

Debtfree

A close-up, low-angle shot of a person's legs from the knees down, wearing athletic sneakers. The person is wearing black shorts. The right shoe is in the foreground, showing a thick layer of dark mud on the red and grey sole. The left shoe is slightly behind and to the left. The background is a bright, hazy, golden light, suggesting a sunrise or sunset over a body of water or a flat landscape. The overall mood is one of perseverance and overcoming challenges.

South Africa's debt counselling magazine

September 2015
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WHAT IS DEBT REVIEW?

BY ETIENNE PIETERSE OF FINANCIAL FREEDOM SOLUTIONS

The National Credit Act 34 of 2005 was an innovative piece of legislation introduced to regulate the consumer credit industry. It also introduced innovative legislation setting out consumer protection through debt review. The protection afforded by the Act is achieved through the services of a Debt Counsellor who is regulated by the NCR.

Debt review is a form of protection where an over indebted consumer applies for help and is protected from harassment, summonses etc. This process avoids expensive and hostile litigation and protects a consumer's assets, such as their house and car from repossession if properly implemented. Debt review is cost efficient and most often results in a consumer not being "blacklisted" and thus having better access to credit again once the debt review process is completed.

DEBT REVIEW WORKS AS FOLLOWS:

1. A person in financial difficulty meets with a NCR registered debt counsellor ("DC") who after requesting certain information (credit record, payslip, ID, statement of assets and liabilities, income and expenses etc.) does an assessment to determine if a person is over indebted.

2. If the DC determines that the person is over indebted, a new payment plan is calculated by the DC in consultation with the credit providers and the over indebted consumer in order to ensure that the new payment is realistic and will repay all outstanding debt.

3. This proposal is then made an order of the Court and the over indebted consumer makes payments in terms of the revised payment plan so that all debt is repaid to the credit providers.

4. Once the existing Credit providers have been repaid, the DC issues a clearance certificate confirming that the consumer is Debt Free and the consumer can then obtain credit again.

Debt Review has many advantages, such as: No credit provider should issue summons or try repossess assets once this protection has been obtained; consumers get to keep assets and prevent repossessions; the consumer has a payment plan that is realistic and affordable; credit providers recover their debt at minimum cost; consumers are not "blacklisted". Debt review is a win-win situation for all and lengthy and hostile litigation is avoided.

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EDITOR'S NOTE

Summer is fast approaching. The days are getting longer and the nights warmer. Before you know it you will want to put on that swimming costume.

So, it might be time to first put on those exercise shoes and burn some of those winter calories first. Winter weight is a lot like debt. Firstly, it is a lot more fun to put on than lose. It certainly is easier. Then to get rid of debt is like trying to get rid of weight. Every time you say the word "diet" someone offers you a piece of cake. Similarly many consumers have found themselves being offered credit as soon as they start paying back their existing credit. However if we ever want to hit the beach then we better start to knuckle down now. After all December will soon be upon us (will you be giving anyone gifts? Have you saved for that?) and January follow right after with all those school clothes and books that need to be bought (you better put something aside for that too).

This month we discuss credit reports and your debt review status; we look at courts who are challenging the way that the NCR says debt counselling fees must be charged, credit providers who say that debt review is causing consumers to default and the elephant in the room: PDA fees and recent changes to the

National Credit Act and Regs. We also take the chance to catch up with a newer debt counselling firm and see what it was that made them want to venture into the world of debt review in our DC Profile. If you are looking for help with your debt be sure to check out the Service Directory Section at the back of the magazine. We have been overhauling it to make it easier to use and adding all the current details of companies offering debt review. Don't ignore that winter wobble and if your debt is crushing you then it is time to get help now. Hit the roads, burn those calories. Pay your debt review instalments and get debt free.

Zak King



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NEWS FLASH

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NCR CAN'T AFFORD TO REVIEW DC FEES

The National Credit Regulator (NCR) recently announced at the Debt Counsellors Association of South Africa (DCASA) annual conference that they were busy with a review of the fees Debt Counsellors charge for debt review. The NCR have issued guidelines about the fees that they want Debt Counsellors to charge in the past. The fees have been adjusted once since the process began back in 2007 and Debt Counsellors are pushing for the NCR to once again adjust the fees in line with how the industry has changed. Most Debt Counsellors now make 1/3rd less than they did in 2009 as the industry has become more and more lengthy, labour intensive and complicated. Consultants working for Debt Counsellors are now also earning less on average. Some argue that this means that consumers could be getting less professional service and is an area of concern. The NCR announcement at the DCASA conference mentioned that the NCR had put out to tender the process of reviewing and reporting on the fees. There was even recently talk that a service provider had been chosen through the tender process. This caused a lot of joy across the industry. The NCR have now crushed that joy, as they announced that they have run out of money for this project this year and are shutting it down till they get some more funding.

FNB TO HOLD WORKSHOP IN CAPE TOWN

The FNB Debt Review Centre team will be heading down to Cape Town in November 2015 to meet with local Debt Counsellors and to workshop ideas around process improvements and get to know DCs in this area better. The Western Cape has the second highest concentration of Debt Counsellors in South Africa with some of the largest debt counselling firms offering debt review being based in Cape Town. The workshop will take place toward the end of November at the lovely big glass FNB building in the heart of Cape Town's CBD and calls for Debt Counsellors to RSVP are already underway. DCs can RSVP to bmbanga@fnb.co.za

NEDBANK/MFC VEHICLE DEBT REVIEW MATTERS

Nedbank and MFC have announced that from 1 October 2015, all new debt review applications in respect of vehicle asset finance (VAF) will be dealt with exclusively by MFC, irrespective of whether the credit agreement was entered into by Nedbank or MFC. If you have been unsure who to communicate with in regard to a vehicle that may have been financed through Nedbank or possibly MFC then there is now good news as Nedbank have taken steps to make life easier for everyone. Just talk to MFC.

NCT TACKLE BACKLOG

The National Consumer Tribunal have the authority to grant a specific type of debt review application (much like a court could). Over the last few months things have drastically slowed down at the NCT with turnaround times getting longer and longer. The NCT have now seen that drastic action is needed to get matters back on track. As such, they have arranged for the NCT to travel to cities across the country to "hear" matters in a special short term arrangement. These special motion courts will allow local Debt Counsellors to bring their matters to be heard and resolved on the day.

AFFORDABILITY ASSESSMENTS NOW UP TO STANDARD

After a 6 month retroactive delay, the published amended affordability assessment requirements came back into effect this month. The amended requirements for what a creditor must check had been on the books for absolutely ages and actually came into effect once before in March this year with the National Credit Amendment Act and new Regulations. It seems though that, due to a huge amount of begging and pleading from credit providers who were not paying attention and unable to get their systems ready in time, the DTI minister made allowances for credit providers to have a further 6 months to figure out how to ask for documents such as proof of your income and copies of your bank statements.

AFRICAN BANK'S GOOD BANK GET FSB GO AHEAD

Good Bank has been issued with a Financial Service Provider Licence by the FSB. This means they now have FAIS capabilities and can offer financial services and advice. Good Bank CEO Brian Riley says that they have been talking to the various other regulatory bodies, getting everything ready to begin operations shortly.

POLICE ARREST 5 CREDIT PROVIDERS

The National Credit Regulator (NCR) is tasked with regulating all credit providers in South Africa. They also are tasked with bringing to book anyone who is operating as a credit provider without registering as one. As such, they gather information about companies and people who offer credit and might be breaking the law. They then work in conjunction with the SA Police Services to raid these businesses and look for offences. The NCR recently conducted a series of such raids in Cape Town. The NCR had been investigating allegations against 21 different credit providers in the Western Cape. The credit providers were from various areas across the Cape Peninsula such as Wellington, Paarl, Stellenbosch, Strand, Woodstock, Robertson, Bellville, Goodwood and Wynberg. These credit providers were doing a number of illegal things like taking consumers ID books and Pension Cards. Some had also taken consumers bank cards and demanded to know their pins. The 71 pensioner's cards will now be returned to them and the NCR will investigate if the debts will be written off or not and refer the matters to the NCT as needed. 5 People have been arrested, so far, in this series of raids.

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YOUR DEBT REVIEW STATUS ON YOUR CREDIT REPORT

When a company is considering giving someone credit they will draw a credit bureau report. This is a report which tells them all about the credit history of the consumer. The report will list basic information such as where the consumer has lived recently and what other credit accounts they have.

What is also shown is how the consumer has paid those accounts. If the consumer has missed lots of payments this will reflect. Armed with this information the creditor can then consider if they feel if the consumer is likely to pay them back for credit they might grant them. They might also be able to decide what interest rate to charge the consumer based on how risky they look.

Granting credit is tricky because if a company offers credit to someone who is actually unable to repay that credit, at the agreed figure each month, this is called 'reckless credit'. Companies who grant reckless credit can be fined and even lose out on getting their money back. If a consumer applies for credit and the creditor works out they can't actually afford the credit each month then it does not matter what their credit report says, the consumer should not get credit. This is true even if your credit score is high. If you can't pay for credit then you won't get credit.

When a consumer is experiencing debt repayment challenges and they can't manage to pay everyone what they owe them each month then they can apply for debt review. They will fill in an application form and meet with a Debt Counsellor to discuss their situation. When they do this, the Debt Counsellor will go onto the internet to a website that the National Credit Regulator runs and capture the consumers details as applying for a debt review. The NCR's system will then send an email to all 13 credit bureaus across the country and inform them that the consumer is talking to a Debt Counsellor. The credit bureaus will then add this information to the consumers credit report. Should the consumer then head off to a credit provider looking for another loan the credit provider will not only do the maths and see that the consumer can't afford a loan but also see that they are talking to a Debt Counsellor to get help. Since the consumer can't afford the loan repayments each month they will not get new credit. Besides they no longer need new credit since they are making a repayment plan, through debt review, for their existing payments. The Debt Counsellor will also make sure they have enough funds to afford their monthly necessities and don't need to borrow funds for these.

As the consumer goes through the debt review process, the Debt Counsellor will update the NCR's website to show what is happening with their debt review. Eventually when the consumer has repaid all their debts (or all except for their bond, maybe) then the Debt Counsellor will change the listing on the NCR's website and this will update all the various credit bureaus that the consumer is no longer under debt review. This means that the debt review status disappears. This is because the National Credit Act says consumers can't be penalised for exercising their rights under the Act (such as going into debt review). At the same time, the Debt Counsellor will provide the consumer with a document called a 'clearance certificate' which shows they are no longer under debt review and their debts are settled.

Some consumers are concerned that the listing is detrimental to their applications for work or rental accommodation. Thus changes were made to the law which made it difficult for companies to just draw a credit report when you apply for work that doesn't involve you handling money.

Jeannine Naude Viljoen, MD of the Credit Bureau Association says that a letting agent “is entitled to check your credit report when you apply to rent a property, but they must have your consent first. The application form will include a separate authorisation form for this…sometimes it will appear in the fine print on the application, so make sure you read carefully before you sign”. You do not have to consent but sadly it might hurt your chances if you don’t. So, it seems this legislation has had little real world impact in this regard. Fortunately, many letting agents now understand debt review better. It can be a challenge though when many people apply for the same property. One of the Debtfree team recently had the experience of being one of over 110 people applying for a single flat in the city. Competition is fierce.

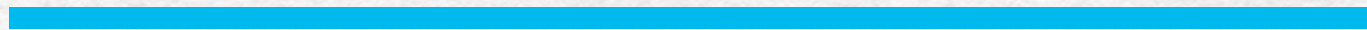
HUMAN ERROR AND COMPUTER GLITCHES

It is important for consumers who finish up debt review to draw a credit report not too long after leaving debt review. This will enable them to see if the debt review status has actually been removed or not. There have been some complaints in the past that after leaving debt review a consumer who goes to apply for credit might run into a snag when the creditor draws a report and it still shows that the person is under debt review. This could happen for a number of reasons. The Debt Counsellor may not have updated the NCR’s website; the NCR’s Website might have been having problems; the credit bureau might not have updated the status. It might be a computer that messed up or a human. Either way the consumer will need to sort it out.

If more than one credit bureau shows the old status on their report then it is probably a problem you would need to talk to the former Debt Counsellor about. They will need to check with the NCR’s Website and maybe even follow up with the NCR themselves. The NCR will then update all the bureaus again.

If only one credit bureau is showing the old status then the consumer doesn’t need to worry about speaking to their old Debt Counsellor they can complete that credit bureaus’ complaint form (normally available on their website) and send them a copy of their clearance certificate. This should normally resolve the issue within a month.

A debt review status on a credit bureau report is a help to credit providers and is not considered a adverse listing such as was discussed during the, so called, pre election “credit amnesty”. The listing stays in place throughout the debt review since the consumer cannot afford new credit anyway. They need to focus on settling their existing credit. After the debt review is finished the consumer will be free to resume using credit, as long as they can afford it.





“It always seems impossible until it is done” - *Nelson Mandela*

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PDA FEES

Recent changes to the National Credit Act and regulations saw the inclusion of Payment Distribution Agencies (PDAs) into the wording of the Act. It also called for their formal registration by early 2016. This was a big step as, in the past some Debt Counsellors had concerns about these companies who were not originally included in the Act.

The 3 registered Payment Distribution Agencies (DC Partner, Hyphen PDA, NPDA) assist consumers to distribute funds to their various creditors in the right amount each month. At present they work under service level agreements with the National Credit Regulator (NCR).

The PDAs also help develop software which Debt Counsellors can use to firstly, draft proposals and do calculations relating to consumers debts and secondly, integrate with the PDA system and let them know what amount must be distributed and when.

This means that the Debt Counsellor can give the consumer a single figure to pay each month toward their debts and the consumer can just make that one easy payment to the PDA. The PDA

then can split that amount up into all the small Rands and cents amounts that change over time and send them off to all the different creditors.

Consumers do not have to use a PDA, due to changes in the NCA and can make the various payments to their creditors and Debt Counsellor each month. This can be tricky however. Many consumers have around 12 credit accounts and they need to make the 12 correct payments into each of these 12 accounts on the right day each month. To compound things the 12 amounts shift and change each month according to the plan. It can be done but is labour intensive and consumers can never miss a payment or pay the incorrect figure else it threatens their debt review.

What most people don't know is that recent changes in the payment turnaround timing and the fees that PDAs can charge have placed the PDAs in a tough position. Since PDAs receive all sorts of payments ranging from cash payments (which carry fees) to debit orders and payments that can bounce back (which has financial implications) they deal with a lot of financial risk. This is one reason why all PDAs have to carry insurance cover of millions of Rands in case things go wrong somehow. This means they need to cover premiums, return costs and of course, their banking fees. Then they also need to pay staff and software developers on top of all that. This no doubt adds up. No wonder there have been no new players on this side of the industry for a number of years now.

The concern is that reduction in fees does not seem to allow for them to continue in business as they exist right now. It might even result in the situation where the PDAs feel the risks and costs outweigh the benefits of operating and decide to close their doors (something they obviously would like to avoid). This would leave hundreds of thousands of consumers in a tough spot overnight and these hundreds of thousands of consumers would all have to arrange payment of the exact correct amount each month, to the right creditor account, with the right reference number to avoid problems. The resultant chaos is almost too horrible to think about. You might ask could it happen? Well, recent changes which will effect the maximum fees chargeable by creditors on short term finance has already driven some micro finance companies out of that industry looking for greener pastures so, it is not totally unthinkable that this could happen. Fortunately it does not look like it will.

The PDAs are very supportive of the industry and are determined to stay around. The PDAs have been engaging positively with the DTI and NCR about the changes over the last few months. The DTI are always interested in unintended consequences of any regulations and legislation and have been looking at this issue for a while now. They have been talking to the various PDAs and the NCR about the issue and the economic realities involved. It is hoped that by the end of the first quarter of 2016 the issue will be resolved. Most consumers under debt review using a PDA will probably never even notice.



HIGH COURT QUESTIONS NCR GUIDELINE ON FEES

When the National Credit Act was published it made mention of Debt Counsellors fees but other than mentioning a consultation fee of R50 (which Most Debt Counsellors don't even bother charging) it gave no specific amounts which could be charged. At the time the Debt Counsellors Association of South Africa proposed a fee structure which most Debt Counsellors adopted.

When other Debt Counsellors who were not members of DCASA later challenged why they would be bound by the associations guidelines it was determined that this was anti competitive especially since there was no specific fee structure to be found in the NCA or in any regulations about the industry. Soon afterwards the National Credit Regulator issued basically the exact same fee structure as a guideline to the industry. (The NCR are allowed under the NCA to issue non binding opinions on matters relating to the ACT). Since most Debt Counsellors were charging along these lines it had little impact on consumers or the industry. The NCR have been very against anyone charging any other fees and have tried to take action against some Debt Counsellors who were charging along different lines. Normally however these particular Debt Counsellors got the NCR's attention due to other things they were doing that were not allowed by the NCA or that they should have been doing as per the NCA and not the fees alone. Where matters have gone to the National Consumer Tribunal the issue of fees has normally been skirted.

The current NCR issued Debt Counselling Fee guidelines run basically along these lines:

In month one of a consumers debt review they are to pay the amount the debt counsellor determines they can afford each month (via a PDA or privately). In this month an amount is set aside for the Debt Counsellors professional service. If the consumer is paying less than R6000 for their combined debts each month then whatever amount they are paying will be set aside in total for the Debt Counsellor once off. If the consumer is paying more than R6000 toward their debts then out of the amount they pay R6000 will be set aside once off for the Debt Counsellors

professional fees. The rest will go to the consumers various creditors.

So, if the consumer is paying R500 in total toward all their debts each month according to the debt restructuring plan then the Debt Counsellor's professional fees will be R500 once off, which would be paid in the first month.

This is called the "restructuring fee".

In the second month the NCR issued guidelines say that funds can be taken out of whatever the consumer pays to be set toward the consumers legal fees. At present there has not been a guideline amount set for these fees as the NCR did not feel it could force attorneys to accept any particular amount. Legal fees vary from Attorney to attorney and often depending on how complicated a debt review may be. These can vary from one extreme of R150 to another of R25 000. Over time prices have also changed as more attorneys have started to handle these matters. Though prices vary the NCR guideline indicates that month 2 would be the time for these fees to be allocated. The funds left over after this amount would then be paid over to the various creditors.

Then from the third month onward the creditors would get all the available funds each month (with the exception of the small monthly amount set aside for the Debt Counsellors after care fees).

All this information regarding how much the Debt Counsellor and the legal fees are (and when they are taken) is set out in the proposals the Debt Counsellor sends to each creditor (and consumer) as well as in the documents which are sent to court.

Recently in court an argument was put forward by a major credit provider in regard to a homeloan basically stating that because the consumer had paid these fees (as per these guidelines) to the Debt Counsellor and the Attorneys they had not paid the full amount that were due on the consumers home loan. This meant that the debt counsellor and debt counselling process and in particular the NCR Fee guideline caused the consumer to fall behind on payments.

The Pretoria High Court discussed this during one case and in it's ruling, the judge pointed out that the fee structure was nowhere to be found in legislation or regulation. Combined with many other factors, this influenced the Pretoria High Court and in the case where the bank wanted to have the debt review order thrown out so that they could potentially sell the house, the consumer lost the fight to keep the house under debt review. The Pretoria High Court referred to this as a subordination of the payment scheme in order to favour the [DC's] own fees and those of [the DC's] attorney. The Court in the case of FNB & Nedbank V Barnard & Coetzee. Said that a Debt Counsellor may not seek to have their own fees and expenses preferred over those of the

creditor and the consumer and said that the payment should be done by instalments. This is a fee structure that was at one time bandied around but was not recommended due to the high drop off rate of consumers at the time.

The High Court said that the current fee structure and payment schedule as set out by the Debt Counsellor was fatal to the debt restructuring court order that was made by the lower Magistrates Court.

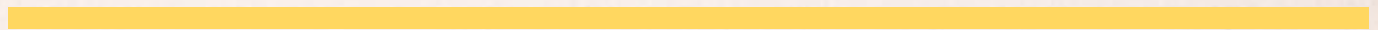
What this means is that, the court felt that because the Debt Counsellor got their money first in month one this meant the whole debt restructuring court order was fatally flawed. It referred to this as an irrationality and as such that the court order could not be supported by the higher court. Since the fee structure is not to be found in any legislation anywhere this leaves the whole fee structure vulnerable to criticism by the courts.

The NCR fee guideline for debt review was based not on regulation but on various industry sources including the industry forum called CIF which stands for the Credit Industry Forum also discussed this matter. All major banks agreed to the normal debt review process. The CIF (including all these banks) then made a recommendation to the NCR and the NCR issued guidelines on the whole process - including fees - to the industry. It seems that at least one major bank's homeloans legal team are not as supportive of these guidelines as their CIF representatives.

YOU HAVE BEEN WARNED

It seems that this point is currently being (or might be) raised in other cases where this creditor's homeloans department want to get out of a debt review court order. When preparing court papers where a homeloans department is trying to get a debt restructuring court order thrown out, so they can try auction off a home, the consumer's legal team should take this into account and prepare to defend this new attack on the debt review process and the NCR's Debt Review Fee guideline.

*Some of the cases referred to in this article are Case No.A801/2014 Gauteng Division, Pretoria (FNB & Nedbank V Barnard & Coetzee) and MFC v Joubert (A629/2013)





COST ORDERS AGAINST DEBT COUNSELLORS

When a consumer applies for debt review they begin process governed by the National Credit Act. The Act says that a Debt Counsellor who accepts an application must after figuring out if a consumer is over indebted or not refer the matter to a court for a debt restructuring court order.

If the consumer is not yet in trouble but soon will be then the matter can be sent to the National Consumer Tribunal if all parties agree to a new temporary payment plan.

In various court cases it has been shown that the Debt Counsellor is forced into a weird position in these matters. The Debt Counsellor is the pro forma applicant for a matter that has no impact on them personally. In fact, they are really just performing a function for the court. The court is now ultimately responsible for restructuring the debt. That said the Debt Counsellor's name is on the court application as the First Respondent.

In all debt reviews the Debt Counsellor has to weigh up the needs of both the consumer (what they can realistically afford each month throughout the entire repayment process as the economy shifts and changes) and the various credit providers (who want to recover their funds). They try to do this in a realistic and fair manner to all parties. Under industry agreements this normally means that the creditors who have assets involved get the most money and as much interest as is realistic over time. The unsecured creditors get done in somewhat but are generally happy to avoid going through expensive legal collections processes and so are happy to forego some or even all their interest fees.

It is therefore unusual that in a court case the Debt Counsellor should be the target of an order for costs unless they do something very weird in the case. A cost order is where the Debt Counsellor is made to pay the fees of one of the parties to the court case. It is even more rare that a Debt Counsellor might be fined or punished by means of punitive costs. This does not mean that it doesn't happen. It seems however that this is busy changing.

Recently some Debt Counsellors have come face to face with matters where they are being required to cover the legal costs of one of the creditors who don't like the application and fight hard to get out of debt review. It seems that in the cases in question it is in regard to High Court matters where credit providers legal teams are trying to get accounts thrown out of a debt review. In one case in Pretoria, where the Judge was unhappy that the Debt Counsellor was following the NCR's guideline on fees and had arranged to draw her fees in the first month, the court decided to award costs against the Debt Counsellor. The court was not satisfied with the way the Debt Counsellor handled some aspects of the Rule 55 application and ordered that the Debt Counsellor pay the costs of two of the creditors in not only the original debt restructuring court order, a further application to lead new evidence, as well as, the appeal by the two credit providers to have their accounts removed from the debt review. Some Advocates charge R6000 / hour in court. As you can imagine all those hours for the various court cases adds up to a lot of money. The court did not want to grant any costs against the consumer who began the process as they felt that would go against the whole purpose of debt review but was happy to order costs against the Debt Counsellor.

In another appeal case in Pretoria, the consumer was found not to have given enough evidence when the original court order was granted, to be over indebted at the time of the case (due to not attaching their salary slips to the original debt review application and not including a vet bill in the list of creditors among other things). The court then ordered costs against the Debt Counsellor basically for not knowing enough about the MCA Rule 55 process, even though they had withdrawn the application. The costs order was to serve as a warning to the Debt Counsellor who the court was sure was very, very busy with so many people in SA in debt.

Debt Counselling is not a very profitable small business. In fact, some research shows that many smaller Debt Counsellors have a second income stream to help support their practice. Many Debt Counsellors are only helping a small number of clients each month. They offer debt review not to get rich but to help consumers and credit providers. In such a case, a cost order for a credit providers legal fees can actually drive a Debt Counsellor out of business entirely. This might not be obvious to a judge or Magistrate who are contemplating such an order as there is a misconception in some courts that Debt Counsellors make a lot of money.

Research by the Debt Counsellor Association of South Africa (DCASA) last year showed that Debt Counsellors are now on average earning almost a third less than ever before. They are taking less and less money home in an effort to keep their businesses running so they can continue helping their clients. This means they can ill afford additional unplanned costs. DCASA have been leading the charge to get the NCR to review the fee structure guidelines for a number of years but have met with success only once since debt review began. So, while courts may hesitate to order costs against a consumer as it may defeat the purpose of debt review they might also need to bear in mind that a costs order against a Debt Counsellor could close their business and effect all the clients the Debt Counsellor has, including the one involved in that particular debt review case.

Cases referred to are:

Absa Bank and Others v Robb

MFC v Jan Joubert A629/2013

FNB & Nedbank v Barnard & Coetzee A801/2014

NEXT:
DEBT COUNSELLOR PROFILE



The Debt Counselling industry demands hard work and constant innovation from all those involved. Only those who are truly dedicated to a sustainable solution prosper in the long term.

If you have built up valuable experience in the industry and are wondering about the next step in your career, we would like to hear from you. We offer many opportunities from **Earn While You Learn** programmes to **mentorship** with the view of owning and managing your own business. We are also constantly on the lookout for those industry professionals who have built up numerous contacts in the industry with the various Credit Providers.

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Pay Plan Solutions is registered with the National Credit Regulator under The National Credit Act No.34 of 2005 and is a member of the Debt Counsellors Association of South Africa registration number DCASA0386. For more information and registration details visit www.payplansolutions.co.za and www.ncr.org.za or www.dcasa.co.za

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DEBT COUNSELLOR PROFILE



ETIENNE PIETERSE

FINANCIAL FREEDOM SOLUTIONS

TEL: 021 826 2699

EMAIL: etienne@financialfreedomsoolutions.co.za



FINANCIAL FREEDOM SOLUTIONS

What did you do before becoming a DC?

I spent 12 years in Manhattan as an administrator of a hedge fund and before that 8 years as the Financial Manager of a luxury bus manufacturing concern here in Cape Town. I am the founder of the South African branch of a New York based company who empowers women in the Western Cape and works closely with the Afrika Tikkun Foundation USA, a foundation who feeds 16,000 children in South Africa on a daily basis and has the late Nelson Mandela as their patron.

Why did you become a DC?

After returning from the USA, I noticed how many people are struggling with their financial commitments every month and the fact that they have no idea who to turn to for help. I wanted to apply my financial management skills in a different and growing industry where I could also make a contribution towards assisting members of our community who, often through no fault of their own, have become financially distressed. It is of the utmost importance that South Africa has a healthy economy – we at FFS would like to make our contribution to our country and citizens to be a debt free and prosperous Rainbow Nation. I qualified as a Debt Counsellor in 2012

You recently opened FFS. Was it scary to start your own practice?

Having worked for many years as an employee, the jump from employee to employer is scary. Fortunately many years of financial management experience, correct planning and the correct partners have made the jump less scary. Having said that, I cannot emphasize the importance of budgeting and planning when starting on your own.

Tell us about your core team?

I have two fellow directors, one a Chartered Accountant and the other a marketing & sales specialist who worked for a Payment Distribution Agency. We complement one another with different skills.

Which PDA are you using?

DC Partner

What are some challenges that face someone wanting to start their own practice?

We are a regulated industry. Complying with both the spirit and letter of the law is to me non-negotiable so I insist on the highest ethics within our firm. There are no half marks for ethics and if we make less profit in order to comply with the NCR's rules, that is just part of the investment in the brand of our firm. Funding is key in order to ensure that you do not run out of cash for overheads.

What is the biggest challenge facing Debt Counsellors at the moment?

I think that it is striking the right balance between giving the best possible service to consumers and putting profits as a second objective. Consumers must primarily benefit from our services, and see the value we can add in order to ensure that the industry is sustainable.

What is the biggest challenge facing your consumers at the moment?

I would say that consumers really have their hands full balancing their budgets with increased electricity prices and interest rates as well as the inevitable overall increase in inflation due to the weakening of the Rand.

What advice do you have for consumers under financial strain?

Talk to someone who is a specialist in this field– and talk to them early i.e. before you are in serious difficulty.



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LOAN SHARKS GET THE CAGE!



CONSUMER JUSTICE GROUP

The **National Credit Regulator (NCR)** and **South African Police Service (SAPS)** have joined forces to bring illegal lenders and loan sharks across the country to **JUSTICE!**

Justice was served in September, after the NCR's investigations led to police raids of 21 suspicious lenders across the Cape and **5 ARRESTS!**

HOW DOES THIS HELP YOU?

Have you ever given your ID book, pension card, or bank card and PIN to a lender, as surety for a loan?

That is **ILLEGAL!**

Did the lender refuse to give these items back to you, when you couldn't afford to pay the loan back?

They are **CRIMINALS!**

If you need help getting your ID or card back, the Consumer Justice Group can help!

The lender violated the **National Credit Act (NCA)**, which means they committed a criminal offense and should be reported to the NCR and SAPS.

We are the **Consumer Justice Group (CJG)!**

There's nothing we get more of a kick out of than fighting to bring down reckless lenders and stopping them from bleeding you dry of your hard-earned money.

We will report the illegal lender on your behalf and investigate the contract for anything suspicious. If we find that the loan agreement is **UNLAWFUL**, we can ask the court to declare it as **RECKLESS LENDING**.

This means you **DON'T HAVE TO PAY THE LOAN BACK!**

So, if a loan shark, lender or credit provider is withholding your ID book, pension card, SASSA card or bank card from you, send us your phone number on our website: www.cjgroup.co.za and we'll call you back, or you can just give us a call on: 021 007 1688



IN A NUTSHELL



MINDSET OF THE OVER-INDEBTED

It is hard to trace the origin of the word Mindset, according to some sources it can be traced back to the 1920's. Mind + set is described in the Collins English dictionary as "habits of the mind formed by previous experience. It is the collection of ideas and attitudes with which a person approaches a situation." Simply put it is a way of thinking. The way we think, determines how we feel and ultimately what we do - how we behave.

FIXED VERSUS GROWTH MINDSET

The word itself mind + set implies that whatever ideas and attitudes you have in your mind are

set, fixed, unchangeable. Carol Dweck in her book *Mindset: How you can fulfil your potential* refers to this approach as a fixed mindset. Blessedly Dweck introduces a new approach to looking at mindset - the growth mindset as opposed to the fixed mindset. The growth mindset is based on the belief that with effort we can change our mindset and stretch and grow as individuals.

The growth mindset approach provides hope. People are capable of changing, they can work on their self-belief, they can change their thoughts and habits and ultimately become better stewards of their behavior.

ATTITUDES AND BEHAVIOR OF THE OVER-INDEBTED

According to a working paper prepared by H. Sander 2012 from the Maastricht School of Management in the Netherlands on Young people and money regrets, some common mindset themes were identified that result in money mismanagement. This applies not only to the youth's relationship with money, but is typical of the mindset of over-indebted people in general.

Over-indebtedness is often driven by the attitude of 'live for today and don't worry about tomorrow.' It is a short-term mentality that results in people living beyond their means and spending excessively. Saying 'no' to things is often difficult and boring. Saying 'yes' is far more fun. This results in people easily accepting credit to fuel their purchases and borrowing without thinking of the repayment consequences. Many people use credit as a revolving door to access additional credit, thereby relying on loans and credit cards to pay existing debt. This ease of access to credit makes it difficult for people to judge when they are truly at their spending limit. Individuals easily sign contracts without reading 'the small print' and truly understanding the implications of their loan agreements. Their eagerness for extra money blinds them to the consequences of borrowing. Consequently many ignore the terms of their contracts; they ignore bills and letters of demand. Exacerbating this behaviour is a blind faith that everything will be 'ok' in the future, which may lead to further risk-taking with their money.

ROLE OF DEBT COUNSELLORS

Money management is not a subject that most people learn at school. Most people learn from their parents or personal experience. To make matters more complicated society has become increasingly defined by consumerism, 'keeping-up with the Joneses' and easy access to credit. It is quite scary to consider that South Africans are using roughly 75% of their monthly salaries to service their debt alone. This is proof that people are living beyond their means.

When consumers land up in trouble, many eventually land up at the door of a debt counsellor looking for relief. How can debt counsellors help these individuals?

Debt counsellors need to ensure firstly that over-indebted individuals acknowledge that they have lost control over their money and that they fully commit to the debt counselling process. Without this acknowledgment and commitment consumers may very well treat the

debt counselling process as just another quick short term 'get-out-of-jail' card, to reduce and delay their debt obligations. Usually, debt counsellors who spend one-on-one time with their consumers, provide them with detailed information and thereafter regularly communicate have a higher conversion rate, and a lower churn rate compared to debt counsellors who don't. The role of debt counsellors is also to provide hope through sharing the many success stories of rehabilitated individuals and creating a vision of what the future will look like without the stress of too much debt.

Acknowledgement, commitment, and providing hope, will not succeed without a budget and a re-payment plan. Over-indebted individuals need help in planning a budget, sticking to a plan and making regular monthly, complete debt review payments. Willpower alone will not ensure that over-indebted individuals pay as per their debt review plan. Payment Distribution Agencies go a long way to assist over-indebted consumers stick to their re-payment plans.

BEHAVIOUR CHANGE INITIATIVES

Educating these consumers on money management is also important. Over-indebted consumers make poor monetary decisions because they are too easily influenced by temptation and competing purchase decisions. People are capable of changing, but they need to want to change. Furthermore, information and triggers that help consumers along the process make a difference. The National Payment Distribution Agency (NPDA) has designed a debt counsellor and consumer support programme, called The Business Partnership Programme™. The programme provides educational initiatives and in-built triggers to assist consumers during the debt counselling process. The programme has resulted in an increase in first payments from over-indebted consumers of over 20%. This is a strong indication of commitment to the debt review process.

Ultimately the journey to success will be achieved when over-indebted individuals recognise that they have to change their mindset towards money management and take full responsibility to regain financial control.



IN A NUTSHELL is brought you by The DCM Business Partnership Programme™, designed to support debt counsellors and consumers during the debt review process, in collaboration with the National Payment Distribution Agency (NPDA). For help, contact the DCM Group on 0861 628 628.

The NPDA was recognised as the industry winner for PAYMENT DISTRIBUTION and Care Premier as the industry winner for DEBT COUNSELLING SOFTWARE at the Debt Review Awards 2015.



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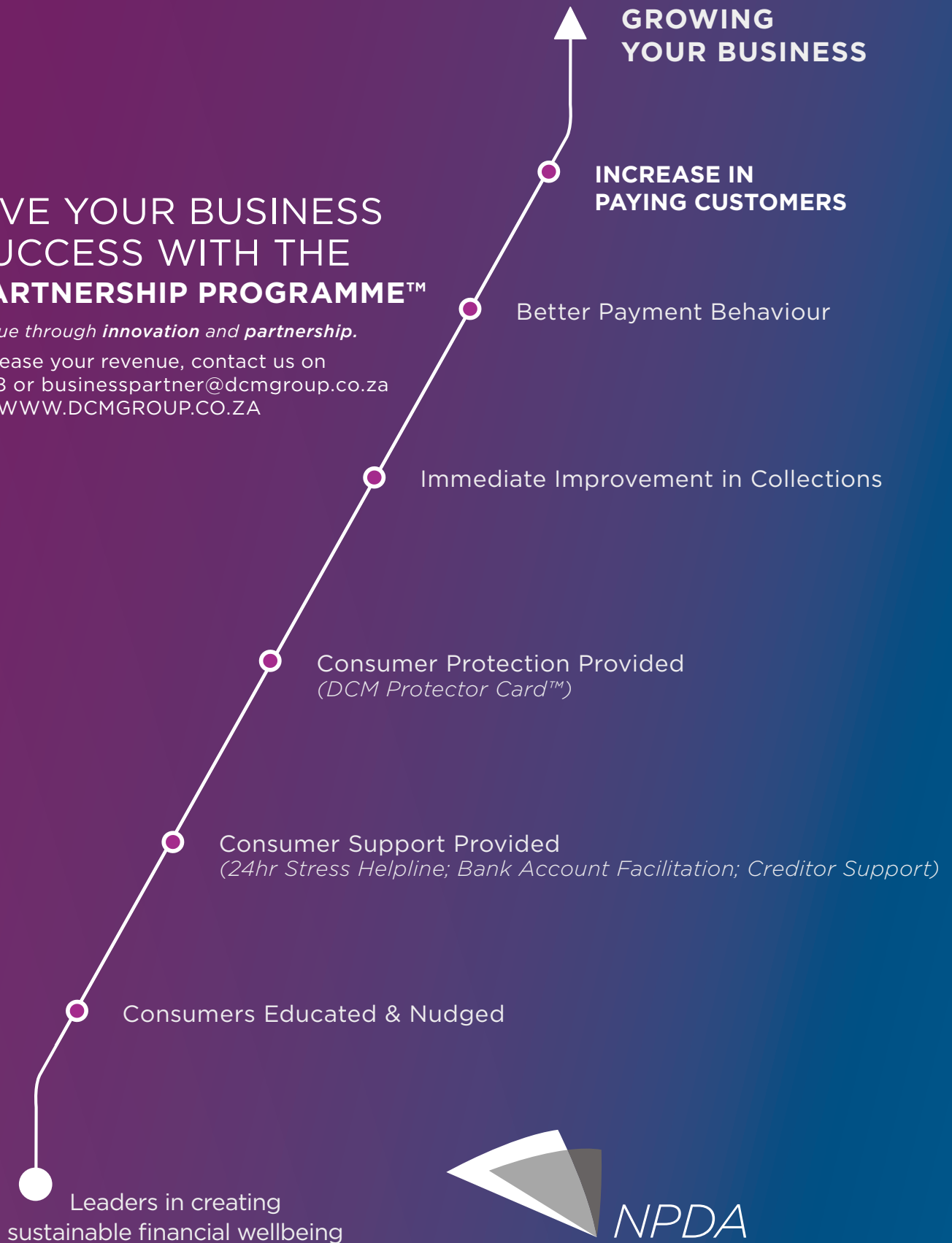
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DEBT COUNSELLORS ASSOCIATIONS ANNOUNCEMENT BOARD



DEBT COUNSELLORS
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DCASA Meeting dates for the fourth quarter:

Free State	16 October 2015
KZN	28 October 2015
Gauteng	04 November 2015
Western Cape	06 November 2015

For more information on the meetings and membership, contact DCASA at 086 143 2272 or dcasa@dcasa.co.za

www.dcasa.co.za



Debt Counselling Union
a division of the New Economic Rights Alliance

The issue of Securitisation is going to the Constitutional Court. Read about it here:

<http://news.acts.co.za/blog/2015/05/landmark-securitisation-case-heads-for-the-constitutional-court>

www.newera.org.za



Black Debt Counsellors Forum
"MAKING A DIFFERENCE"

Thank you to all our members in KZN who attended our recent regional meeting during September. We will be holding meetings in other regions soon and will notify members via email of the location and dates well in advance.

Also be sure to check out the new Akani Credit Report App www.akanisolutions.co.za

www.bdcf.co.za

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Our members have been discussing NCA Section 85 applications, Nedbank and MFC, MCA Section 65, NCA Section 103(5) and Holiday clubs on our dedicated members Facebook page. Thanks to everyone who contributed to these discussions.

If you would like to benefit from membership to the Alliance of Professional Debt Counsellors then contact secretary@allprodc.org

www.allprodc.org

SEPTEMBER 2015



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SEPTEMBER

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NEWSLETTER

CIF

Several CIF sub-committees have met over the last few weeks. Matters such as the court process, DCRS, Sect 103(5) and the www.ncrdebthelp.co.za system were discussed. The recent subcommittee regarding the www.ncrdebthelp.co.za system met and discussed among other matters some changes to the codes for DCs to use when updating the system with info on our clients. Some of the old codes will fall away making things less confusing. The NCR have suggested a number of refinements which they are busy testing. The various PDAS have also been working with the NCR to get their systems to automatically update the www.ncrdebthelp.co.za system making things even easier for us DCs and cutting down on our workload. The big issue of transferring clients (which has been incredibly slow and frustrating for consumers and DCs alike) is now receiving a lot of attention by a special task team at the NCR. Already the backlog of thousands of consumers waiting for

transfer has dropped by 75%. They hope to be all caught up soon. Another new development will be a: check if a consumer is already under debt review function. This will help greatly and we look forward to it's implementation.

NCR GUIDELINES

The NCR has the authority to issue non binding opinions on topics within the debt review industry. These are commonly called guidelines. The NCR have even stated that they are talking to the DTI about making some guidelines into regulations. We want to caution our members from viewing these guidelines as current regulation or law. In recent court cases our members have seen that if a Debt Counsellor does something that lies beyond what the National Credit Act says (such as follow a point in one of the guidelines) they have no legal standing or protection against things like cost orders. Please stick to the NCA closely at all times.

CONTACT DETAILS

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FACEBOOK: www.facebook.com/AllProDC / TWITTER: www.twitter.com/AllProDC



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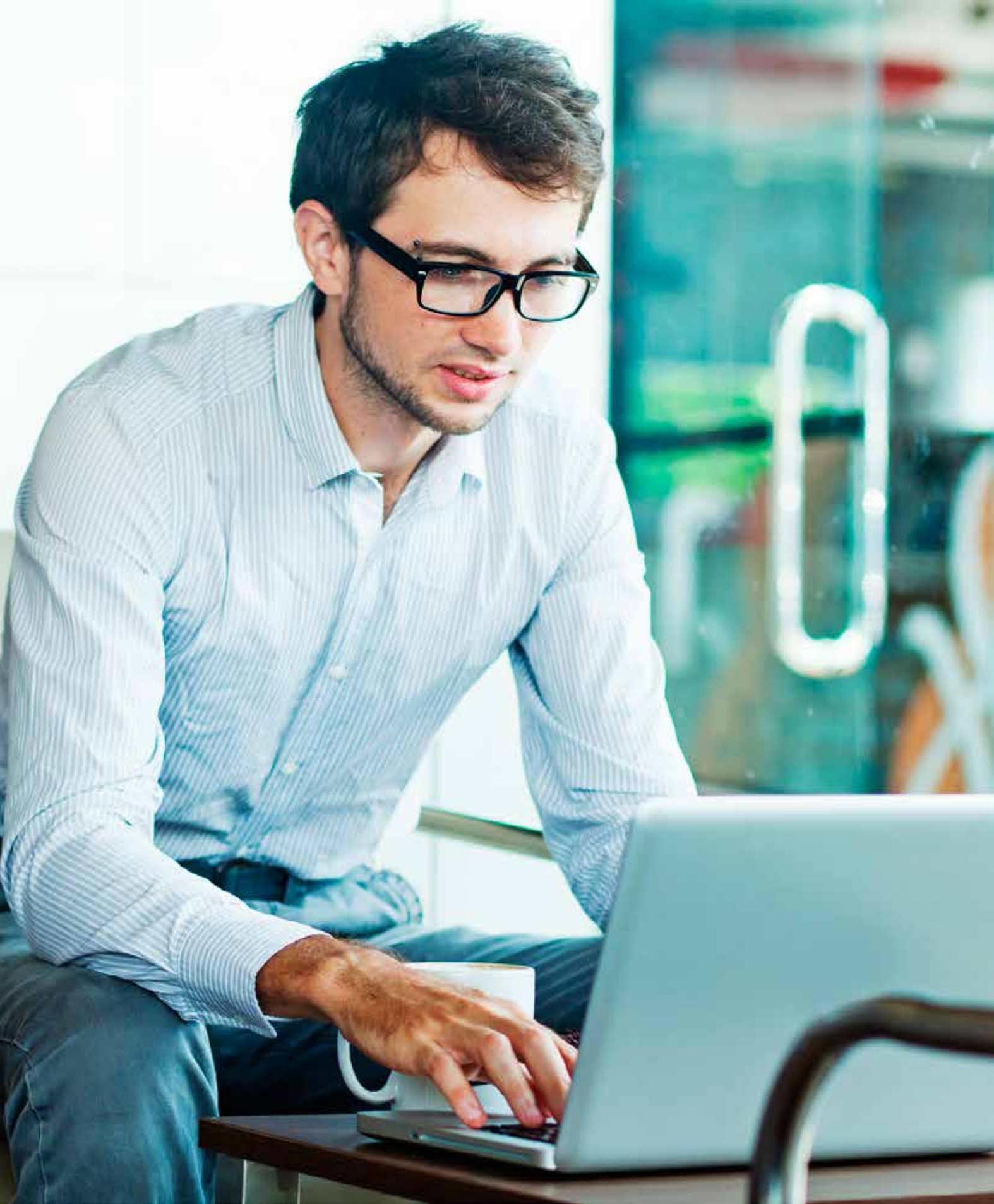
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FNB HOMELOAN'S LEGAL IS ALL THE BUZZ

It seems that we can't currently visit one of the online Debt Counsellor forums or Facebook pages these days without hearing about another DC who is busy fighting with FNB Homeloans about a Debt Review matter. It really appears that FNB Homeloans is on the war path. They definitely seem to be top of mind for DCs at present. Not that they are the only ones. We are also hearing about Nedbank (MFC) Vehicle Finance going after consumer's vehicles too.

There are many reasons why a credit provider may try to get an account out of debt review. Many of them are legitimate. The main idea, regardless of reason, however would seem to be to get a judgement against the consumer and to potentially take the asset away (a home or a car) and sell it. Standard old school pre-2007 collections mentality.

While one creditor argues that the Debt Counsellors proposal (and granted court order) falls outside the industry norm, the NCR's issued guidelines and NCR task team findings, the other argues that the Debt Counsellor did stick to these NCR guidelines and this has caused the consumer to fall into default and is a bad thing.

FNB Debt Review Centre is obviously very "pro" debt review. It is what they do all day long and they have said they want to be the best at it. They are currently making a big effort to reach Debt Counsellors across the country and engage with them. Thus it is upsetting to Debt Counsellors when they receive applications from FNB to overturn past debt review rulings. It also goes against what the Debt Review Centre seem to want to accomplish.

What must be remembered is that there are various product houses within FNB itself. It seems there is a big disconnect between FNB DRC and FNB Homeloans in regard to various industry matters. FNB are a huge company and it is not uncommon in larger organisations for there to be some disconnect. Or perhaps it is simply the legal representatives, that FNB Homeloans choose,

who throw arguments at the court in a shot gun approach in an effort to dislodge past debt review rulings. It is hard to tell.

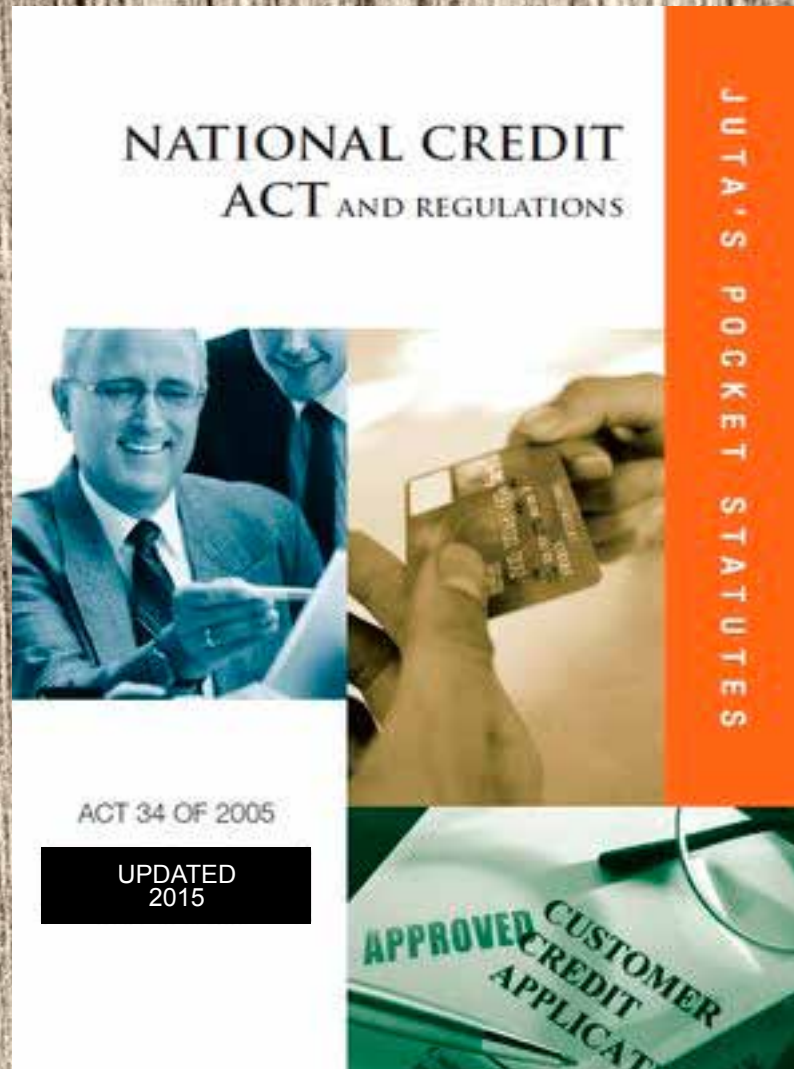
FNB are members of the Credit Industry Forum and are involved in helping make suggestions to the NCR in regard to their recent guidelines. FNB have strongly come out in support of the guidelines and have implemented them internally. Thus it is sad when another arm of the same firm then uses these same guidelines as part of their argument essentially saying they are bad and cause negative results for the consumer which could in the end cost them their homes. In the past, registered individuals who have spoken out against the NCR have faced censure at the NCT for bringing the NCR into disrepute. Could arguing that the NCR's guidelines are causing the consumer to go into default and then potentially going after the consumer's home on auction be seen in a similar light? It definitely calls the entire NCR guideline system into question.

In one case, where the judge made the Debt Counsellor pay for the various court appearances and legal work of FNB in a costs order, it appears that the judge refused to hand down further punitive costs. FNB have stated that they did not ask for punitive costs against the Debt Counsellor. That is relieving, as it would be terrible to ask for a Debt Counsellor to be punished for trying to help you recover your funds from a troubled consumer. Especially after already asking that the Debt Counsellor cover all your high court costs which could financially cripple them.

FNB have argued that by the Debt Counsellor taking their fees in the first month of the debt review as per the guidelines that the consumer did not pay their full amount on the home loan and thus went into default. They have also said that this is essentially greedy of the Debt Counsellor as they want to get fees before the creditors get debt repayments. Debt Counsellors do this because not only is it the 'industry norm' which FNB have supported for years but it is required as per the NCR guidelines which FNB have (in the past) said they support. Is this a big shift internally against the NCR and their guidelines or is it a few isolated cases which are all cropping up at the same time? It is hard to tell. When asked, the NCR sent us a copy of one of the main cases involved but did not comment further. FNB have not been able to give us too much information other than to say they did not ask for punitive costs. The matter has been referred to the NCR by Debt Counsellors and is being discussed by at least one DC association. Perhaps this is why both parties are a bit quiet on the matter for now. Regardless of the long term outcome the topic is running around the web. It is all very confusing and concerning.

*Some of the cases referred to in this article are Case No.A801/2014 Gauteng Division, Pretoria (FNB & Nedbank V Barnard & Coetzee) and MFC v Joubert (A629/2013)

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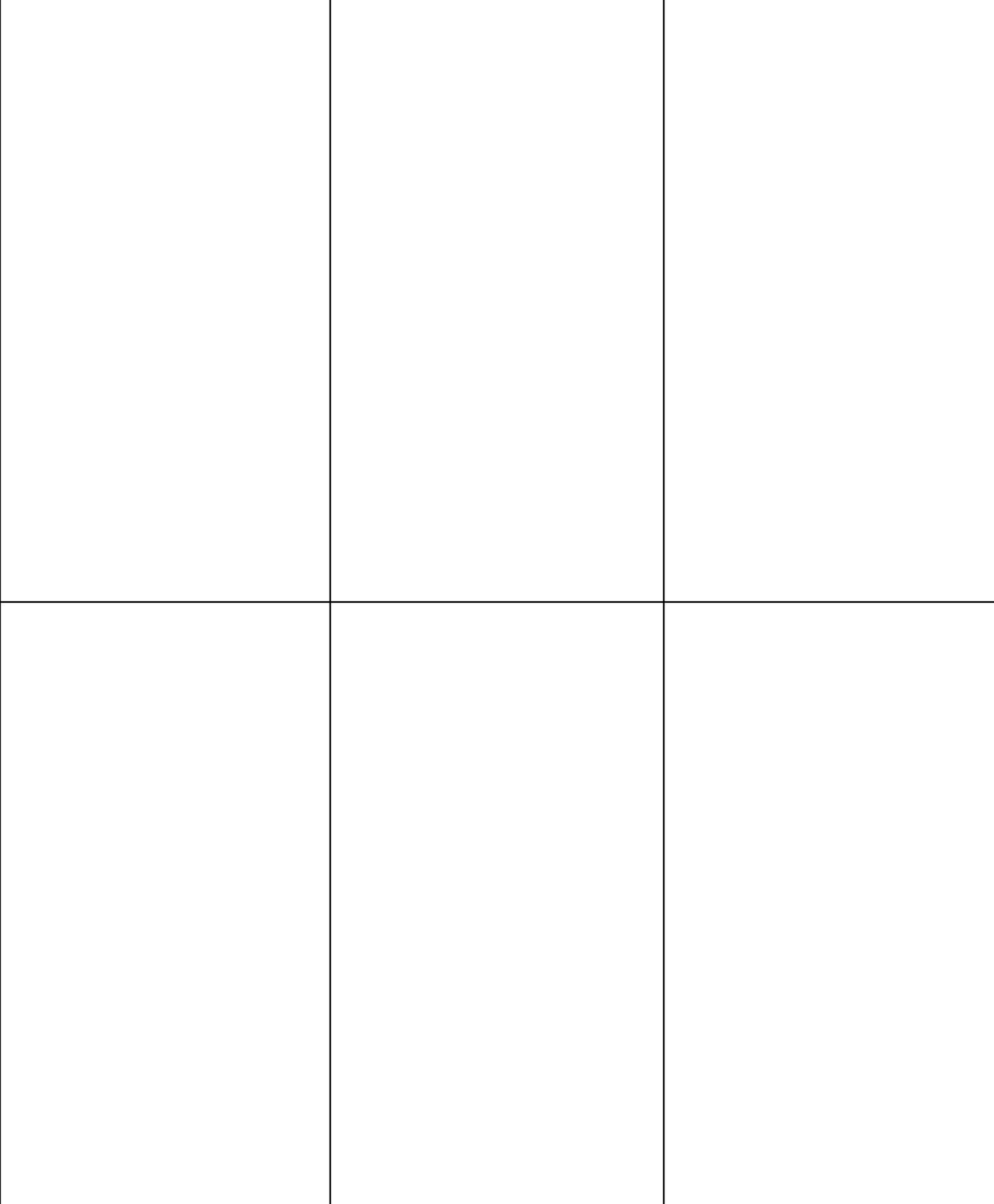
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