

## **DEBT REVIEW WITHDRAWAL GUIDELINE**

Debt review was created by the National Credit Act 34 of 2005 (NCA) as a debt relief option for over-indebted consumers; however, the act does not specify provisions to withdraw from debt counselling. To provide a solution for consumers who wish to withdraw from debt review, the National Credit Regulator(NCR) has published guidelines to be applied by all industry members.

Below is an extract from the guidelines published in May 2021

### **WHEN CAN A CONSUMER EXIT THE DEBT REVIEW PROCESS?**

1. After the debt counsellor has made a determination of over-indebtedness but before the Magistrates Court has granted a debt re-arrangement order:

i. Section 87 of the NCA is applicable. A debt counsellor makes a determination of over-indebtedness when they issue a Form 17.2(b) to credit providers and update the credit bureaus via DHS.

ii. A consumer who is not yet subject to a Magistrates court debt re-arrangement order in terms of section 87 may, together with the proposal of the debt counsellor, present additional facts to the Magistrates Court to bring about a rejection of the debt counsellor's initial proposal of over-indebtedness. This means that the consumer has to present to the Magistrates Court with new or additional facts to support the fact that he/she is not over-indebted and that he/she is able to fulfil contractual repayments, including any arrears that exist at that point in time. If the Magistrates Court finds the consumer not over-indebted, the debt review ends, and the debt counsellor is required to update DHS to Status G1 to indicate that the consumer is not over-indebted. The debt counsellor should send out a Form 17 W(c) (Annexure A) accompanied by the order of the court to credit providers where the Magistrates Court has found the consumer not over-indebted.

iii. The debt counsellor will charge the consumer debt counselling fees in line with the NCR Debt Counselling Fee guidelines applicable from time to time, and the consumer remains liable for the payment of these fees to the debt counsellor.

iv. If the Magistrates Court finds the consumer over-indebted, the debt review process continues, and the consumer cannot withdraw from debt review.

2. After the Magistrates Court has granted a debt re-arrangement order:

i. Section 71 of the NCA is applicable. Once a debt re-arrangement order or debt re-arrangement consent order has been granted, the consumer can no longer withdraw from debt review.

ii. The only way to end or exit the debt review is in terms of section 71 through the issuance of a clearance certificate by a debt counsellor once all the substantive and procedural statutory requirements have been met.

iii. For the sake of clarity, no process exists in the NCA that enables voluntary withdrawal from the debt review process after the consumer has applied for debt review in the prescribed manner and form.

In addition, the NCR has now published additional guidelines that grant exceptions to the above-mentioned processes, as per below.

## 1. RELEVANT CASE LAW

1.1 In the judgment of the National Credit Regulator v Lamara (NCT/102200/2018/57(1)) [2019] ZANCT 180 (13 December 2019), the NCT at paragraph 145 states that there needs to be a clear indication and date when the consumer applied for debt review. This will be in the form of a duly completed and signed form 16 or a clear record of when the consumer furnished all information to the debt counsellor as contemplated in regulation 24(1)(b). This will be the date when the debt counsellor received the application as contemplated under sections 86(1) and (4) of the National Credit Act (NCA).

1.2 In addition, the Van Vuuren judgment in paragraph 28 states that section 88(1) has the function of freezing the consumer's rights to contract in credit. Upon notice of receipt of the debt review application, the freeze is immediately effective.

1.3 In light of these judgments, a consumer is considered under debt review when he/she has applied for debt review in the prescribed manner as set out in section 86 of the NCA. Therefore, a consumer cannot voluntarily withdraw or terminate the debt review process prior to the issuance of a Form 17.2 as a result of the duly completed and signed Form 16 and/or submission of the relevant information and documentation to the debt counsellor as contemplated under regulations 24(1)(a) and (b).

### **What Does This Mean For A Consumer Wanting To Exit Debt Review?**

A consumer who has applied for Debt Review can withdraw from Debt Review before Form 17.1 (Notification Of Application For Debt Review) has been issued to credit providers and credit bureau by the Debt Counsellor. Once Form 17.1 has been issued, however, a consumer cannot ask to withdraw from debt review. At this point, a consumer's name will be flagged by the NCR debt help system as over-indebted. It can only be unflagged if the consumer settles all outstanding debt and obtains a clearance certificate or court order indicating that the consumer is no longer over-indebted and their financial position has changed.

For further information, please see the official guidelines.

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