



Control your Finances  
Control your Life!



## **DEBT COUNSELLING GUIDE**

Everything you should know before  
applying for debt review.



Written by:

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Registered Debt Counsellor  
NCRDC 1980

## **FOREWORD**

Dear Reader

If you are reading this you are probably already experiencing difficulty in meeting all your monthly obligations.

In all probabilities you might already contemplate applying for debt review, or are considering various options as to how to take control over your finances.

Let's be honest, when experiencing financial difficulties one might feel helpless to such an extent that your finances are controlling your life and not the other way around.

Well, there is indeed a way out and debt counselling might just be the answer to your problems and the way in which to regain control over your finances.

As we all know financial difficulties have a severe impact on our lives, personally and it also impacts on our families, our day to day living and our work.

Making the decision is the first step and the most important one.

## **A BIT ABOUT MYSELF**

The picture on the cover is me. This is what I look like. An ordinary male, aged 44 with hair turning grey. My life had its ups and downs but I am grateful for finding my passion in life, which is assisting people with such an important aspect of their daily lives.

I am married for twenty years to a beautiful, loving, caring and supporting wife. Our daughter just turned 13 and we are only just beginning to experience "teen-age"

life. I love everything about our daughter. All the honour to God for these two blessings in my life.

I am a registered Debt Counsellor. My career as Debt Counsellor started in October 2009 with a leading debt counselling company and I have learnt such a great deal from them, for which I will always be grateful.

During 2011 I made the decision to practice on my own and for my own account and I started HLV Debt Counselling.

Rest assured, I have indeed written the required exams and as such am registered with the National Credit Regulator (NCR) as a Debt Counsellor.

I stand for:

- Honesty in all my dealings with clients and creditors alike
- Integrity in everything I do
- A passion for my work
- Ethics and a great sense of responsibility as I fully understand just HOW important this step is in all my clients' lives

The reason why I am writing this guide is because of you, my clients or potential clients. So many people call or e-mail me enquiring about the process that we call Debt Counselling.

As I said earlier on, making the decision is only the first step, but the most important one. As such it should be an informed decision and I hope that this guide will in some way assist you.

The aim of this guide is therefore to provide you with answer to some of the questions you might have and to give you a bit of insight into our industry. I am

going to do my best to explain the requirements, the process, the legal aspects, creditors, budgets, payments and everything else involved.

In short, I hope that after reading through this guide you will have the knowledge to make an informed decision about entering this process.

As you read through this guide I invite you to contact me, whether telephonically or by sending me an e-mail should you come across anything you need clarification on.

I have done my best to write this guide as if I am sitting with you, explaining the process.

My details:

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### **HOW DO YOU KNOW IF YOU ARE OVER-INDEBTED?**

- You are currently in arrears with payments to your creditors
- You cannot afford to pay all or some of your creditors
- After paying your creditors, you do not have sufficient money left for living expenses i.e. school fees, transport, water and electricity, property rates and most importantly food?

If any of the above applies to your current financial situation you should consider applying for debt review. After applying a Debt Counsellor will, through a formal process, review your situation and decide whether you are indeed over-indebted.



# Context

Chris Becker, economist at ETM Analytics, recently wrote a blog comparing price inflation of a Steers burger and petrol over the past 10 years. The price of a Steers burger rose by 250% in 10 years, a compounded rate of 13% a year, trumping the petrol price hike over that period. (See below.) *Finweek* looked at the price increases of other goods and services.

## PRICE INCREASES OVER THE PAST DECADE



\* Information from Pam Golding Properties, Western Cape

## **THE SCARY PART:**

With reference to the analysis published in Finweek 10 May 2012:

Exclude the vehicle and add one unit of each product in your shopping basket.

In 2002 the cost of your basket was R8 192-62

In 2012 the exact same shopping basket will cost you R16 527-41

An increase of some 103 %

If your nett income was R8 192-62 in 2002, your nett income for 2012 must be R16 527-41 to be able to afford the same shopping basket or "life style" if you prefer.

The question now is did your nett income increase with 7,5 % per year over the past 10 years?

Did you receive a consecutive annual increase over the past 10 years, especially since 2008?

Let me tell you, I have clients, friends and relatives who have not received an annual increase for some four to five years now.

I think it is safe to say that the economy world-wide has placed a lot of strain, not only on employers but also employees. As a result it affects almost everyone, whether you are the employer or employee.

The purpose of this guide however is not to address world-wide economical issues.

We are facing times where the average South African struggles to keep their heads above water and make ends meet.

More than 8 million of the 19 million active credit users have impaired accounts.

Fact is, if you don't do anything to bring your personal financial affairs in order, no one else will. Or more serious your creditors might take legal action and you might lose some of your assets.

### ***YOU MUST MAKE THIS DECISION BEFORE IT IS TOO LATE***

Debt Counselling is one of the safest routes you can choose to take control of your finances.

### **WHERE DID DEBT COUNSELLING START?**

It all started when the National Credit Act, Act 34 of 2005 ("NCA") was promulgated during 2006.

Section 79(1) of the NCA refers to over-indebtedness.

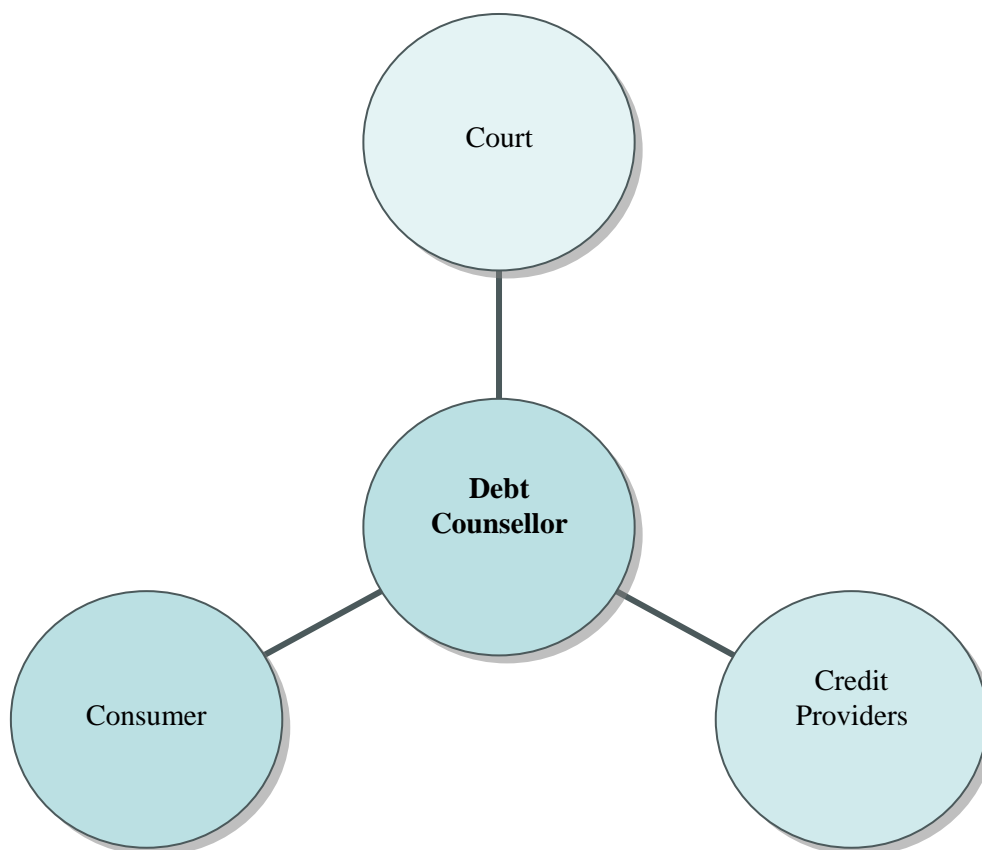
Over-indebtedness, in short is where you are in a current financial situation whereby you don't have the financial means to satisfy, in a timely manner, all the obligations you have under existing credit agreements.

We can also phrase it as follows: "If I do pay all my creditors I am unable to afford my normal monthly living expenses, or if I did budget for my normal living expenses I cannot afford to pay my creditors".

If you are facing this you might indeed be over-indebted.



## WHY THE NEED FOR A DEBT COUNSELLOR?



When you enter into a credit agreement with a Credit Provider you are bound by the terms and conditions of the contract.

The Credit Provider granted you credit, whether in the form of an unsecured loan or a secured loan (asset finance). You are therefore bound by the contract and for the repayment of these credit agreements, fees and interest applicable to the contract.

When you default on these payments, the Credit Provider will start a process for the collection of the arrears, which may result in legal action.

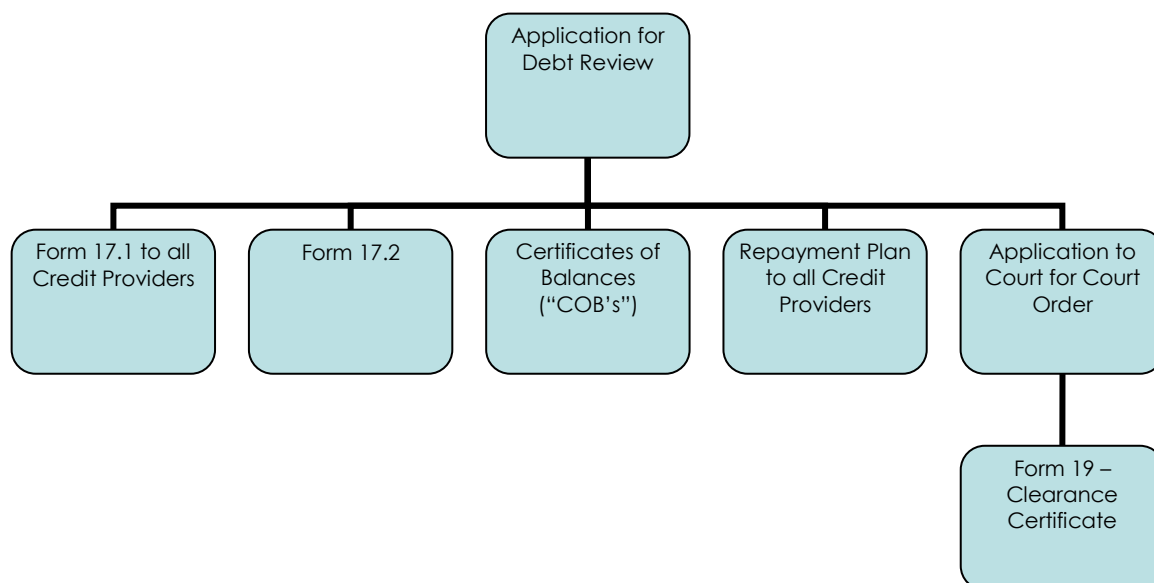


The Legal Action normally has the result of a Judgment and a possible Warrant of Execution whereby the Credit Provider may attach your move-able assets or in case of a bond, attach or sell your house (immovable property). **(Please contact me immediately if you are currently in this situation)**

When you are facing financial strain and you apply for Debt Review, your debt Counsellor will, on your behalf, negotiate with your credit providers for a better or more affordable repayment plan and through a formal process approach the Court to have you formally declared over-indebted.

Your Debt Counsellor is the facilitator in the process that involves you, your Credit Providers and the Court.

## THE PROCESS OF DEBT REVIEW



**Application Form:**

Also known as Form 16.

This is the document you complete and sign once you apply for Debt Review.

The information required in this documents is your personal information, contact and work details.

Also required is your current budget, list of creditors and the reason for over-indebtedness. Rest assured – I will take you through the process and paper-work if you do decide to apply.

The document ends with a declaration of understanding and a Power of Attorney to your Debt Counsellor.

The NCR (National Credit Regulator) fee structure and legal fees should also be contained in this document.

**Additional Documentation required:**

Copy of ID	Salary Advices:	Marital Status:
SalaryAdvice	1 x for Fixed Salary 3 x if you receive Over Time 6 x Commission Basis	In Community of Property: Joint application
Proof of Residence	Bank statement for Pension Income	ANC: Separate application unless both parties signed for Credit Agreement (i.e. Bond)

Bank Statements (3 months)	Bank Statement for Property Rental	Customary Marriage: Joint application
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### **Form 17.1**

#### **Official Heading: Form 17.1: Notification to all credit providers and all registered credit bureau**

This is the first official document that is sent to the Credit Providers to inform them that you have formally applied for Debt Review.

This is done in terms of Section 86 of the NCA.

On receipt of this notification the Credit Providers must flag all accounts listed in your name as being "application for Debt Review".

The Credit Providers are requested to supply your Debt Counsellor, in writing, with a Certificate of Balance on all accounts you hold with them.

The Credit Bureaus are advised about the Application for Debt Review and subsequently the information APPLICATION FOR DEBT REVIEW will be listed on your profile.

**Once you have applied for Debt Review you are not allowed to enter into any new credit agreements. This will apply for the period whilst under debt review.**

The listing on the Credit Bureau will inform Credit Providers of your debt review status.

## **Form 17.2**

### **Official heading: Form 17.2: Notification to all Credit Providers and all Registered Credit Bureaus**

The second official document that your Debt Counsellor must forward to your credit providers within 5 (five) working days after the Form 17.1 was sent out.

This form is sent out after determination and confirmation as to whether you are indeed over-indebted. As such it is only sent out once your Debt Counsellor has indeed determined the fact that you are over-indebted.

As such the Form 17.2 serves to notify Credit Providers that the application for Debt Review was successful and that your debt repayments are in the process of being restructured.

## **COB: Certificate of Balance**

Within 10 (ten) working days after receiving the Form 17.1 your Credit Providers must supply your Debt Counsellor with a Certificate of Balance.

This document gives an accurate description of the current status of your account as well as other relevant information, such as:

- Account Number
- Type of Account
- Good description in the event of vehicles and other asset finance
- Inception date of loan
- Original term
- Current outstanding balance
- Monthly Instalment
- Interest Rate

- Linked Insurance
- Included or excluded from Debt Review: an account will be excluded if legal action commenced before application for debt review (your Debt Counsellor **can** negotiate to include the account)

**The COB is therefore a very important document in the debt review process as the information contained therein is the key to the new repayment plan.**

### **Important part: New Repayment Plan**

This is what Debt Review or Debt Counselling is all about.

The repayment plan is a new payment plan under existing credit agreements. This repayment plan must be:

- ✓ Affordable to you
- ✓ Acceptable to your Credit Providers

With this new repayment plan we are going to add all your payments into “one basket” from where it will be distributed to all your Credit Providers.

The total amount for distribution to the Credit Providers will be less than the original monthly repayment amount required. This is after all the reason why you have applied for Debt Review and why you were declared over indebted.

There are **rules** pertaining to the new repayment plan:

When Debt Counselling started 6 years ago it was the rule to present a repayment plan based **purely** on the affordability of the client. This led to

Credit Providers receiving between 10 – 20 % of the original monthly repayment required. The fact of the matter is that these repayment plans could not have served in the best interest of you, the client, since it would mean that you will remain under debt review for almost the rest of your life. It was inevitable that some changes would be made. The process does have to balance the rights of consumers and credit providers alike and the Courts do take this into consideration.

Since the early days there has been some significant changes and certain repayment “rules” are now applicable:

Bond Repayments:	80 % of the original instalment with a maximum term of 360 months
Vehicle loans:	70 % of the original instalment with a maximum of 84 months to pay
Unsecured loans – Balance of R3 601 and more	Maximum 60 months to pay
Unsecured loans – Balance between R1 501 and R3 600	Maximum 36 months to pay
Unsecured loans – Balance up to R1 500	Maximum 18 months to pay

Your Debt Counsellor should know all these rules and also the effect of the interest rate applicable to each credit agreement.

**Calculating your new payment:**

You and your Debt Counsellor will now determine the amount you can afford under the new repayment plan and this will be proposed under the new repayment-plan to your Credit Providers.

Your income, original credit agreement payments and your essential monthly living expenses will be taken into account when the affordability repayment plan is calculated.

<b>BEFORE DEBT REVIEW</b>				<b>AFTER DEBT REVIEW</b>	
Nett Income: R20,000-00				Nett Income: R20,000-00	
<b>Credit Agreements:</b>		<b>Living Expenses:</b>		<b>Living Expenses:</b>	
Bond	R 7 500.00	Food	R 3 000.00	Food	R 3 000.00
Vehicle A	R 2 500.00	Water and Lights	R 1 800.00	Water and Lights	R 1 800.00
Vehicle B	R 1 800.00	Pre-School	R 800.00	Pre-School	R 800.00
Credit Card:	R 500.00	Transport	R 1 700.00	Transport	R 1 700.00
Clothing:	R 350.00	Cell Phones	R 500.00	Cell Phones	R 500.00
Bank Loan:	R 750.00	Insurance	R 600.00	Insurance	R 600.00
Cash Loan:	R 850.00	Entertainment	R 500.00		
<b>Total:</b>	<b>R 14 250.00</b>	<b>Total</b>	<b>R 8 900.00</b>	<b>Total:</b>	<b>R 8 400.00</b>
<b>Combined Total:</b>	<b>R 23 150.00</b>			<b>Available Income:</b>	<b>R 20 000.00</b>
<b>Income:</b>	<b>R 20 000.00</b>			<b>Minus Living Expenses:</b>	<b>R 8 400.00</b>
<b>Sum:</b>	<b>-R 3 150.00</b>			<b>Available for Creditors:</b>	<b>R 11 600.00</b>
<b>** OVER INDEBTED</b>					

**\*\* Entertainment is excluded in the scenario After Debt Review as it is viewed "unfair" towards creditors if they are to receive a lesser payment whilst the client still enjoys some "luxuries". The Courts are also very strict when it comes to living expenses**

### **Presenting the Repayment Plan:**

In our example we have determined that you can afford to contribute R11 600-00 per month towards repayments to your creditors.

At this point I like to mention that your Debt Counsellor should make use of state of the art software programmes to assist him / her with the repayment plan. Complex

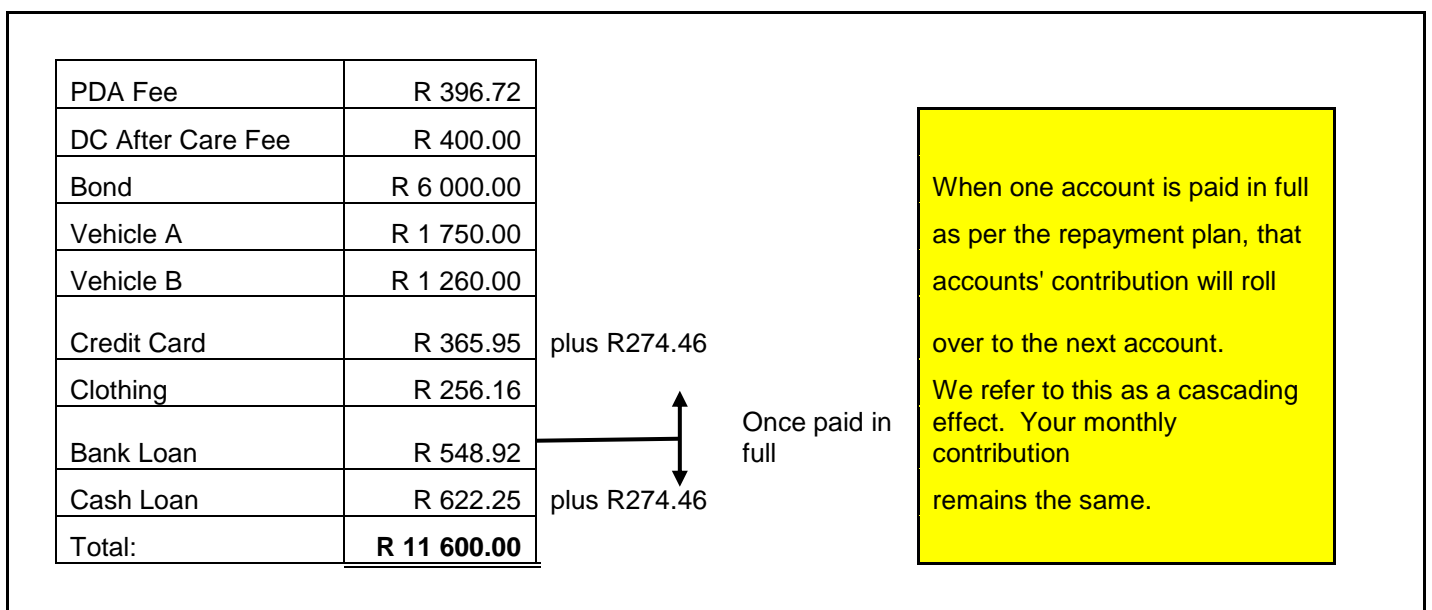


calculations are involved as we work with different types of credit agreements, with different outstanding balances, not to mention the payment periods and interest rates. The dates which the Certificates of Balances were received also has an influence on the calculations.

The following diagram is a very basic example of the repayment plan:

Based on a monthly contribution of R11 600-00

As from month one you will pay your contribution into a Payment Distribution Agency (PDA) account. Debt Counsellors are not allowed receiving / accepting your contribution. The PDA links up with the payment plan and they will pay the creditors accordingly.



The repayment plan will include the account information as received from the CoB's. The new monthly payment, interest rate, payment period, balances, terms and conditions and a host of other information is presented to the Credit Providers, from the first up until the last payment to the last creditor.

Your Debt Counsellor must present this repayment plan to you.

Once the new payment plan (also referred to as Proposal) is sent to the creditors, it is expected from them to respond either by accepting the proposal alternatively suggesting an alternative or counter proposal.

If the proposal is done in terms of the industry rules the Credit Providers will normally respond with a provisional acceptance (meaning that they are in agreement with the new repayment structure). This will ultimately be made an order of Court.

In the event that a Credit Provider is not satisfied with a proposal they will normally present a counter offer. This counter offer can sometimes be that they require a higher repayment amount or it might be that the suggested payment term might be too long alternatively an interest rate adjustment.

Be that as it may, all counter proposals must be discussed with you and your Debt Counsellor will at all times inform you on the status of your application.

In the event that a counter offer cannot be met, the matter will be determined by the presiding Magistrate at Court who will have to make a ruling.

A quick re-cap:

You are facing financial difficulties and approach a Debt Counsellor

The financial assessment result in you being found over-indebted

Your new repayment plan is calculated

The Creditors are notified by way of official documentation

The new repayment plan (proposal) is sent to all Creditors

### **Court Procedure:**

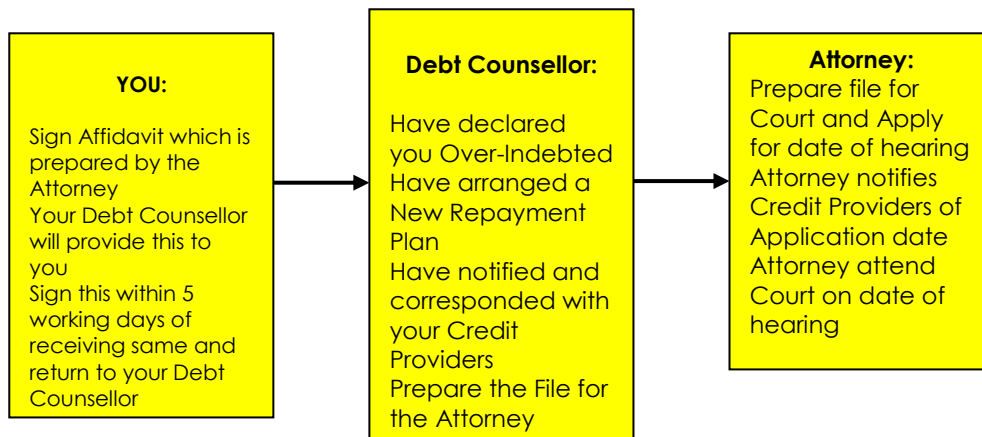
The next step in the process is to approach the Court to make the new repayment plan an Order of Court.

**NB: Your residential address will determine which Magistrate Court has jurisdiction to hear the matter, i.e. if you reside in Benoni the Magistrate Court with jurisdiction over you will be the Magistrate Court of Benoni.**

You do however not have to worry about this as I work nationally.

The Debt Review Process is a legal process and must be presented to Court, even in the event that all Credit Providers has accepted or consented to the new repayment plan.

It ultimately protects your rights.



After the date of hearing and the new repayment plan is made an Order of Court, this Order is forwarded to all your Credit Providers.

### **CLEARANCE CERTIFICATE AT END OF PERIOD:**

Your Debt Counsellor will present a Clearance Certificate to the Credit Providers at the end of the Debt Review Process in the event that:

- All repayments in terms of the Repayment Plan were met and maintained throughout the process
- That all accounts were paid in full

The Credit Bureau will remove the Debt Review status from your Profile

## FEES PAYABLE:

The National Credit Regulator determines the fees payable to the Debt Counsellor and all Debt Counsellors must therefore adhere to the prescribed fees.

The fees are as follows:

- ❖ R50-00 application fee
- ❖ R100-00 application fee in case of a joint application
- ❖ R50-00 per credit bureau check
- ❖ R300-00 fee in the event that the application is rejected
- ❖ A restructuring fee equal to the first instalment of the new repayment plan with a maximum of R6 000-00 (Six Thousand Rand).
- ❖ An after-care fee of 5 % of the instalment of the repayment plan with a maximum amount of R400-00 (Four Hundred Rand)
- ❖ PDA fees are 3,42 % of the instalment amount with a minimum of R57-00 and a maximum amount of R570-00
- ❖ Legal fees are payable. Please discuss this with your Debt Counsellor
- ❖ A fee of R750-00 should your Debt Counsellor refer the matter to the National Consumer Tribunal

## Example of payments:

Where monthly contribution is R11 600-00:

### MONTH 1

Restructure Fee: R6 000-00  
Legal Fee: R3 000-00  
PDA Fee: R396-72  
Creditors: R2 203-28

### MONTH 2

After Care Fee: R400-00  
PDA Fee: R396-72  
Creditors: R10 803-28

### MONTH 3 FORWARD

As month 2

Where monthly contribution is R5 500-00:

#### MONTH 1

Restructure Fee: R5 311-90  
PDA Fee: R188-10  
Creditors: R0-00

#### MONTH 2

Restructure Fee: R188-10  
After Care Fee: R275-00  
PDA Fee: R188-10  
Legal Fee: R3 000-00  
Creditors: R1 848-80

#### MONTH 3 FORWARD

After Care: R275-00  
PDA Fee: R188-10  
Creditors: R5 036-90

The fees are included in the repayment plan and the Creditors are informed via the Proposal regarding short or no payments for the first and/or second month.

It is important to pay in the first month that you apply for Debt Review as the Creditors expect full payment from at least month three.

Very important is also the time-frames:

We only have 60 (sixty) days from date of Application to see to the whole process, including obtaining a date for hearing at Court.

Therefore any payment missed within the first two months would jeopardize the whole process and may result in a credit provider terminating the process.

#### **COMMUNICATION WITH YOUR DEBT COUNSELLOR:**

Your Debt Counsellor should at least provide you with the following information during the process:

1. Form 17.1
2. Form 17.2
3. Proposal
4. Consumer Affidavit

5. Notice of Motion (Application to Court)
6. Consent Order (Court Order)
7. Monthly payment statements

Immediately inform your Debt Counsellor if a Credit Provider made contact with you and the reason for the contact.

Credit Providers are not supposed to contact you during the process of Debt Review, unless same is a courtesy call in order to notify you that they are receiving payments in terms of the repayment plan.

Please respond as soon as possible should your Debt Counsellor request information from you as the process works within very strict time-frames and a delay can result in termination.

Ultimately, we are working together to ensure a better future for you.

#### **SOME IMPORTANT NOTES:**

1. We strongly recommend that you open a new bank account and inform your employer of the new banking details.
2. Ensure to re-instate debit orders for living expense accounts such as Short Term Insurance and Cell-phone contracts.
3. Never sign any document presented to you after applying for Debt Review. Immediately inform your Debt Counsellor of any such request or demand by a Credit Provider.
4. You may increase your monthly contribution at any stage. Consult with your Debt Counsellor first if you are in the position to do so.
5. A decrease in monthly contributions will only be allowed in extreme circumstances. Please discuss this with your Debt Counsellor beforehand.

6. Your monthly payments must be honoured. The Creditors are very strict when it comes to a month in which no payment was received (after the first 60 days). They may terminate the process which will obviously have a negative effect on you.
7. The new repayment plan payment or contribution must be paid in full each and every month on the due date.

**END:**

I trust that I have covered almost all the aspects pertaining to the Debt Review process.

I truly hope that you have a better understanding of the process involved.

I once again extend my invitation to you. Should you require any additional information you are more than welcome to either contact me telephonically or send me an e-mail.

Thank you for taking the time to read this.

Regards,

Lukas Vorster

