement other than those contemplated in subparagraph (i), have been settled in full.

2. CAN A DEBT COUNSELLOR TERMINATE OR WITHDRAW DEBT REVIEW PROCESS?

No. A debt counsellor does not have statutory powers to terminate or withdraw the debt review process. This means that a debt counsellor can no longer issue Form 17.4 and update DHS with status G (Voluntary withdrawal by consumer) or H (Withdrawal by a debt counsellor). There is however varied ways in which a consumer can be withdrawn from debt review which will be set out below.

3. CAN A CONSUMER WITHDRAW FROM DEBT REVIEW PROCESS ONCE A DEBT REVIEW COURT ORDER HAS BEEN OBTAINED?

- Once a debt review court order has been obtained a consumer cannot terminate or withdraw the debt review process, they can however approach the court to rescind the order or apply (at their own expense) for an order which declares that the consumer is no longer over-indebted.
- Upon receipt of the order, a debt counsellor will notify the credit providers of the withdrawal by means of Form 17.W and update DHS with status G.

4. CAN A CONSUMER WITHDRAW OR TERMINATE DEBT REVIEW PROCESS PRIOR TO OBTAINING DEBT REVIEW COURT ORDER?

- Consumers can only withdraw or terminate the debt review process prior to declaration of over-indebtedness as per section 86(7) of the Act and issuance of Form 17.2 subject to payment of debt counselling fees as per NCR Debt Counselling Fee Guidelines.
- If a determination is made and no court order is in place, the consumer will remain under debt review.
- A debt counsellor will notify the credit providers of the withdrawal by means of Form 17.W and update DHS with status G.

5. CAN A DEBT COUNSELLOR SUSPEND HIS/HER SERVICE FROM A CONSUMER UNDER DEBT REVIEW PROCESS?

5.1 Where section 86(7) determination is made and the consumer is not co-operating

- Where a consumer is not co-operating with the debt counsellor (e.g. not providing relevant information or proof, non-payment of debt counselling fees, etc) and a determination in terms of section 86(7) of the Act is made, a debt counsellor can suspend provision of his/her service to the consumer.
- Prior to suspension of the service, a debt counsellor will notify the consumer of the intended suspension of service, the consequences and allow the consumer 10 business days to remedy the situation.
- Debt counsellor to remain the debt counsellor on record for the consumer.

The following information should be included in the notice of intended suspension to the consumer:

- i. Notice of pending service suspension and the reasons thereof;
- ii. Consequences of non co-operation (e.g. risk of termination by credit providers, inability to apply for further credit, consumer is still under debt review, no withdrawal request to be processed, etc) ;
- iii. Option to remedy the situation within 10 working days;
- iv. If no response is received and the situation has not changed, consumers and credit providers should be notified of the suspension of service by means of Form 17.W.

5.2 Where a consumer has elected to make direct payments to credit providers

- In terms of the NCAA, a consumer has a right to make direct payments to credit providers and not make use of the services of a Payment Distribution Agent (PDA).
- Election by consumers to make direct payments to credit providers cannot be construed as non co-operation and should not be used as a reason for suspension of debt counselling services.

The following information relating to election to make direct payments should be included in the Form 16 signed by the consumer when they apply for debt review:

- I. Consumer remains responsible to make all payments as re-arranged, **in full and on time.**
- II. Proof of payments must be sent to the debt counsellor **on a monthly basis** for record keeping and to enable provision of after care service as a consumer cannot be under debt review without a debt counsellor.
- III. Consequences of making short or late payments (e.g. risk of termination by credit providers)
- IV. Debt counselling fees are payable to a debt counsellor for services rendered and this **includes payment of monthly aftercare fees.**
- V. For a debt counsellor to issue a clearance certificate, all **after care fees must be up to date.**
- VI. Where the debt counsellor has suspended provision of service, a consumer must provide **proof of settlement/paid-up letters** from credit providers for a debt counsellor to issue a clearance certificate.

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6. CAN A CONSUMER BE TRANSFERRED TO ANOTHER DEBT COUNSELLOR?

- A consumer under debt review may be transferred to another debt counsellor subject to payment of all debt counselling and aftercare fees where it has been established that the previous debt counsellor followed the correct process.
- Form 17.7 should be used to facilitate this process.

CONCLUSION

All debt counsellors are requested to disclose this information upfront and in writing to consumers to ensure that they are fully aware of the implications of being under debt review.

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