CONSUMER PROTECTION AND DEBT MATTERS

Debt Counselling

Debt counselling is the procedure in which an over-indebted consumer applies to court to have his/her debt re-arranged, for example, by reducing the monthly instalment amount and extending the period over which the outstanding balance is paid back to the credit provider.

Date updated: July 2022

For all your debt counselling answers, simply follow our guide below.

1. What is debt counselling?
2. What is the procedure to apply for debt counselling?
3. What is a debt counsellor?
4. Can debt counselling be cancelled?
5. When can a consumer get a clearance certificate?
6. What is the effect of debt counselling?
7. How can LegalWise assist you?

1. What is debt counselling?

- A person (“consumer”) experiencing financial problems may consider debt counselling as a way to keep his/her head above water. Debt counselling is also referred to as debt review.
- Debt counselling is the procedure in which an over-indebted consumer applies to court to have his/her debt re-arranged, for example, by reducing the monthly instalment amount and extending the period over which the outstanding balance is paid back to the credit provider.
- Applying for debt counselling does not mean a consumer’s debt is written off, it is merely a second chance to repay his/her debt.
- Only over-indebted consumers who are natural persons may apply for debt counselling, juristic persons may not apply.

2. What is the procedure to apply for debt counselling?

- A consumer may apply to a debt counsellor to be declared over-indebted. A consumer is over-indebted when s/he is unable to comply, in a timely manner, with his/her obligations under all his/her credit agreements.
- The debt counsellor must notify the consumer's credit providers and every registered credit bureau of the consumer's application within five business days of receiving it.
- The debt counsellor will evaluate the consumer's financial situation and prospects of debt re-arrangement. During this evaluation, the consumer and his/her credit providers must comply with the requests of the debt counsellor and participate in the review and negotiations relating to the debt re-arrangement.
- The debt counsellor must determine whether the consumer is over-indebted and whether any of the credit agreements appear to be reckless within 30 business days of receiving the application.
- The debt counsellor may come to one of the following determinations:
    - The consumer is not over-indebted and reject his/her application (if the consumer believes that s/he is over-indebted, s/he may apply to court for a debt re-arrangement order).
    - The consumer is not over-indebted, but experiencing financial problems, and recommend that the consumer and his/her credit providers enter into a voluntary debt re-arrangement agreement. Such an arrangement must be in writing and signed by all the credit providers, debt counsellor and the consumer.
    - The consumer is over-indebted and propose that the court make the following orders:
        - declaring some of the consumer's credit agreements reckless; and/or
        - re-arranging the consumer's obligations under some of his/her credit agreements by extending the period of the credit agreements, reducing the amount of each payment due or postponing the dates of the payments due.

- The credit providers of the consumer will be informed of the debt counsellor's proposal. They can either accept or object to the proposal.
- Upon receipt of the application, the court will conduct a hearing, taking the debt counsellor's proposal, consumer's financial information and the credit providers' objections into account.
- This procedure is finalised as soon as the court makes a debt re-arrangement order or dismisses the application.

- Re-payment of a consumer's obligations under his/her credit agreements is through a payment distribution agency.

3. What is a debt counsellor?

- A debt counsellor is a natural person that has the required education and experience in order to be registered as a debt counsellor with the National Credit Regulator.
- A debt counsellor assists a consumer who is unable to make payment towards his/her credit providers by negotiating and re-arranging his/her obligations under his/her credit agreements with them.
- A debt counsellor must inform consumers about the debt counselling procedure (prescribed forms and manner of applying), the effect of debt counselling, his/her fees/charges and payments when undergoing debt counselling. The fees/charges of a debt counsellor are prescribed by the National Credit Act.
- A registered debt counsellor will advise a consumer on ways to manage his/her living expenses through a budget. The debt counsellor will set aside a certain amount of income for the consumer's necessities such as food, school fees, transport costs and so on, and use the remainder of the money to pay the consumer's credit providers.

4. Can debt counselling be cancelled?

- It is possible for a consumer to cancel debt counselling in certain instances, such as after getting a clearance certificate from the debt counsellor.
- If there is no court order placing him/her under debt counselling:
    - The consumer can inform the debt counsellor in writing of his/her desire to cancel the debt counselling.
    - This can only be done *before* a formal notice is sent to the creditors, saying that the debt counsellor has found that the consumer is over-indebted.
    - The consumer must pay the debt counsellor’s fees before the debt counselling can be cancelled.
- If is a court order:
    - The consumer must apply in court to cancel the debt counselling proceedings and for the court to declare that s/he is no longer over-indebted.

- If the application is successful, the debt counsellor must give notice to all of the creditors of the cancellation.

5. When can a consumer get a clearance certificate?

- Firstly, a clearance certificate can be given by a debt counsellor when all the debts that formed part of the debt counselling has been paid in full.
- Alternatively, a clearance certificate can be given when the consumer can show that:
    - s/he is financially stable and can, in the future, pay the outstanding debts under long-term credit agreements that formed part of the debt counselling, such as a home loan;
    - the long-term credit agreements that formed part of the debt counselling are paid up to date, but it does not have to be paid in full; and
    - all other debts that formed part of the debt counselling, except for the above, have been paid in full.

- The debt counsellor must, within seven days of issuing the clearance certificate, file it with the National Credit Register and all credit bureaus. All the information relating to the consumer being under debt counselling must be removed from their records.

6. What is the effect of debt counselling?

- As soon as a consumer applies for debt counselling, s/he must not enter into any more credit agreements within any credit provider until:
    - The debt counsellor rejects his/her application to be declared over-indebted.
    - The court dismisses the debt counsellor’s proposal and application or the consumer’s application for debt counselling.
    - His/her obligations under his/her credit agreements listed under a debt re-arrangement order or agreement has been fully satisfied.

- A credit provider may not proceed with any legal action against the consumer if s/he has been informed of the consumer’s application to be declared over-indebted, his/her application for debt counselling to court, or his/her debt re-arrangement order or agreement.
- However, a credit provider may proceed with legal action if the consumer breaches his/her credit agreement AND any of his/her above applications are rejected by the debt counsellor or court, or

s/he has satisfied his/her obligations under the debt re-arrangement order or agreement. A credit provider may also apply to terminate the debt counselling as a result of the consumer breaching his/her debt re-arrangement order or agreement.

7. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

© LegalWise South Africa (RF) (Pty) Ltd. This guide is general legal information, not legal advice. For assistance, call 0861 42 7777 or visit https://www.legalwise.co.za/guides/debt-counselling.