CONSUMER PROTECTION AND DEBT MATTERS

Prescription

Prescription is when a debt (for example, obligation to pay money) is extinguished after a period of time. Get an overview of the most important information about prescription and debt law via this QuickLaw guide.

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For all your prescription answers, simply follow our guide below:

1. What does prescription mean?
2. What are the consequences of a debt that prescribed?
3. When does a prescription period start to run?
4. When will a prescription period be delayed?
5. When will a prescription period be interrupted?
6. What are the different prescription periods?
7. How can LegalWise assist you?

1. What does prescription mean?

- Prescription is when a debt (for example, obligation to pay money) is extinguished after a period of time.
- South Africa has different laws which specify prescription periods, for example, the Prescription Act says that contractual and delictual debts extinguish after three years from the date when it became payable (due).
- Prescription periods may, in certain circumstances, be delayed or interrupted.

2. What are the consequences of a debt that prescribed?

- A person who is indebted (“debtor”) to another person (“creditor”) will not be liable to pay such debt after a certain period of time has passed.
- This means that the creditor may not institute legal action against the debtor for such a debt.

3. When does a prescription period start to run?

- As soon as the debt is due. A debt is due once the creditor can identify the debtor and the facts from which the debt arose.
- If the debtor prevents the creditor from gaining knowledge of the debt (excluding debts arising from contracts), prescription runs from when the creditor gains knowledge of the existence of the debt.
- If a debt is related to trafficking in persons, rape, and sexual exploitation of children the prescription period will not run during a period where the creditor cannot institute his/her claim due to his/her mental or psychological condition.

4. When will a prescription period be delayed?

- A prescription period is delayed if one of the following restrictions apply:
    - creditor is a minor, insane, or under curatorship;
    - debtor is outside South Africa;
    - creditor and the debtor are married to each other;
    - creditor and the debtor are partners and the debt arose from a partnership agreement;
    - debtor is a member of the creditor, being a governing body an organisation or business;
    - debt is the object of a dispute in an arbitration; or
    - executor of a deceased estate has not yet been appointed.
- Such a restriction will stop *on, after or within* one year before the normal prescription period will end. If this happens, one year will be added after the date on which the restriction stopped.
- For example: if a debt becomes due on 15 January 2008, it will prescribe within a period of three years; the prescription period will end on 14 January 2011 (“normal prescription period”). On 15 January 2009 the debtor:
    - leaves South Africa for six months. This means that the debtor will return on 15 July 2009, which is *more than one year* before the normal prescription period will end. The prescription period will not be affected and will still end on 14 January 2011;
    - leaves South Africa for 18 months. This means that the debtor will return on 15 July 2010, which is *within one year* before the normal prescription period will end. One year must be added from the date on which the restriction has stopped and the

new prescription date is 14 July 2011; or

- leaves South Africa for three years. This means that the debtor will return on 15 January 2012, which is *after the normal prescription period* ended. One year must be added from the date on which the restriction has stopped and the new prescription date is 14 January 2013.

5. When will a prescription period be interrupted?

- The running of prescription is interrupted by:
  - an acknowledgment of debt by a debtor, for example, if a debtor pays part of his/her debt to the creditor before prescription; or
  - a summons served by the creditor on the debtor in order to claim payment of the debt due.

6. What are the different prescription periods?

- The tables below give a short summary of different prescription periods and distinguishes between non-government claims and government claims.

Prescription Period for Non-Government Claims	
Time period before debt / claim is extinguished	**Description of Debt / Claim**
30 Years	• Debt secured by a mortgage bond. • Debt in respect of a judgment delivered by a court.
6 years	• Debt relating to a negotiable instrument (for example, a cheque or promissory note).
3 years	• Debt arising from delict or contract, or any other liability.
30 years	• A person shall become the owner of a thing, such as piece of land, after possession for an *uninterrupted* period of 30 years.

Time period before debt / claim is extinguished	Description of Debt / Claim
<u>Owner / driver identified:</u> 3 years 5 years <u>Owner / driver not identified ("Hit and Run"):</u> 2 years 5 Years 120 days	• A claim for compensation in respect of loss or damage (bodily injury) from the driving of a motor vehicle, must be lodged with the Road Accident Fund within three years from the date on which the accident occurred. • Once a claim has been lodged, a summons must be issued within five years from the date on which the accident occurred. • A claim for compensation in respect of loss or damage (bodily injury) from the driving of a motor vehicle, must be lodged with the Road Accident Fund within two years from the date on which the accident occurred. • Once a claim has been lodged, a summons must be issued within five years from the date on which the accident occurred. • After the lodgment of a claim with the Road Accident Fund, a summons may not be served before the expiry of 120 days.
12 months	• Claims for compensation for injuries sustained during the course of employment will lapse if the accident is not reported to the employer within 12 months from the date of the accident occurring.
12 months	• A claim for a contribution from the joint wrongdoer (in terms of the Apportionment of Damages Act) must be made within 12 months after a judgment was granted in respect of damages.
3 months	• Notice of a claim against an Attorney for theft should be given to the Legal Practice Council or Fidelity Fund within three months after a person became aware of this theft.

Prescription Periods for Government Claims

Time period before debt / claim is extinguished	Description of Debt / Claim

30 Years	• Debt in respect of tax or levies under any law. • Debt owed to the State for profits in respect of the right to mine substances (such as minerals).
15 years	• A debt owed to the State for money loaned or a sale or lease of land, by the State to the debtor.
3 years	• Debt against State Organs arising from delict or contract, or any other liability.
6 Months	• Notice of intended legal proceedings against the State must be served on the State Organ within six months from the date on which the debt became due.
30 Days	• No summons may be served on the State within 30 days after service of the Notice of intended legal proceedings.

7. How can LegalWise assist you?

If you are a LegalWise Member and require more information or advice 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 to join visit our join now page.

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