

Debtfree

South Africa's debt counselling magazine



August 2015
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Chris van der Straaten
Head: PDA
082 557 0437

Malcolm Povey
Head: Operations PDA
082 445 5604

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Gerhard Dyzel gerhard@dcpartner.co.za
082 828 7595 / 044 873 4532 (ext 110)

Yolandi Meyer pda25@dcpartner.co.za
082 338 2680 / 012 348 7624

www.dcpartner.co.za

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EDITOR'S NOTE

The full extent of your Chinese, might be a witty SA take on the traditional Chinese greeting: "Ni Howzit". We laugh and pat ourselves on the back for being so funny. You may not care that China has had to adjust the guiding rate for the Yuan currency a number of times this month... you may not have even heard about it but the growing concerns about the world's second biggest economy's slowdown will probably effect us just as much as the continued chaos in Greece is effecting Europe. Especially since SA has ever closer ties with the Chinese government. At present, China is SA's biggest trading partner. With SA kids set to be taught Mandarin starting in 2016 the connection between SA and China is being taken to new heights. Will close ties with big trade partners solve all SA's economic woes? It is doubtful. Interest rates are up. Petrol prices may be fluctuating but food prices are only going up, not coming down. It seems that all the many planned or hoped for economic boosts are slowly drying up. What does this mean? Well, it means that interest rates will probably have to keep climbing. It means that the banks, who are being pressured by ever expanding regulation, are lending out less and less money to a smaller group of people. Which means, if you are already under financial stress and struggling to repay your debts, now is the time to do something about it. Don't think that waiting to see if things get better is the way to go. Get help and get it soon. (Check out the

updated Service Directory Section in this issue for who to talk to)

Creditors are having to adjust their normal business practices. It has been a tough few weeks for retail creditors and their insurance companies in particular. The NCR has been all over them like ants on honey. Three large creditors have very recently been the target of NCR investigations into irregular insurance practices and the NCR has referred all 3 to the National Consumer Tribunal asking for big fines. The NCR have gone so far as to say they are rolling out similar investigations into the same thing at other credit providers (you can read more about that in this issue). It shows how the Regulator has the ability to act against unscrupulous behaviour by creditors. That said, not every case goes their way at the NCT and recently 2 large matters were ruled in favour of the credit providers, in question not the NCR. There has been a mixed bag of results outside the NCT at the normal courts across the land as well. Some Debt Counsellors have recently experienced push back from Judges and Magistrates in regard to guidelines that the NCR has asked DCs to follow (see the AllProDC newsletter about that). Will this invalidate all the hard work being done at CIF? It depends on what happens next.

It is not all doom and gloom though. Debt review is growing faster than it ever has and

lots of people are getting the help they need. Some of the biggest creditors in SA are trying to get their debt review departments to work harder and better than ever before and naughty creditors are being brought to book about dodgy practices. We hope you enjoy the news, views and reviews in this issue including the pivotal issue of learning to trust and rely on your Debt Counsellor.

As the Chinese say: Dédào bāngzhù, bìng huòdé wú zhài yīshēn qīng
(get help and get debt free)

Zak King



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Marijke Wessels

Portfolio Manager, Gauteng, KZN & Free State
Mobile 082 729 3833 **Email** marijke.w@one.za.com

Sam Haasbroek

Portfolio Manager, Western, Eastern Cape & Northern Cape
Mobile 082 550 7294 **Email** sam.h@one.za.com

Contact us on 086 126 6562 / debt@one.za.com



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NEWS FLASH

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MONEYLINE IN THE SPOTLIGHT

Community news organisation GroundUp recently headed over to a queue of consumers waiting for loans outside a Moneyline Financial Services outlet. Their report was less than favorable. The Moneyline operation in question (a subsidiary of Net1 who currently handle social grants in SA) run their operation out of a church in Nyanga on weekdays. Consumers in the queue (earlier this month) consisted mainly of older people and mothers, a high portion of them on SASSA Social Grants. Reportedly hundreds of people were in the queue for half a day to try get a loan. GroundUp questioned the Moneyline staff about their operation. They told the reporters that only applicants with a valid ID, proof of residential address and a SASSA card were eligible for a loan. When asked if affordability assessments were done, a Moneyline staff member said that applicants only needed their SASSA cards and that the loans would be immediately transferred to the applicants SASSA accounts. Deductions would then only begin a month later. SASSA spokesperson Kgomoco Diseko is urging consumers with grants not to use their grant as security for loans. The "Hands off our Grants" campaign (run by the Black Sash) say that the "Social Assistance Act makes it clear that a grant cannot be transferred, ceded or encumbered in any way" a phrase they say makes these types of loans unlawful. Many of the interviewed consumers in the

queue related how they had to take new loans monthly as their previous loans were coming off their meager income from the grant and left them with barely anything. This type of behavior is called being stuck in a "debt trap". The consumer has to borrow because they have to pay back what they already borrowed. Each time the debt grows a little and they end up with less and less funds. The NCR have referred Moneyline to the NCT in regard to reckless lending. The NCR's Lebogang Selibi says that this was in regard to "specifically... extending monies recklessly to child grant recipients". Two of the three charges the NCR brought against Net1 & subsidiaries were set aside. The third has to do with deregistering Moneyline entirely. Net1's contract to handle social grants was recently ruled as unlawful at constitutional court and now the whole process is out to tender again. It seems that all of this has not sparked a change in behavior in the registered credit provider as yet.

EASTERN CAPE DEBT COUNSELLORS WORKSHOP

The National Credit Regulator (NCR) regularly hold workshops in different parts of the country to engage with Debt Counsellors who are registered with them under the conditions of the NCA. Debt Counsellors assist consumers repay creditors via a legal agreement through a process called debt review. The NCR recently



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announced that they will be hosting such an event in the Eastern Cape. They sent out communication to the various Debt Counsellors in the area and informed them of the line up and date. As normal the NCR did not have a venue booked as they wait for RSVPs before knowing how many people will attend and thus where to book based on capacity. The NCR recently sent out a warning circular to Debt Counsellors to inform them that should they not RSVP in time then they would not be allowed to gain access to the venue on the day. The RSVP date for the PE event was set at 26th of August 2015. In an unusual turn of events it seems that not many Debt Counsellors want to attend the upcoming event in Port Elizabeth and the NCR have now had to call the whole thing off for a while until more interest is shown and they are able to reschedule.

PLAN TO SOLVE SLOW TURN AROUND TIMES AT THE NCT

The National Consumer Tribunal (NCT) has authority in terms of the National Credit Act (NCA) to hear matters relating to debt review where all parties agree to the Debt Counsellors debt review proposal. Recently the amendments to the National Credit Act gave the NCT an even wider range of matters it can hear. Sadly turn around times on matters sent to the NCT have not been as fast as expected. Knowing that volumes of cases were increasing, the NCT made plans a long time back to introduce a fast electronic way to submit cases that would allow them to deal with cases faster and in higher numbers. A demo of the system was tested and rolled out (at the time on Excel). The results looked very promising and as the popularity of the DCRS debt restructuring

proposal system grew among some larger debt counselling firms so did the amount of consented matters that could be put before the NCT. For a while matters were being heard and dealt with in less than 2 months (from application). Slowly as the numbers of applications have risen (not by a huge margin but it has grown) the matters coming back out of the NCT have slowed down. Consumers and Debt Counsellors began to grumble. The system which was meant to be developed to speed things up, remained an Excel version and training in regard to it's use, was not rolled out as far as had originally been indicated might happen. By the time of the 2015 Debt Review Awards in June, NCT Chairperson Dianne Tereblanche felt obliged in her speech to mention the issue. 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. They have distributed a list of the needed documentation and basic process and will soon release the dates. It is hoped that this can 'right the ship' before the problem gets too far out of hand. With matters currently having slowed down at the Tribunal and with some recent issues with DCRS (as well as the continued slow adoption of the proposal system by Debt Counsellors) it seems that application numbers for consent orders through the NCT are now dropping anyway. This situation is not ideal as the process through the Tribunal (when possible for some consumers) costs very little and saves consumers lots of money. The demand for the NCT's services and rulings in regard to debt

review related matters is probably only going to increase-should DCRS be adopted by a higher number of Debt Counsellors and with decreased comebacks on DCRS proposals by credit providers. Lets hope this step helps get the workload and turnaround times back on track.

DOWNLOAD

LEWIS TO PAY BACK OVER 69 MILLION RAND

The National Credit Regulator (NCR) recently took Lewis Stores (and Monarch Insurance) to task for making consumers who were on pension or receiving a grant, take insurance on their work income. Lewis have 444 shops country wide in SA and many more in neighboring states. The NCR referred Lewis to the National Credit Tribunal (NCT) and asked that they be fined around R10 Million and face serious censure from the Tribunal.

DEBT COUNSELLORS REPORTS THIS MONTH

Every 3 months the National Credit Regulator requires Debt Counsellors to hand in a report on their new and existing clients. This information helps the NCR monitor what is happening industry wide. They are then able to compare it with the regularly updated information that Debt Counsellors have to capture on the NCR Debt Help system. It is a condition of registration for Debt Counsellors. The latest report was due this month (on the 15th). The Form 42 Report is for the time period between: 1 April and 30 June 2015

NCR REFER JD GROUP TO THE NCT

The NCR have referred JDG and their insurance arm, JDG Micro Life Ltd. to the National Credit Tribunal because they found that they have been charging pensioners occupational disability cover. It seems that even consumers on government social grants (eg disability or child support) have been asked to pay for this type of insurance, which they could never use. The NCR have asked that the NCT order JDG to repay the amounts in question to the consumers (since 2007, when the National Credit Act came into effect). This will require an extensive audit and involve a lot of money.

BURNING THAT BRIDGE

Bridge Corporate (who own Bridge Loans, Bridge Collections and Bridge Debt) were recently in the press in regard to the EAO/Garnishee Order court case in the Western Cape High Court. The matter did not go in their favour and the court ruled that the garnishee orders were to be set aside and money repaid to the 15 consumers. The case has also resulted in the Judge asking that 150 000 Garnishee matters (at least) being handled by Flemix & Associates be investigated. It seems this was the death knell for the troubled Bridge Empire. Though the firm (in the guise of Onecor) had been under business rescue for over 10 months after having been found to have been acting as a bank in many regards (by the SARB) for over a decade; it seems they decided that the company could no longer be saved. Bridge and all the trust involved in running the firms and contravention collections firm Coombe (also known as Flemix) have a lot of friends and

family members in common and have been the source of much news about garnishee orders. Recently shareholders have been getting less and less return on their investments in some cases even nothing. This week the firm filed for an urgent liquidation in the Johannesburg High Court. This may seem to be the end of the matter but it has now emerged (in a financial audit) that just weeks before Bridge declared themselves to be in financial distress and in need of business rescue, directors of the firm converted their shares (in a highly irregular manner) to the tune of R120 million Rands worth. This pushed the firm over the edge and into business rescue and now finally liquidation leaving other shareholders out of pocket. This is now being investigated by the Companies and Intellectual Properties Commission and the Independent Regulatory Board of Auditors.

NEDBANK DEBT REVIEW LEADERSHIP CHANGE

The current head of the Nedbank Debt Review Department Mr. Anton Thomas left the Debt Review department at the beginning of August has moved to another department at Nedbank. Anton sent out a communication which stated in part: "I wish to use this opportunity to thank everyone for their continued support during my tenure at Nedbank Debt Counselling Operations and wish everyone all the greatest success in the future..." Anton says he is confident that the current management team in the Debt Counselling Operations space, are "a strong and efficient team" and he says: "I feel confident leaving the reins of the operations space in their more than capable hands". It will not be the last that people in the debt review space see Anton he says: "I will continue, for a

certain period, to support the team at industry level forums". Anton is confident that debt review is the future of collections in SA and says that he would like to reiterate a few words from his speech at the Debt Review Awards: "It remains an imperative that all stakeholders work together for the greater good. Legislative reform is not always possible and that's where the various engagement forums fill in the gap. We may not always agree, however through those robust debates which include all industry stakeholders, we as a debt counselling industry, have forged ahead implementing at many a times " world leading " intervention strategies. Never become complacent, the task remains at hand and it is our responsibility to ensure we tackle this task for the betterment of the industry, the economy, the South African citizen and for those who are yet to come".

REPO RATE CHANGE

The Reserve Bank's Monetary Policy Committee (MPC) recently announced it was increasing the repurchase rates by 25 basis points. This means that the Repo Rate is now 6%. It seems that the warnings coming from the office of the Reserve Bank about increasing pressure to increase the repurchase rate in the face of a weaker Rand (at a 14 year low) and poor performing economy were warranted. This smaller increase of 0.25% is compounded for consumers by the way bank lending rates work and so consumers will see an increase in the cost of their credit of more than half a percent. Economists warn this could be the first of several hikes in the months to come.



DO YOU TRUST YOUR DEBT COUNSELLOR?

As children we learn to trust our parents. They feed us. They come when we call. They catch us when we fall. They provide a basis for our future dealings with other people. We learn to trust our friends, friends parents and our teachers. Along the way we also learn who not to trust. We get hurt and tricked and lied to. People break our heart and our trust. We make deals and agreements with people and they don't stick to their side of the bargain. And so trust becomes something we demand others earn.

It is one of the reasons we feel so betrayed when we are going through hard economic times and the company with whom we have loyally banked for years and years set the collections dogs on us. It breaks our trust and actually hurts our feelings.

The situation may get out of hand and so we go looking for someone to offer us professional guidance and assistance in getting out of debt. The process of finding the right Debt Counsellor is an important one and there are many factors which we should take into account. Do your homework and make good choices!

Eventually we chose someone and sign some forms and feel a huge weight lift from our shoulders. Finally, we have someone in our corner who will help stop the pesky, infuriating collections calls, who eases our fear of the Sherriff showing up at our door to take all our stuff and will protect us from the scary letters we have been receiving.

Suddenly however you are now asked to trust this individual or company to a huge degree. Overnight you are asked to follow a new budget. Given a new figure to live on the Debt Counsellor gives you a list of how they think you can best spend your money. They might advise you to change certain aspects of your normal banking habits. They could advise you on how and where to shop. They might encourage you to change your entire housing arrangement. They tell you to save this much each month toward school books next year. They tell you to pay your TV

licence. They assure you that if you do so you can afford to live reasonably each month.

It goes even further. The Debt Counsellor says that they have a plan to settle the debt. They tell you how much is required to do so each month and they plan your life for the next few years. Over night they have made a plan that we are required to stick to.

Next they tell us to deposit money into a new account each month. That of a Payment Distribution Agency. Before we went to visit them we thought a PDA was a 'no, no' at work and the sort of thing you get into trouble for. Now we are asked to put a large chunk of our earnings into this account each month.

It takes a lot of trust to allow a relative stranger to tell you how to live and what to do. We listen because we are desperate and the situation is out of control as is. Surely anything is better. But the truth is we have had limited dealings with this new person and with the debt review process and the debt counselling firm so we might find it hard to trust when certain situations arise. What sort of situations?

A COLLECTION CALL

We may get a call from a collections agent who wants money. We calmly tell them we are under debt review and they must talk to our Debt Counsellor. It gives us a feeling of satisfaction after all those pesky calls to finally tell someone to essentially: "talk to my lawyer". We feel vindicated that we have the situation under control. But the collections agent then says something to the effect that debt review doesn't work. Or they might say something like we have no record of you being under debt review. Immediately our feeling of comfort is shattered. What do they mean? Surely they deal with debt review matters all the time. If they say that your account isn't under debt review then maybe there is a problem. What if the call is from the bank about our car or bond. This is serious stuff. If they say they don't have a record of the debt review we could lose everything. We begin to panic.

The call may only come after a month or two when we have already being paying money to the PDA for one or two payments. Now someone from the "bank" says they are not getting any money. How can that be? You know you paid the money and now they are saying it is not getting to them. Is someone stealing your money. You realise you don't really know the Debt Counsellor all that well after all and here is the bank who you have used for years and years saying that they are not getting money. What a disaster!

But hang on... Who exactly is on the other end of the line? Is it, in fact, the bank that is calling?

Most times when a debt has not been paid for a while a credit provider will send the account to

be dealt with by a 'soft collections' process. This means they will hand it over to a department internally or externally who will begin to harass you into paying. They will call, send sms, emails, letters and try to convince you to pay. If that doesn't work after a while they will then send the account to a firm of legal collections experts. These people might try the same technique once or twice but are then allowed to send you a scary warning letter and then take things to the next level and send you a summons to go to court. You can then fight the matter at court if you want but they are getting very serious and want to get a judgement and a piece of your salary or get the thing you bought back. These companies pay their staff based on the amount of money they recover. This means that the collections agent who calls you from the bank, probably doesn't work at the bank itself or is heavily incentivised to get you to pay or promise to pay. This has many, many times sadly resulted in collections agents putting a serious spin on the truth or even crossing over the line into outright lies to get you to pay money or give them an asset. Someone comes to your office and says they have been sent to collect your car because you are a month behind on payments. They say they have the papers there and lead you to believe you HAVE to hand over the car for safekeeping. While they may have been sent and they do have some papers the story they tell you may be very one sided and lead you into making a bad decision. Be careful of trusting this stranger. Be careful of trusting a total stranger on the phone who simply says that no money has been received or who tells you your debt review has been cancelled.

You know this new individual even less than the Debt Counsellor with whom you sat down and discussed your entire financial situation, who explained how the law works to protect you. Have you seen any documentation that proves that the person talking to you works for who they say they work for? Do they have the legal right to contact you? Have you seen their paperwork? Don't stop trusting your officially registered Debt Counsellor who's certificate from the National Credit Regulator you have seen because of a 2 minute phone call from a stranger. That would be foolish. Rather get all the facts and speak to your Debt Counsellor before doing anything rash.

A STATEMENT

What if you get a statement from your creditor that shows you owe more money than before? This might be after one month of debt review or even after several months? What if you have been paying for a while and the debt is not getting much smaller? Should you start to doubt your Debt Counsellor?

It is important to realise that because your creditor charges interest each month your debt can grow if you pay less than the amount of interest charged each month. In some cases this might be part of the plan your Debt Counsellor has made through the court. It is uncommon but not impossible. Sometimes funds that normally went to a big debt (with a lower interest rate) are shifted for a brief period into a smaller high interest rate debt to finish it off. In almost all cases funds are taken from the first and second payment you make to cover the Debt Counsellors fee

and the Lawyers fees. This means that your debts might climb slightly those first two months. This is the industry norm. Your creditors (in particular the debt review department) have been informed it will happen and have normally agreed to that. Someone calling from an outside company, working for commission might not even know that. They might not even know how debt review works other than it stops them from getting commission on getting you to promise to pay them something.

DEBT SHRINKING SLOWLY

If you have been paying for around two years and you are seeing that the debt is taking a long time to reduce you may begin to feel your Debt Counsellor is not doing their job. You begin to lose trust in them. Before you decide to do anything drastic, go have a look at the court order for debt restructuring you have in place from when you started debt review. The Debt Counsellor will have given you a list of how the payments were going to work (If you don't have it for some reason you can ask for the one that shows the month by month plan - rather than just the starting amount each month). The court order shows you how many months each debt will take to be paid off at the new arrangements. If it has been 24 months since you started debt review and the court order shows that the accounts will take 60 months then you know how much longer it will take if nothing changes. Rather than moan about it taking so long, see if you can increase your monthly payments a little to speed up the process. After all you are enjoying having more funds available to live on and cover your regular expenses each month. Don't mess with that. Leaving debt review at this point will leave you in a bad financial state.

LEARN WHO TO TRUST

Most important is to get to know more about the debt review process and your Debt Counsellor. Don't let them be a mystery to you. Learn where their offices are. Learn who works there. Go visit them or interact with them regularly. This will build your trust in these professional strangers who are helping you get out of a bad situation. Beware of trusting a total stranger who calls and says strange things over your Debt Counsellor. If you have doubts or concerns then go to your Debt Counsellor and discuss matters with them. If they are bad at communicating with you then... improve your communication with them. Be specific and explain the situation in a detailed way that makes what you need and want very clear. Don't give up on the process because they are very busy and take a while to answer emails. Most of all beware of strangers. Trust your Debt Counsellor.

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WHY THE NCR WENT AFTER LEWIS

Recently the National Credit Regulator asked the National Consumer Tribunal to fine Lewis stores millions of Rand for contraventions of the National Credit Act. Lewis is not the first and the NCR have promised not the last creditor to face these charges.

When a consumer takes credit they are also asked to take insurance in case they die and are unable to pay back the money. This is a provision of the NCA and is normal business practice. Normally the insurance (called credit life insurance) also has a clause which pays your monthly instalment for a while if you lose your job. This helps you from defaulting on the loan. Credit providers also offer other types of cover such as disability cover in case you no longer can work and pay your debt.

When a consumer takes credit they are asked if they want to supply their own credit insurance

(like you would know where to get that right???) or use that provided through the credit provider. In the case of Lewis Stores this was a company called Monarch [we will just refer to Lewis to keep it simple].

Recently a mystery shopper went to a Lewis branch and went through the process of buying an item on credit. So many naughty things happened in this particular case it is hard to know where to start. Lewis say the staff member went against company policy in so many ways. The sales person insisted that the customer take a club membership, captured the incorrect info, did a skewed affordability assessment (and thus made the application reckless) and sold the client insurance they could not use. There were all sorts of other fees and charges as well. In the end the product cost 3 times as much as a shop down the road due to fees and interest and insurance.

After the press about the incident came out the NCR released a report on an investigation they had launched into granting insurance to people who are self employed, on pensions or grants. These people cannot lose their income and so do not need insurance that covers income protection. They then referred Lewis to the National Consumer Tribunal and asked that they fine Lewis. This is not the first such matter to be referred to the NCT. In June 2015 Finbond and recently JDG Trading have also been referred to the NCT in regard to insurance matters. In some cases customers who were already disabled were sold disability cover. Pensioners were also sold cover for becoming disabled and unable to work at jobs they don't have. Basically it is a case of making people pay for cover they will never claim and don't need. In other cases the insurance charges were deemed to be excessive. In the case of JDG the NCR have asked that the NCT order them to repay funds paid by all their effected consumers since 2007. That's a huge chunk of change.

Once the news hit the press about the mystery shopper and the NCT Lewis shares plummeted around 40% in a short time period. The value recovered somewhat once Lewis told investors that they were planning on paying back consumers around R69 Million in regard to these matters. At the same time they submitted papers to the NCT denying that anything was wrong. The recent shareholders meeting was a real fun event with people demanding to know what was going on and who had messed up. Lewis have laid the blame firmly on human error across the board and not on company policy. It sent a bit of a mixed signal to say nothing is wrong but we will pay back the money but it made investors feel better and Lewis shares went up by over 11% but still remain way down since the whole debacle began.

Some creditors have been making around 30 to 40% of their profit based on insurance. The National Treasury released a paper and pointed out that these fees are excessive last year already. With retail companies such as Lewis so heavily dependant on sales on credit, with insurance (+- 70% supposedly), to make a profit rather than selling for cash, the market is in for a real shake up as the NCR go from retailer to retailer looking for similar issues.



THE ANNUAL DEBT COUNSELLORS ASSOCIATION OF SOUTH AFRICA CONFERENCE

The annual Debt Counsellors Association of South Africa (DCASA) Conference was held during August in Gauteng, at Emperors Palace. The Conference has been an annual affair for years now and is well supported by Debt Counsellors from around the country.

The venue accommodated around 300 people in the large conference room and a number of industry exhibitors were present. Most of the large banks were there namely, ABSA, Standard Bank and FNB. Key leadership and staff attended to engage with Debt Counsellors. Along with the banks were all three PDAs (DC Partner, the DCM Group and Hyphen PDA) as well as their software providers. Also displaying were insurance providers ONE|SURE and Auto & General as well as attorneys Staniland Attorneys. It was great to see the team from Consumer Friend and their healthy supply of stress balls. Hyphen had their traditional goodies on the table including delicious biltong (always a crowd pleaser). Each delegate also received a pack of 9 credit industry information flash cards from DCASA.



Mel da Silva, who was event chairperson for the day, welcomed all those attending and introduced speakers throughout the day. Mel mixed his speaker introductions with his usual witty stories and jokes.

Paul Slot of DCASA was the first speaker of the day and spoke about industry improvements. The tone was positive and did not focus in too much on fees as at the last conference. He gave a brief review of matters at CIF and where they stand.

Economist Mr. Mike Schussler gave a brief review of 200 years of economic change. He spoke about the growing middle class and dominant economic markets. He then compared SA to other countries and discussed both positive and negative factors that are set to effect the local economy. Some interesting points stood out such as: 2 /3 SA families own a home. Many own two homes. Despite positive factors when compared to other countries Ave SA citizen is not experiencing financial betterment at same rate. Government spending is out of control and unemployment is huge (25%). He glossed over the obvious detrimental effects of Eskom's inability to supply power at capacity and focused more on government debt (which is growing) the huge increase in Strike action and predicted lower than hoped for economic growth. Basically

he said the economy is in crisis.

Relating to Debt Counselling he discussed how credit judgements have reduced over time and he feels this is where Debt Counsellors have played a part (not just changing views on sequestration and the slow collapse of EAOs)

Eugene Joubert of Corporate Rebels entertained the Audience with an interpretation of Section 103(5) taking into account rulings about debt review such as the declaratory order, appeal court view ruling and the proposed NCR Section 103(5) guidelines. He used the metaphor of a bucket this time rather than a springbok and kept everyone entertained with his take on how to look at a Section of law. He looked at the wording of the Section 103(5) including the heading, paragraph by paragraph and asked pertinent questions in regard to different phrases throughout. The presentation raised many questions and encouraged attendees to take a deeper look at the chosen wording. He often said that if the writers of the Act wanted to say something different they would have done so.

Thereafter 4 actors presented a part called Debt Monster. The introduction of industrial theatre in the Debt Review space was new and although many enjoyed the Debt Monster some were unprepared. The rhyming voice theatre ran to a background mantra of: "Money, Money, Money"! While some said this was the highlight of the conference others were left scratching their heads. The part provided a change of pace and left the audience ready to hear from the following speaker who was Kedilatile Legodi ("still the same Kedi") of the NCR.

Kedi is also the Chairperson at the Credit Industry Forum (CIF). She explained how discussions at the CIF eventually become NCR guidelines. She acknowledges that there could be implementation issues (eg of the NCR withdrawal guidelines. Due to confusion and issues with those guidelines she said that the NCR are now issuing an explanatory note). She reported that Justice Department have expressed an interest to be part of CIF but this matter is under consideration. Kedi said that the NCR are currently reviewing the conditions of registration to try include some matters (that fall outside the specific wording of the NCA) to possibly include items which the CIF have been working on and NCR have issued as guidelines. While none in the audience expressed immediate concern, such registration conditions could be challenged by Debt Counsellors, who do not wish to abide by them, via the NCT .

The NCR now intend to have some of the non binding opinions or guidelines issued by DTI as regulations. This will mean that the CIF meetings are providing a base for future legislative change. This would be a huge victory for the CIF members and make the published guidelines carry a lot more weight and relevance.

The NCR further discussed their management of the www.ncrdebthelp.co.za system and said

they are planning big things. Some long awaited changes are already starting to show on the system. Kedi says that future Implementation will be slow and in phases. Currently, it is a work in progress but in the not too distant future the NCR intend to use it as a regulatory tool.

In the question and answer session that followed an Attorney shared his frustrations in regard to the JHB courts regarding their handling of debt review matters. Kedi informed the audience that the NCR were talking to the judiciary about it. The published court guidelines from the NCR have had mixed feedback. It is however difficult to understand the comment from the Attorney as most DCs are currently getting their Debt Review orders approved in the JHB court particularly since the recent declaratory order.

An Attorney asked the NCR a question about Securitisation and whether the NCR has a position or stance on the matter , it was announced that an NCR investigation was carried out and that they will issue a report with the NCR's opinion shortly. The audience then got to engage with exhibitors and talk shop before enjoying a delicious buffet lunch.



The afternoon session began with the Moot Court. It was less the look of the dressed role players than the tone of voice and delivery that really captured the feel of a court reckless lending matter. Both sides of matter presented their arguments in a not so clear cut case. Ultimately, in a

crowd pleasing result, the ruling went in the favour of the consumer and particular account was declared reckless.

The following speaker was Siphamandla Kumkani of the DTI. He spoke about coordinating legislative changes rather than doing so piecemeal. He then discussed possible amendments to the Magistrates Court Act which may include reference to debt review, reckless credit, prescribed debt and PDAs. Moving on he spoke about possible proposed caps to EAO deductions. An interesting comment was made about how the recent Stellenbosch EAO court case has been an eye opener at the DTI in regard to EAO abuse. Before closing off Mr. Kumkani mentioned that the implementation of insurance charge caps (on credit life) and new rates for credit will come out soon.



One other interesting comment was made, during the closing question and answer session at the end of the day, in regard to the fees that are charged for debt review services. These have remained the same for many years now as the industry has changed significantly. The NCR revealed that they have put a review of the Debt Counselling fee structure out to tender. They say they will soon choose a service provider to do the review and will act on the research.

The day closed, after generous prize giveaways from exhibitors DC Partner, Hyphen PDA, Maximus and DCASA itself, with a further chance to network and talk to the exhibitors.



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IN A NUTSHELL



HOW TO APPLY THE CONTROVERSIAL *IN DUPLUM* RULE

INTENT RESTORED BY CONSTITUTIONAL COURT

On March 2015, the intent of the controversial common law *in duplum* rule was clarified by the Constitutional Court in the Constitutional Court ruling in Paulsen v Slip Knot Investments 777 (Pty) Limited.

The *in duplum* rule, has its origins in Roman Law and literally means 'double the amount'. This common law rule has been part of the South African common law for more than 100 years, established to limit the excessive costs of debt and to protect consumers from debt traps. The *in duplum* rule provides that interest on a debt will cease to run when the total amount of arrear interest has accrued to an amount equal to the outstanding principal debt.

ONEANATE RULING OVERTURNED

The 1997 Oneanate ruling by the Supreme Court of Appeal in the case of Standard Bank Ltd v Oneanate Investments resulted in the suspension of the *in duplum* rule once the creditor initiated legal proceedings. This meant that if the maximum interest had been reached prior to litigation starting, interest could continue to accumulate during legal proceedings, thus exceeding the value of the capital amount borrowed. The 1997 Oneanate ruling has been the subject of much controversy and in some cases used opportunely to take advantage of debtors.

The Constitutional Court overturned the 1997 Oneanate in Paulsen v Slip Knot Investments 777 (Pty) Limited on the basis that it infringes a debtor's constitutional right of access to justice and may lead to a 'chilling effect' on debtors, who despite a valid legal defence, will prefer to settle a claim as opposed to the threat of uncapped interest charges once legal proceedings begin.

NCR ISSUES GUIDELINES

In April 2015 the National Credit Regulator, (NCR) issued proposed guidelines on the interpretation and application of Section 103(5) of the National Credit Act (NCA). The NCR has once again requested comments from the Credit Industry Forum re these guidelines to address areas of contention.

The proposed NCR guidelines confirm that under a credit agreement charges as set out in sections 101(1)(b)-(g) of the NCA may not, in aggregate, exceed the unpaid balance of the principal debt at the time the default occurs. The charges set out in sections 101(1)(b)-(g) include interest, initiation fees, service fees, the cost of credit insurance, default administration charges and collection costs.

CALCULATING OUTSTANDING DEBT AFTER DEFAULT

To begin with one needs to determine the point of default. In practice, this means the point where the contractual payment was not met in full.

Once the total charges as set out in Section 101(1)(b)-(g) reach the unpaid balance of the principal debt, at the point of default, then the consumer's liability to pay ends.

Let's assume a person borrows R10,000 and has made monthly payments reducing the outstanding debt to R5,000. At this stage, the person goes into default. Arrear interest and charges as set out in Section 101(1)(b)-(g) cannot exceed the outstanding debt at the point of default, R5,000. Thus, once the outstanding debt, interest and charges as set out in Section 101(1)(b)-(g) reach R10,000, no further interest or charges can accrue.

KEY PRINCIPLES IN THE PROPOSED NCR GUIDELINE

The consumer cannot waive his or her right to the protection of section 103(5) at anytime by

agreement with the credit provider.

The operation of section 103(5) is not affected by the commencement of legal proceedings by the credit provider or the debt collector against the consumer.

Once the consumer is up to date with all arrear debt payments the section 103(5) falls away. However, if the consumer defaults again then section 103(5) will come into effect again, and the remaining outstanding balance at the time of default, will become the principal debt. Any charges accruing from the first period of debt will be added to the amounts that accrue during the second period, including any subsequent periods of default, provided these don't exceed the principal debt at the time of subsequent default. According to Mr Paul Slot, president of the Debt Counsellors Association of South Africa (DCASA) "this approach is not supported by all credit industry participants".

Section 103(5) applies to credit facilities only in respect of the amount of the credit facility that has been used by the consumer. For example, if a consumer has a credit facility of R20,000 and has only used R8,000 of the credit facility at the time of default. The outstanding debt balance plus interest and other charges cannot exceed R16,000.

In the case of a judgement, the law permits interest to run again in accordance with the *in duplum* rule only from the date the court issues the judgement, and not from the commencement of litigation proceedings.

FURTHER CLARITY REQUIRED

Clarity has been provided by the Constitutional Court on suspension of the common law *in duplum* when legal proceeding begin. However, parts of Section 103(5) of the NCA remain ambiguous. Mr Paul Slot "welcomes the opportunity provided by the NCR to debate the proposed Section 103(5) guidelines again. The industry requires clarity on the point of default, the impact of the amount accrued in the first period of default and the costs included in Section 101(1)(b)-(g)".

Section 103(5) was on the agenda for the Debt Counsellors conference hosted by DCASA on 19 August 2015. The revised ruling by the Constitutional Court applies to all debtors, except court cases that are finalised with no prospect of an appeal.



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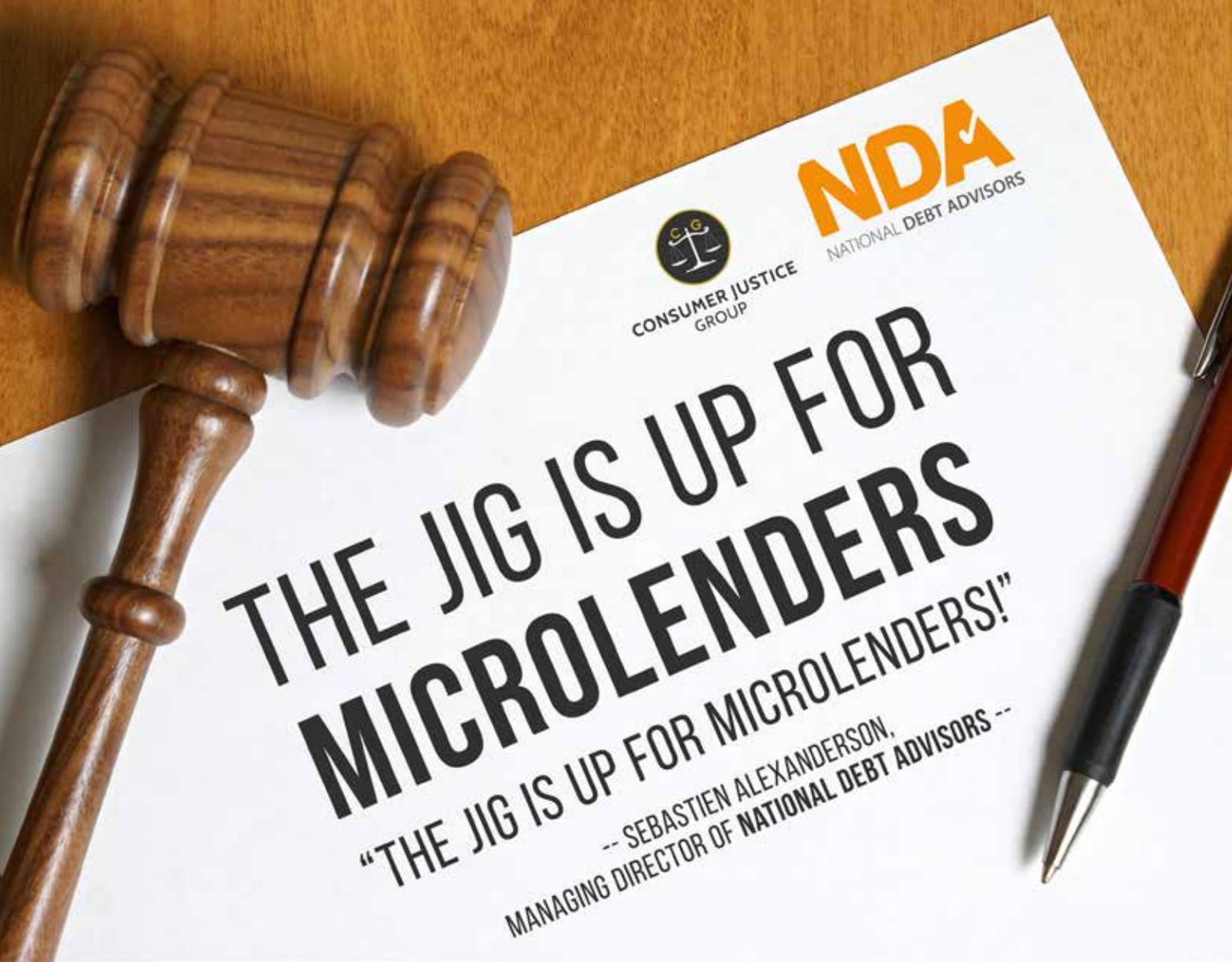
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If they were issued outside of the debtor's district and/or if they were stamped by a clerk of court, without judicial oversight, these garnishee orders are unlawful. As such, they should be rescinded or, at the very least, new payment terms should be negotiated.

Are You One of the Many Victims of Unlawful Garnishee Orders?

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Your garnishee order is unlawful if:

- * It was issued by a court out of your district.
- * You don't have enough money for food, medicine, clothes and other essentials because of the garnishee order.
- * If a clerk of the court issued your garnishee order, without a Magistrate overseeing the matter

We can help by approaching your HR department or creditors to find out where all of your pay is going. Contact NDA today and we'll sort it out, so you get your full salary back.

It's Also a Big Win for Debt Counsellors

Thousands of potential customers have been turned away due to not meeting the minimum criteria because of EAOs. But what does this judgment mean for your business? Consumers who previously didn't qualify as clients could now be your most valuable clientele.

The relationships debt counsellors enjoy with creditors puts them in a unique position to help out debtors with unlawful emolument attachment orders.

Use your super powers for good, and turn wronged consumers into satisfied customers.

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A big thank you to the 300 delegates who attended the DCASA Conference. We were overwhelmed with the positive feedback received.

All delegates received information flash cards from DCASA and many Debt Counsellors and they have reported they have benefitted from sharing the information on the DCASA Flash Cards with their staff.

www.dcasa.co.za



Debt Counselling Union
a division of the New Economic Rights Alliance

Advocate Douglas Shaw has now brought a class action of 50 cases to the High Court. It's aim: to stop the banksters from selling houses below market value. Read about it here:

<http://www.iol.co.za/news/crime-courts/banks-to-be-sued-over-repossessions-1.1854341>.

www.newera.org.za



Black Debt Counsellors Forum
"MAKING A DIFFERENCE"

Did you know that the Black Debt Counsellors Forum is a registered Non Profit Organization?

We will be holding an Inter-Provincial meeting at the end of August. Members will be informed in regard to the date shortly.

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

www.bdcf.co.za

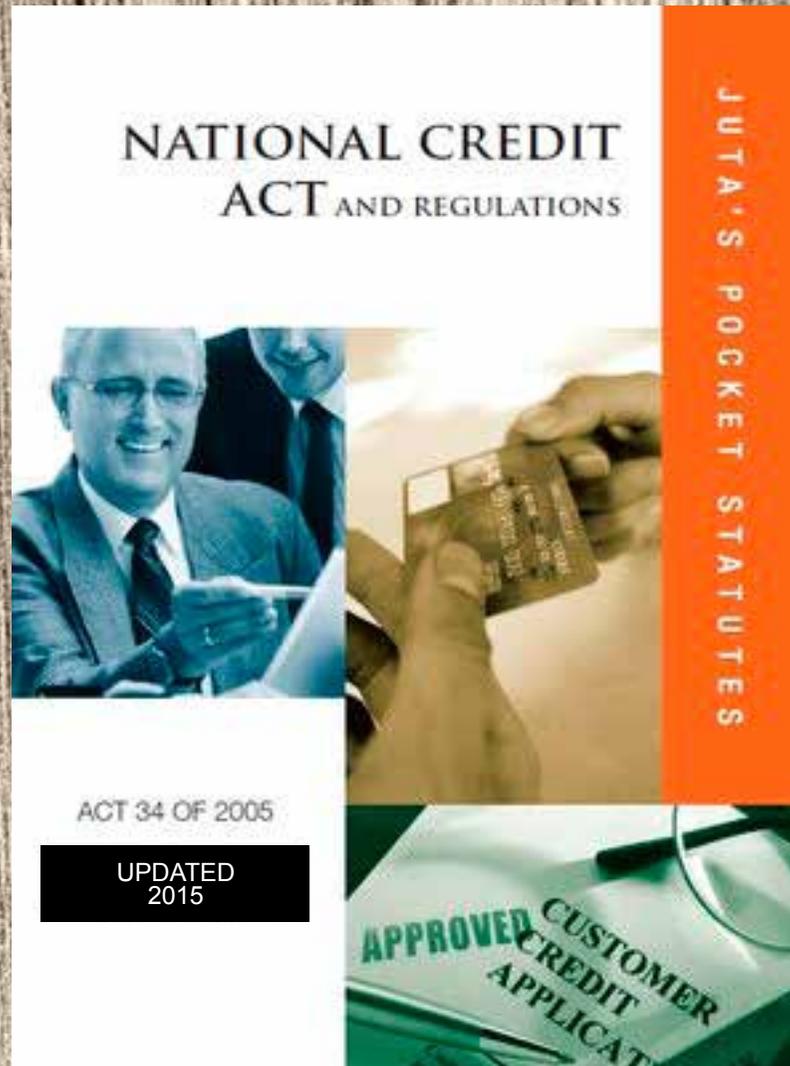
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NEWSLETTER

DEBT COUNSELLING FEES AS PER GUIDELINE

In a recent sour turn of events, some of our members have been chastised by the High Court for putting the consumer in “default” on some accounts because we have been taking our debt restructuring fees (in month one) and the attorneys their legal fees (in month two). This is, of course, the long standing industry practice as set out by the NCR. The High Court in question demanded proof that the current fee structure is based on regulation (which it is not). These may now be the first incidents of a problem in this High Court and needs to be addressed urgently. We are calling all DC’s (from any association or non associated) who have had this issue come up on court matters to send us information. If you as a Debt Counsellor were following this (or another) NCR guideline and had an issue with the court then we ask that you please mail us and inform us : secretary@allprodc.org.

Obviously our members are sticking to the conventions that exist industry wide however we are very concerned that the NCR has put us on in the position where we by following the non binding opinion/guidelines, are acting mala fide. This may result in very negative consequences for all in the industry. We need further protection.

This matter will probably have to go to the DTI and ultimately be put into the Government Gazette if we

are to avoid these issues in the future. Members are called on to make suggestions in regard to the way forward and any possible alternative fee structures that do not supposedly ‘put the consumer in a worse position’.

EXPIRING REGISTRATION CERTIFICATES

Debt Counsellors need to be aware that from this year their NCR registration certificates will now have an expiration date. We urge members to renew their registration in a timeous nature or they may have to run the daunting gauntlet of getting a new registration (in the past that has taken the NCR several months to more than half a year to process). For more details see NCR Circular 12/2015

We are looking for suggestions on how to still get paid without putting the consumer in a worse position. Any other matter where the dc was following guidelines but the court gave them a hiding must be reported to us.

CIF

The Credit Industry Forum met this month (20th) to discuss the ongoing challenges regarding End Balance Differences (between Credit Provider accounts and Court orders and PDA tracking) and getting accounts closed and consumers back into the market swiftly. We will post information regarding this and other meetings on the dedicated members Facebook page.

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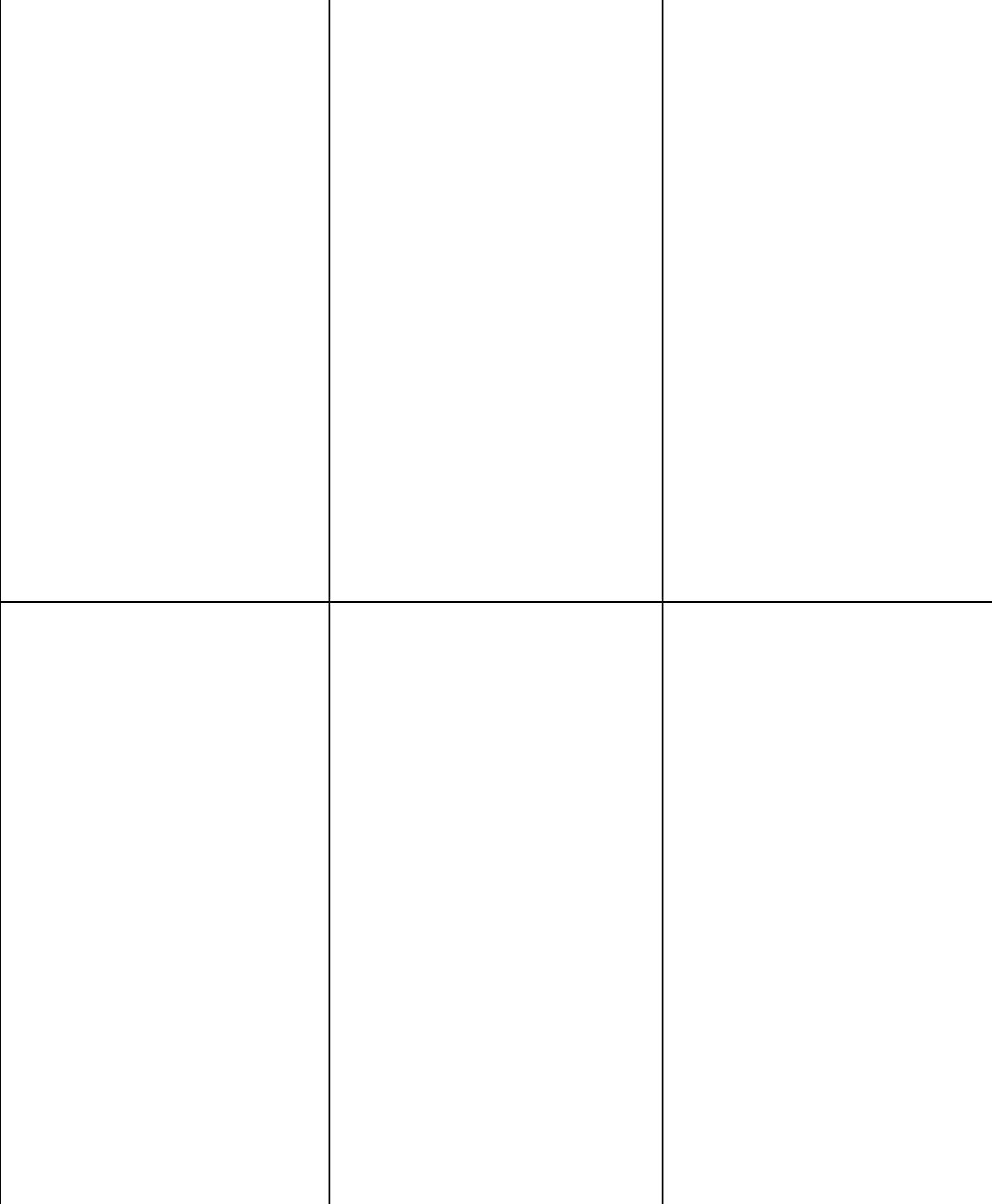
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0861 111402

Debt Review specific queries	DebtReviewServices@standardbank.co.za
Debt Review specific complaints and escalations	debtreviewcomplaints@standardbank.co.za
Debit order cancellations	coming soon
Debt Review application notification (Form 17.1 by Debt Counsellors):	coming soon
Debt Counsellors to submit Form 17.2 and Debt Review proposals	coming soon
Debt Review court applications	coming soon
Debt Review payment related matters	coming soon
Reckless Lending	coming soon

ESCALATION PROCESS

COMING SOON

ABSA CONTACT DETAILS
0861 22 22 72

ESCALATION PROCESS

**COMING
SOON**

FNB CONTACT DETAILS
087 730 1166

ESCALATION PROCESS

**COMING
SOON**

NEDBANK CONTACT DETAILS
& ESCALATION PROCESS

COMING
SOON

AFRICAN BANK CONTACT DETAILS
& ESCALATION PROCESS

COMING
SOON