CONSUMER PROTECTION AND DEBT MATTERS

National Credit Act

The NCA protects a consumer who enters into a credit agreement with a credit provider. For example, a credit agreement can take the form of a credit card, overdraft, store card, personal loan and so on.

Date updated: July 2022

For all your National Credit Act answers, simply follow our guide below.

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1. What is the National Credit Act (“NCA”)?

- The NCA protects a consumer who enters into a credit agreement with a credit provider. For example, a credit agreement can take the form of a credit card, overdraft, store card, personal loan and so on.
- The NCA applies to all credit agreements effective or entered into within South Africa, between consumers and credit providers that are independent from each other (dealing at arm’s length).
- A consumer entering into a credit agreement must carefully read through the terms and conditions to ensure that s/he understands exactly what his/rights are under the credit agreement.

2. Who are the major role players under the NCA?

- Consumer: is a natural or juristic person that purchases goods or services on credit, or borrows money under a credit agreement. However, the NCA will only apply to a juristic consumer whose

annual turnover or asset value is less than R1 000 000 at the time of entering into the credit agreement.

- Credit provider: is a person that offers credit or lends money under a credit agreement. A credit provider must be registered with the National Credit Regulator (“NCR”). A credit provider who is not registered under the NCA may not offer or enter into a credit agreement.
- Credit bureau: an organisation that stores and reports on a consumer’s credit information, such as credit agreements, applications, payment history or patterns, and so on. A credit bureau must be registered with the NCR.

3. What rights do a consumer have under the NCA?

- A consumer has the right to:
- apply for credit – it does not include the right to be granted the credit (the credit provider can still decline it on reasonable grounds);
- be given reasons for the declined credit application – the reasons must be provided to the consumer within a reasonable time after his/her request;
- be protected against discrimination when applying for credit – a consumer may not be discriminated against as result of his/her gender, race, marital status and so on.
- be protected from a reckless credit agreement – a consumer must be assessed on his/her understanding of the costs, risks, rights and duties under the credit agreement; his/her repayment history; and existing financial situation, in order to determine whether s/he will be able to repay the credit (affordability assessment);
- receive a quotation setting out the amount, interest rate, other charges and total costs under the credit agreement;
- receive information and documents in a plain and understandable language in order for the consumer to make an informed decision when entering into the credit agreement, for example, the consumer must be able to understand the content, meaning and/or importance of the information and documents;
- receive information and documents in an official language s/he can read or understand – subject to reasonability and factors, such as expenses, practicality and usage, region and so on, in providing such information and documents in that official language;
- receive information and documents in a manner as prescribed by law or as chosen by the consumer, for example, by post, e-mail, fax, in person and so on;

- receive a free replacement copy of documents, however, frequent requests for the same documents may be subject to a fee;
- not be held liable for the use of his/her credit facility after s/he has reported the loss or theft of his/her card, PIN or something similar;
- apply for debt review (debt counselling) if s/he cannot afford to repay his/her credit – rearrangement of his/her credit obligations;
- surrender his/her goods under the credit agreement – to return the goods to the credit provider in order to have them sold to settle the outstanding amount;
- access and challenge information held by a credit bureau – may request such information, free of charge, once every 12 months;
- receive regular statements of account setting out the current balance, amounts paid, charges and next instalment date; and
- protection of information by treating it as confidential and only to be used for the purpose consent was given.

4. What duties does a consumer have under the NCA?

- A consumer has the duty to:
    - make payments in terms of his/her credit agreement;
    - inform the credit provider of changing his/her address, the address where goods under the credit agreement are kept, or if another person keeps the goods;
    - be honest and truthful when providing a credit provider with his/her information; and
    - comply with the duties set out in the credit agreement, for example, to take care of the goods or to insure the goods.

5. Where can a consumer complain to about credit related disputes?

- A consumer must always try to resolve a complaint with the person or body causing the complaint before referring it somewhere else.
- If a consumer is still not happy, s/he may lodge a complaint relating to credit, credit agreements and the NCA with the NCR, which includes complaints about the services of a credit provider, debt counsellor or credit bureau. A consumer may also lodge a complaint with a relevant ombudsman, alternative dispute resolution agent or a consumer court.

- The NCR is an independent body, regulating the credit industry. Upon receipt of a completed complaint form, the NCR will either:
    - issue a notice of non-referral;
    - refer the complaint to a debt counsellor, a relevant ombudsman, an alternative dispute resolution agent or consumer court; or
    - investigate the complaint.
- After investigating the complaint, the NCR will either:
    - issue a notice of non-referral;
    - apply to the National Consumer Tribunal (“NCT”) for an order;
    - refer the complaint to the NCT or a consumer court; or
    - refer the complaint to the National Prosecuting Authority, if the complaint relates to an offence in terms of the NCA.
- If the NCR issued a notice of non-referral or made a decision the consumer is not happy with, s/he can refer the complaint to the NCT or a consumer court directly.
- The NCT is an independent body that fulfils a function similar to that of a court. A complaint must be referred to the NCT by completing the correct complaint form and lodging it within the prescribed period of time.
- The NCT will hold a hearing, and make an appropriate order and/or penalty, for or against the body complained about. The NCT must give reasons for its order.

6. 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.

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