

Recoveries and Debt Collection

1. Introduction to Recoveries and Debt Collection

1.1 What is debt collection?

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
1.1.1 Introduction to debt collection				
1.1.2 Role-players in the debt collection process				Payment Distribution Agency of South Africa
1.1.3 Registration process for role-players		<p>Form 1A – Application for registration as debt collector by an officer in the employ of a juristic person, a director of a company or a member of a close corporation</p> <p>Form 1B – Application for registration as debt collector by a juristic person, a company or a close corporation</p> <p>Form 1C – Application for registration as debt collector by a person other than an officer in the employ of a juristic person, a director of a company or a member of a close corporation</p> <p>Form 2 – Application form for registration as a credit provider in terms of Section 40 of the National Credit Act 34 of 2005</p> <p>Form 46 – Application form for registration as a payment distribution agent in terms of Section 44a of the National Credit Act 34 of 2005</p>	<p>Documents required to register as a credit provider</p> <p>Documents required to register as a PDA</p>	<p>Collector's register (web)</p> <p>Council for Debt Collectors (web)</p>

2. The National Credit Act

2.1 Introduction to the National Credit Act

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.1.1 Purpose and application of the NCA	Nedan (Pty) Ltd v Selbourne Food Manufacturers CC and Another [2014] ZAGPPHC 979	Form 1 – Application for exemption by the Minister in terms of section 4(1)(d) of the National Credit Act 34 of 2005		
2.1.2 Agreements not at arm's length				

2.2 Credit agreements

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.2.1 What constitutes a credit agreement	<p>ABSA Bank Ltd v Prochaska t/a Bianca Cara Interiors 2009 (2) SA 512 (D)</p> <p>Evans v Smith [2011] ZAWCHC 230</p> <p>Hattingh v Hattingh 2014 (3) SA 162 (FB)</p> <p>Carter Trading (Pty) Ltd v Blignaut [2009] ZAECPEHC 22</p> <p>Firststrand Bank Ltd v Carl Beck Estates (Pty) Ltd 2009 (3) SA 384 (T)</p>			
2.2.2 Classification of credit agreements				

2.3 Agreements governed by the NCA

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.3.1 Amendments and repealed legislation				
2.3.2 Application of the NCA to pre-existing agreements				

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2. The National Credit Act

2.4 Over indebtedness and reckless credit

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.4.1 Over-indebtedness of the consumer				
2.4.2 Application for debt review		Form 16 – Application by consumer for debt review Form 17.1 – Notification to all credit providers and all registered credit bureaus Form 17.2 – Notification to credit provider and credit bureau by debt counsellor of rejection or restructuring Form 18 – Application by consumer to court for debt review Form 19 – Clearance certificate issued		Circular 2 of 2015 – Debt review task team agreements of 2010 guidelines
2.4.3 Reckless credit	Absa Bank v Trustees for the Time Being of the Coe Family Trust and Others [2010] ZAWCHC 206	Form 15 – Notice of credit provider of credit excluded from reckless lending		

2.5 Termination of a credit agreement

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.5.1 When can a credit agreement be terminated				

3. Initiating Collection Proceedings

3.1 Steps before taking legal action

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.1.1 Initiating recovery and debt collection proceedings				
3.1.2 Placing a debtor in mora		Letter of demand for payment of fees for services rendered		
3.1.3 Notice in terms of section 129 of the NCA	First Rand Bank Ltd v Phiri and Another [2013] ZAGPPHC 90	Notice in terms of section 129 of the National Credit Act 34 of 2005 Certificate of compliance in terms of section 129(1) of the National Credit Act		
3.1.4 Consumers currently under debt review	ABSA Bank Ltd v Prochaska t/a Bianca Cara Interiors 2009 (2) SA 512 (D)	Notice in terms of section 86(10) of the National Credit Act 34 of 2005		

4. Alternate Dispute Resolution

4.1 Debt mediation

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.1.1 Consulting with the debtor		Settlement agreement First and second defendants verifying affidavit in terms of Rule 31 of the High Court Rules Consent to judgment in the High Court		
4.1.2 Structuring a payment plan		Settlement agreement		
4.1.3 Alternative methods of securing payment of a debt		Admission of liability and undertaking to pay Consent to judgment in the High Court Consent to judgment in the Magistrate's Court		
4.1.4 Initiating applications to the Tribunal				

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5. Prescription

5.1 Important concepts

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
5.1.1 The running of prescription				

6. Commencement of an Action

6.1 The summons

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
6.1.1 Drafting and issuing a summons	Hansen and Schrader v Pauling (1885) 4 SC 92			

6.2 Commonly used particulars of claim

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
6.2.1 Particulars of claim used in collection matters	<p>Botha v Potch Motors (Edms) BPK 1963 (1) SA 279 (T)</p> <p>Absa Bank Ltd v Prochaska t/a Bianca Cara Interiors 2009 (2) SA 512 (D)</p> <p>Barclays Bank v McCall 1980 (2) SA 308 (W)</p>	<p>Form 3 J789</p> <p>Particulars of claim for a claim based on a mortgage bond</p> <p>Particulars of claim for a credit agreement</p> <p>Particulars of claim for unpaid rent</p> <p>Provisional sentence summons in the High Court</p> <p>Particulars of claim for a motor vehicle collision</p> <p>Certificate of compliance in terms of section 129(1) of the National Credit Act</p>		Table of actions for arrear rental in the Magistrates' court

7. Categories of Debtors

7.1 Natural persons

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
7.1.1 Natural persons with full rights of appearance				
7.1.2 Natural persons with limited rights of appearance		<p>Citation of child assisted by their guardian</p> <p>Citation of child represented by their guardian</p>		

7.2 Juristic persons

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
7.2.1 Companies and close corporations	Langeberg Ko-operasie Bpk v Folscher 1950 (2) SA 618			
7.2.2 Trusts and partnerships				

7.3 Deceased debtors

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
7.3.1 Lodging a claim against the deceased estate				

7.4 Insolvent debtors

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
7.4.1 Sequestrating a debtor	Investec Bank Ltd and Another v Mutemeri and Another 2010 (1) SA 265 (GSJ)			
7.4.2 Liquidating a debtor				
7.4.3 Business rescue proceedings				

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8. Jurisdiction

8.1 Determining jurisdiction

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
8.1.1 Cause of action				
8.1.2 Jurisdiction determined by a place or area	Thomas v BMW South Africa (Pty) Ltd 1996 (2) SA 106 (C)			Determining jurisdiction in the Magistrates' Court Determining jurisdiction in the High Court

9. Default Judgments

9.1 Essential requirements

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
9.1.1 Obtaining default judgment	Credit Corporation of SA Ltd v Bosman 1958 (3) SA 845 (T)	Affidavit in terms of Rule 12(6) of the Magistrates' Court Rules		
9.1.2 Drafting a request for default judgment		Request for default judgment in the Magistrates' Court Application for default judgment in the High Court Request for default judgment after serving a notice of bar Request for default judgment in terms of Rule 31 of the High Court Rules Affidavit in terms of Rule 31(1) of the High Court Rules Affidavit in terms of Rule 12(6) of the Magistrates' Court Rules		

9. Default Judgments

9.2 When will default judgment be granted

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
9.2.1 Failure to deliver a plea after being placed on bar		Notice of Bar		
9.2.2 Consent to judgment		Consent to judgment in the Magistrate's Court Consent to judgment in the High Court		
9.2.3 Admission of liability		Admission of liability and undertaking to pay		

9.3 Effect of a judgment being granted

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
9.3.1 Obtaining judgment against a defendant				

9.4 Reviving a judgment

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
9.4.1 Revival of a lapsed judgment				

10. Execution

10.1 Warrant of execution

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
10.1.1 Drafting and issuing a warrant of execution				Attachment and sale of property in the High Court
10.1.2 Procedure after warrant of execution is issued				
10.1.3 Re-issuing of a warrant				
10.1.4 Reviving a warrant of execution				

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10. Execution

10.2 Attaching movable property

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
10.2.1 Attachable property				
10.2.2 Property exempt from execution				
10.2.3 Removal and storage of property		Indemnity in terms of Rule 38(1) and (2) of the Magistrates' Court Rules		
10.2.4 Dealing with interpleader claims				

10.3 Sale of the movable property

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
10.3.1 Notice of sale		Notice of sale of movable property		
10.3.2 Publication				
10.3.3 Sale in execution	Mattioda Construction (SA) (Pty) Ltd v E Carbonari Construction (Pty) Ltd 1973 (3) SA 327 (D)			
10.3.4 Section 127 of National Credit Act				

10.4 Declaring immovable property executable

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
10.4.1 Notice to debtor				
10.4.2 Nulla bona return of service				
10.4.3 Application to declare property executable	Firststrand Bank Ltd v Folscher and another [2011] ZAGPJHC 79			
10.4.4 Sale in execution of immovable property		Notice of sale of immovable property		

10. Execution

10.5 Garnishee orders

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
10.5.1 Application for a garnishee order		Ex parte application in terms of section 72 of the Magistrates' Court Act 32 of 1944 Application in terms of section 72 of the Magistrates' Court Act 32 of 1944 Garnishee order for the attachment of a debt		
10.5.2 Effect of a garnishee order				
10.5.3 Setting aside a garnishee order				

10.6 Administration orders

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
10.6.1 Application for an administration order				
10.6.2 Effect of an administration order				
10.6.3 The duties of the administrator	Oosthuizen v Landdros, Senekal 2003 (4) SA 450 (O)			

10.7 Emolument attachment orders

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
10.7.1 Application for an emolument attachment order	MBD Securitisation (Pty) Ltd v Booi [2015] ZAFSHC 134	Emolument attachment order		
10.7.2 Effect of an emolument attachment order				
10.7.3 Setting aside an emolument attachment order				

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11. Proceedings in Terms of Section 65

11.1 The section 65 letter

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
11.1.1 Drafting a registered letter in terms of section 65		Registered letter to debtor in terms of section 65		

11.2 Transferring a matter to another court

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
11.2.1 Transferring a matter in terms of section 65M		Certificate in terms of section 65M of the Magistrates' Court Act 32 of 1944		
11.2.2 Application for a certified court judgment		Certified court judgment		

11.3 Application in terms of section 65

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
11.3.1 Drafting and issuing a section 65A notice				
11.3.2 Service of the section 65 application				
11.3.3 The section 65 hearing				
11.3.4 The agreement between the debtor and creditor				
11.3.5 Financial enquiry of the judgment debtor				
11.3.6 Costs involved in section 65 proceedings				

12. Rescission of Judgment

12.1 Application for rescission of judgment

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
12.1.1 Applying for a rescission of judgment				
12.1.2 Removing a judgment from the credit bureau				

13. Costs

13.1 Costs to consider

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
13.1.1 Party and party costs				
13.1.2 Attorney and client costs	Law Society of the Cape of Good Hope v Windvogel 1996 (1) SA 1171 (C)			
13.1.3 Attorney and own client costs	Audio Vehicle Systems v Whitfield and Another 2007 (1) SA 434 (C)			
13.1.4 Taxation and assessment of costs		Notice of intention to tax a bill of costs in the High Court Notice of set down for taxation in the Magistrates' Court Notice of objection in terms of Rule 70(3)(b) of the HC		
13.1.5 Collection commission				

13.2 Interest

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
13.2.1 Maximum prescribed rates of interest				
13.2.2 The in duplum rule				Circular No. 3 of 2015 published by the NCR

13.3 Statements of account

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
13.3.1 Drawing up a statement of account for the debtor				