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14 Sandown, 330 Andrew Zondo Rd,

Amanzimtoti, 4126

ROMIE - NCRDC1262



APPLICATION BY CONSUMER FOR DEBT REVIEW
in terms of Section 86 of the National Credit Act 34 of 2005
(NCR FORM 16)

PLEASE NOTE THAT:

1. On receipt of this application the debt counsellor will advise all credit providers and all registered credit bureaus that you have applied for debt review;
2. You will be listed with all registered credit bureaus that you have applied for debt review;
3. This form must be accompanied by a list of all credit providers as well as copies of all documents requested;
4. Should any documents not be submitted within 10 days of the Application being received by the Debt Counsellor, your application will not be accepted.

TERMS AND CONDITIONS – Declaration by the Consumer

<u>I declare as follows:</u>	<u>Initials</u>
1. I undertake to comply with all requests from the debt counsellor to assist him/her to evaluate my state of indebtedness and the prospects for responsible debt restructuring;	
2. I hereby consent to the submission of my information to all registered credit bureaus by the debt counsellor;	
3. I also consent that the debt counsellor may obtain my credit record from any/all registered credit bureaus and any other registers which may contain any of my credit information;	
4. I undertake not to enter into any further credit agreements, other than a consolidated agreement, with any credit provider until one of the following events has occurred: a. The debt counsellor rejects my application; b. The court determines that I am not over-indebted; or c. All my obligations under credit agreements as re-arranged are fulfilled	
5. I undertake to honour the debt re-arrangement agreement and to deposit the full 'rehabilitation amount' monthly into the nominated payment distribution agency's account with effect from the first pay day after date of this application.	
6. I understand that all concessions granted by my credit providers will only become effective after the final acceptance letters have been issued by them and that my credit providers may withdraw the concessions if I do not honour the repayment arrangement strictly i.e. if I make short payments/make late payment/skip payments.	
7. I understand that all fees are included in the debt rearrangement programme.	
8. I confirm that I have received a receipt, confirming that I have applied for Debt Counselling, from my debt counsellor.	
9. I/We confirm that the information contained herein is to the best of my/our knowledge true and correct.	
10. I hereby authorise and consent to Finesse Financial Solutions, its staff and affiliated service providers to collect and process Personal Information in accordance and for purposes of offering and executing its service/s in accordance with the National Credit Act 34 of 2005 and in compliance with the Protection of Personal information Act 4 of 2013 ("POPI Act").	
11. I hereby confirm that, according to my/our knowledge, none of my/our accounts constitutes reckless lending therefore Romie Govender NCRDC1262 need not investigate the accounts for reckless lending.	

Signed at _____ on this, the _____ day of _____ 20__

Signature _____
(Main Applicant)

Signature _____
(Spouse)

POWER OF ATTORNEY

I/We, the undersigned,

NAME/S: _____

IDENTITY NUMBER/S: _____

ADDRESS: _____
_____**declare as follows:**

1. I undertake to comply with all the requests from the **Debt Counsellor, R Govender - NCRDC1262** to assist her to evaluate my state of indebtedness and the prospects for responsible debt restructuring;
2. I hereby consent to the submission of my information to all registered credit bureaux by the **Debt Counsellor, R Govender - NCRDC1262;**
3. I also consent that the **Debt Counsellor, R Govender - NCRDC1262** may obtain my credit records from any/all registered credit bureaux and any other registers which may contain any of my credit information;
4. I undertake not to enter into any further credit agreements, other than a consolidated agreement, with any credit provider until one of the following events has occurred:
 - *The **Debt Counsellor, R Govender - NCRDC1262** rejects my application;
 - *The court determines that I am not over-indebted; or
 - *All my obligations under credit agreements as re-arranged are fulfilled;
5. The Debt Counselling process was explained to me, and I have read and understood the Debt Counselling Process;
6. **Debt Counselling Fees** and **Legal/Document Preparation Fees** applicable are set out in the Fee Guidelines, I understand and accept these fees. **I shall accept any additional fees only when advised in writing;**
7. I understand that **I MUST NOT SIGN ANY DOCUMENT** whatsoever which I receive from any credit provider and shall make no promises, either verbally or in writing, to any credit provider and understand that ANY payment to a credit provider will be done through the PDA by arrangement with the **Debt Counsellor, R Govender - NCRDC1262;**
8. If I lodge a complaint of reckless lending, I confirm that the information I gave to the credit provider on the application for credit was true and correct;
9. If I have any additional money that I want to pay towards my debt, I will arrange with the **Debt Counsellor, R Govender - NCRDC1262** for the payment to be made through the PDA, so records and interest can be adjusted by them;
10. I confirm that the information contained in this document is, to the best of my knowledge, true and correct.
11. I indemnify all employees and nominees of **Finesse Financial Solutions/Finesse Debt Counsellors** against any claim that may be instituted against it or them arising from any act or omission by such person appointed by **Finesse Financial Solutions/Finesse Debt Counsellors** or it's nominee in the lawful execution of the terms and conditions of this agreement/Power of Attorney entered into between **Debt Counsellor, R Govender - NCRDC1262 on behalf of Finesse Financial Solutions/Finesse Debt Counsellors** and myself, and confirm that **Finesse Financial Solutions/Finesse Debt Counsellors** shall not be liable for any damages suffered by me resulting from any act or omission of whatsoever nature, however arising.
12. I hereby acknowledge that all lawful actions taken by the **Debt Counsellor, R Govender - NCRDC1262 acting on behalf of Finesse Financial Solutions/Finesse Debt Counsellors** under this Power of Attorney are tacitly ratified by me, and I will be bound by such agreements as principal debtor

Signed at _____ on this, the _____ day of _____ 20_____

MAIN APPLICANT_____
SPOUSEDEBT COUNSELLOR : ROMIE GOVENDER
PHONE: 031 303 3690 / 084 2502356NCR REGISTRATION NUMBER: NCRDC1262
E-MAIL: romie@debtfinesse.co.za

Prescribed Power of Attorney (to obtain a credit report)

I/We, _____ (name/s and surname) with

Identity numbers _____

and residing at _____

_____ (address)

hereby appoints and consent to **ROMELA GOVENDER (NCRDC1262)**

of **FINESSE FINANCIAL SOLUTIONS,** to:

- request and receive from Compuscan/Experian my credit report in the same format as I/we would have received it had I/we requested it in person; and/or
- I/we consent that the Debt Counsellor may obtain my credit records from any / all registered credit bureaus and from any other registers which may contain any of my/our credit information.

I/we consent that an amount of R50 (fifty rand) per report may be collected from my/our debt review payments towards recovering the cost of obtaining this credit reports.

Signed at _____ on this, the _____ day of _____ 20__

Signature _____
(Main Applicant)

Signature _____
(Spouse)

BY CLIENT/S:**1. ASSESSMENT CALCULATIONS:**

All assumptions based at Contact Stage takes into consideration only information provided by yourself (the client) and are for illustrative purposes only. Once the credit providers have responded with Certificates of Balance, then only can an interim proposal be drawn up.

2. FEES

All fees pertaining to your debt review are as prescribed by the National Credit Regulator and are contained on pages 8 and 9 below.

3. NEW BANK ACCOUNT

We recommend that you open a new account for your salary deposits especially **if you avail of an overdraft/credit facility** and move/switch all your necessary service agreement debit orders over to the new account (insurances, security services, education, cell phones medical aid and all other debit orders to service providers).

4. DEBIT ORDERS

It is your responsibility to cancel all your loan debit orders with the respective credit providers and to place stop payments with your bankers. We will assist you with the cancellation of your loan debit orders, **BUT WE WILL NOT ACCEPT RESPONSIBILITY IF YOUR CREDITORS FAIL TO DO SO.**

5. SUMMONS AND SECTION 129 (FINAL DEMAND) LETTERS

Kindly note that **you do not have protection in terms of Section 86 of the National Credit Act** on debts where your creditors have exercised their rights to proceed with enforcement action where payments are in arrears i.e. that are at Summons Stage (Legal Action) prior to this application and / or where Section 129 Letters (Letters of Demand) have been issued more than 10 days prior to this application. Creditors cannot be compelled to include these debts in the debt review process and **The National Credit Act does not offer you legal protection in these matters/cases.** Additional fees may apply to negotiate with attorneys/external debt collectors.

6. PROCESS OF DEBT COUNSELLING

The process of debt counselling has been explained in detail. Here are some key points to remember:

- 1.1. We will list you on the NCR Debt Help data base to enable the credit bureaux to update your credit profile.
- 1.2. We will inform your creditors of your application for debt review via Form 17.1
- 1.3. Your accounts will be 'frozen' for a period of 60 days thereafter.
- 1.4. During this time, we request Certificates of Balance from your credit providers and assess/evaluate your financial position.
- 1.5. After the evaluation we will issue a Form 17.2 to your credit providers to state whether we are proceeding with or rejecting your application.
- 1.6. If we are rejecting your application, we will issue you with a letter to this effect. If we are proceeding, you will be required to commence payments (the lower instalment/renegotiation amount) via a PDA (payment distribution agency). We will also update the NCR Debt Help system accordingly.
- 1.7. We will draft an interim proposal and submit same to your credit providers and the PDA will distribute your payment as per the interim proposal in respect of fees and to your credit providers.
- 1.8. Should all your credit providers accept the interim proposal, we will finalise the proposal and obtain final acceptance letters/consents from your credit providers and we will apply for a consent order via the National Consumer Tribunal. Should all your creditors not accept our proposal, we will apply for a court order via The Magistrate's Court.
- 1.9. After you have fulfilled all your obligations under Debt Review, we will issue A CLEARANCE CERTIFICATE and update the DHS system accordingly. We will provide you with a copy of the clearance certificate which you will need to have certified and returned to us within 5 days, in terms of Section 71 of the NCA, to enable us to request the credit bureaux to remove the Debt Review flag from your credit profile. The credit bureaux are expected to do so within 5 days.

7. PAYMENT DISTRIBUTION AGENCY

The process of Debt Counselling requires the use of a payment distribution agency (PDA) to maintain audited transactions and to provide an accurate account of cascading payment plans. You are required to make a single monthly payment to the PDA who will distribute the funds to all your creditors as per the debt rearrangement proposal. The cost of distribution is between R5 and R15 per creditor distribution depending on the distribution amount (including VAT).

8. INSURANCE AND ASSURANCE

You will have to ensure that your life assurance, bond cover, car and household insurances remain in place. **We will not accept any liability with regards to cancellations and claims on your policies.**

9. PAYMENT OF FEES AND PAYMENT METHODS

9.1. The following fees are applicable:- a) The Application fee; b) The Debt Counselling Fee, c) Attorney Fees; d) Aftercare fees; e) PDA fees.
9.2. Our consultants and branch offices are NOT authorised to collect Debt Counselling Fees; Attorney Fees or any Rehabilitation Payment amounts. You may, however, pay the Application fee of R50 to the consultant.

9.3. Payment Methods:

- 1. Electronic Funds Transfer (EFT) directly to the Payment Distribution Agency’s Trust Account.
- 2. Cash deposits directly into the Payment Distribution Agency’s Trust Account.
- 3. Stop Orders or scheduled payments, which is to be arranged by you via your salary or bank into the Payment Distribution Agency’s Trust Account.
- 4. Salary Stop Order, which is to be arranged by you via your salary department into the Payment Distribution Agency’s Trust Account.
- 5. Debit Order authorisation/ NAEDO authorisation in favour of the Payment Distribution Agency’s Trust Account which can be arranged at our offices.

10. PDA TRUST ACCOUNT DETAILS:

1. Account Name: Hyphen Technologies Trust A/C
Account Number: 62196206413
Bank: FNB **Branch Number:** 255005.
Reference Number: please use your **identity number** as the reference number.
NB:-Preferred method of payment is via Electronic Funds Transfer (EFT) into the Trust Account which is set up as a ‘PUBLIC RECIPIENT’. Select ‘DEBT REVIEW 1’

2. Account Name: DC PARTNER (PTY) LTD OBO FINESSE FINANCIAL SOLUTIONS
Account Number: 63040144527
Bank: FNB **Branch Number:** 255005.
Reference Number: please use your **identity number** as the reference number.
NB:-Preferred method of payment is via Electronic Funds Transfer (EFT) into the abovementioned account which is to be set up as a ‘RECIPIENT’ on your Banking App.

11. RECKLESS LENDING INVESTIGATIONS:

Will only be undertaken upon request from you. The Reckless Lending Investigation fee will be payable in month 2 and additional legal fees will be payable directly to the attorney.

Signed at _____ on this, the _____ day of _____ 20__

Signature _____
(Main Applicant)

Signature _____
(Spouse)

ANNEXTURE TO FORM 16

DEBT COUNSELLING FEE STRUCTURE 2018

<i>STEP</i>	<i>SERVICES</i>	<i>AMOUNT (excl. VAT)</i>	<i>BY WHEN IT SHOULD BE PAID</i>
1. Application Fee	Completion and submission of the Form 16.	R50.00 (as prescribed).	Upfront and in full.
2. Administration Fee (New fee)	(a) Consultation with consumer, including explanation of process and fee disclosure; (b) Form 17.1 process; (c) Loading consumers on the DHS*; and (d) Rejection process as per the Form 17.2(a) including: (i) Notifying the consumer and credit providers; (ii) Updating the DHS; and (iii) Compliance with Regulation 25.	R300.00 per debt counselling application.	Upfront and in full.
3. Determination Fee:	The fees under this item are aligned to the outcomes of the full assessment of the consumers' financial information.		
3.1 Restructuring Fee	Attending to the Form 17.2(b) process including, but not limited to, the following related services: (a) Proposal preparation; (b) Loading the plan on the debt counsellor's PDA*** profile; (c) Negotiating with credit providers; (d) Submitting the final proposal; (e) Supplying debt counselling documents to the attorney to draft the court application; (f) Updating the DHS; (g) Transferring the consumer; (h) Instructing the attorney to draft the court application/collating and filing NCT**** application; and (a) Withdrawal by consumer (Form 17.W process).	<i>For one applicant:</i> (a) the fee is either equal to the distributable amount** or a maximum fee of R8 000.00, (b) whichever amount is the lesser. <i>For consumers married in Community of Property:</i> (a) the fee is either equal to the distributable amount or a maximum fee of R9 000.00, (b) whichever amount is the lesser.	Payable in Month 1 after drafting and submission of the proposals.

3.2 Reckless Lending Fee (New fee)	(a) Reckless lending assessment; and	R1 500.00 per debt counselling application.	Payable in Month 2 after completing the written outcome of the reckless lending assessment.
	(b) Supplying reckless lending documents to the attorney to draft the affidavit on the assessment outcome.		
4. After Care Fee	Services including the following: (a) Form 17.2(c) process; (b) Review of the consumer's financial situation; (c) Attending to payment queries; (d) Clearance process, including securing the paid-up letters; (e) Withdrawal by consumer (Form 17.W process); and (f) Updating the DHS.	For the entire debt counselling process: (a) The fee is equal to 5% of the distributable amount or a maximum fee of R450.00, (b) whichever amount is the lesser.	Payable in every month after Month 2 in which after care services are rendered.
6. NCT Submission Fee	Submission of the NCT application.	R500.00 (excluding the NCT filing fee).	Charged and payable in Month 2 after completion of the restructuring process
7. Attorney Fee	(a) Drafting of the court application; and	To be agreed upon upfront with the attorney and communicated in writing to the consumer when applying for debt counselling. Debt counsellors are advised to negotiate that the legal fee be aligned to the disposable income of the consumer where possible.	Payable to the attorney only after: (a) one or more credit providers have not accepted the repayment plan; (b) the attorney has drafted the court application; and (c) the attorney has attended the hearing of the court application:
	(b) Attendance at court.		

After Care does not include:

- Any legal action (Magistrate or High Court) or legal fees other than the debt review application
- Any rescission of Judgments and/or Garnishee Orders and/or amendments/variations to the Order.
- Any legal action/suspensions/terminations by Credit Providers during the debt review resulting from non-payments/short payments or late payments by the client
- Any counselling outside of the financial counselling as part of the Debt Review.

Kindly note that failure to make full payments on time, could result in your application being terminated in terms of Section 86 (10) of the National Credit Act and you will not be protected against debt enforcement action taken by your credit providers - extra fees may be levied for further negotiations and interventions on your behalf.

****ALL PAYMENTS TO BE MADE ELECTRONICALLY TO: HYPHEN TECHNOLOGIES TRUST A/C#62196206413 HELD at FNB BRANCH#255005 or DC PARTNER (PTY) LTD OBO FINESSE FINANCIAL SOLUTIONS A/C# 63040144527 HELD at FNB BRANCH#255005. PLEASE USE YOUR ID NUMBER AS THE REFERENCE NUMBER. (*Compulsory from month 1)**

Signed at _____ on this, the _____ day of _____ 20__

Signature _____
(Main Applicant)

Signature _____
(Spouse)

GUIDELINES FOR THE WITHDRAWAL FROM DEBT REVIEW as per NCR circular 001/2021 – May 2021**INTRODUCTION**

The National Credit Act 34 of 2005 (NCA) introduced debt review as a debt relief measure for over-indebted consumers. However, the provisions to withdraw from this process by the consumer or debt counsellor (DC) is not specified in the NCA.

To provide a solution for consumers whose financial circumstances have improved whilst under debt review to revert to contractual payments, in 2011 the credit industry implemented a voluntary Form 17.4 withdrawal process which was subsequently replaced on 19 February 2015 by the Withdrawal Guidelines 002 of 2015 issued by the National Credit Regulator (NCR). Since implementation of the NCR withdrawal guidelines in 2015, legal clarity has been obtained through the High Court, which necessitated a review of the NCR Withdrawal Guidelines 002 of 2015.

Final legal clarity was obtained in the full bench High Court matter: Van Vuuren v Roets and Others (37407/2018) [2019] ZAGPJHC 286; [2019] 4 All SA 583 (GJ); 2019 (6) SA 506 (GJ) (3 September 2019) (“Van Vuuren Judgment”) which judgment provided clarity on whether a consumer under debt review whose financial circumstance has improved can withdraw from debt review in absence of a clearance certificate.

Following an intensive review process of the Van Vuuren judgement and its impact on the Withdrawal Guidelines 002 of 2015 by the Credit Industry Forum (CIF), the NCR is pleased to announce that the paper developed by the CIF has been signed off and is issued as guidelines to be applied by all industry participants. These guidelines will replace all previous Withdrawal Guidelines from the date of issue and publication. Please take note that the NCA, its regulations or case law will take precedence over provisions made in these guidelines and will where necessary be amended.

COMPLIANCE

All credit providers, credit bureaus and debt counsellors are requested to comply with the current legal framework and prevailing case law within which these guidelines are established from. Non-compliance with these guidelines should be reported to the NCR.

GUIDELINES**1. SUMMARY OF THE VAN VUUREN JUDGMENT**

The following legal principles were decided in this High Court Judgment:

- 1.1 A High Court cannot make an order confirming that an applicant (a consumer under debt review) is no longer over-indebted. This means the High Court may not order a release of the consumer from debt review.
- 1.2 Where a debt counsellor has notified all credit providers and every credit bureau of the consumer’s application for debt review, or after the assessment and conclusion that a consumer appears to be over-indebted has been made and a new fact arise, the High Court is not the forum of first instance to approach. This means if no order is in place, the correct court to approach is the Magistrate Court. In the event of a consent order, the National Consumer Tribunal (NCT) may be approached.
- 1.3 A consumer who is not yet the subject of a Magistrates’ Court debt re-arrangement order in terms of section 87 of the NCA, may together with the proposal of the debt counsellor present the additional facts to the court to bring about a rejection of the proposal. If the proposal is rejected by the Magistrate, every credit provider and every credit bureau should be notified of the relevant order. This means that in cases where debt re-arrangement order has not yet been granted, the debt counsellor and consumer must place the new facts in front of the Magistrate who can then declare the consumer not over-indebted.
- 1.4 If a Magistrate has already granted a debt rearrangement order, section 71 of the NCA regulates the only route to exit the debt review. This means that where a debt re-arrangement order is in place, the consumer has to repay all debt (excluding home loans) and apply for a clearance certificate in terms of section 71.
- 1.5 If a Magistrate has already granted a debt rearrangement order, the High Court may not order a release of the consumer from debt review. This means no court may declare a consumer no longer over-indebted. In terms of the deliberate chosen objective in the NCA, the only remedy is the repayment of debt in terms of section 71.

2. CONSUMER AWARENESS OF THE WITHDRAWAL PROCESS

The NCR and debt counsellors must educate consumers regarding: i. The effects of debt review (primarily before and/or when an application is made); and ii. The limited ways in which a consumer can withdraw from debt review.

3. WHEN IS A CONSUMER UNDER DEBT REVIEW?

- 3.1 A consumer is under debt review when he/she has applied for debt review in the prescribed manner as set out in section 86 of the NCA.
- 3.2 In the judgment of the National Credit Regulator v Lamara (NCT/102200/2018/57(1)) [2019] ZANCT 180 (13 December 2019), the NCT at paragraph 145 states that there needs to be a clear indication and date when the consumer applied for debt review. This will be in the form of a duly completed and signed form 16, or a clear record of when the consumer furnished all information to the debt counsellor as contemplated in regulation 24(1)(b).

- 3.3 Where a consumer makes an allegation against a debt counsellor to the effect that the consumer did not apply for debt review, the debt counsellor must make available to the consumer a duly completed and signed Form 16 or specified documents, giving a clear indication as to the date when the consumer applied or furnished such documentation in terms of regulation 24(1)(b).
- 3.4 The consumer may lodge a complaint with the NCR who will investigate the matter based on information supplied by the consumer, debt counsellor and credit providers. In cases where the debt review application did not follow the prescribed manner set out in the NCA, the NCR may issue a finding that the consumer did not apply for debt review and will advise the relevant parties of the outcome.
- 3.5 In cases where a finding is made by the NCR that the consumer did not apply for debt review, the NCR must inform the debt counsellor and the debt counsellor is to update the Debt Help System (DHS) to Status B and notify credit providers accordingly. The NCR will monitor that the update on DHS takes place accordingly.

4. WHAT HAPPENS AFTER AN ASSESSMENT HAS BEEN CONDUCTED BY THE DEBT COUNSELLOR?

- 4.1 When a consumer applies for debt review and is found to be not over-indebted, in terms of section 86(7)(a) of the NCA, the debt counsellor must reject the debt review application as per the procedure determined in the NCA and its regulations and issue a Form 17.2(a) and update the DHS to Status B.
- 4.2 When a debt review application has not been rejected, a debt counsellor must, (in terms of section 86(7)(b) or section 86(7)(c)) submit a proposal to the Magistrate Court to re-arrange the consumer's obligation or to obtain a consent order from the NCT in terms of section 138. For clarity this means that once a debt counsellor has found a consumer over-indebted and issued a Form 17.2, the Magistrate Court is required to make an order as contemplated in section 87 of the NCA.

5. WHEN CAN A CONSUMER EXIT THE DEBT REVIEW PROCESS?

- 5.1. After the debt counsellor has made a determination of over-indebtedness but before the Magistrates Court has granted a debt re-arrangement order:
- i. Section 87 of the NCA is applicable. A debt counsellor makes a determination of over-indebtedness when they issue a Form 17.2(b) to credit providers and update the credit bureaus via DHS.
 - ii. A consumer who is not yet subject to a Magistrates court debt re-arrangement order in terms of section 87, may together with the proposal of the debt counsellor present additional facts to the Magistrates Court to bring about a rejection of the debt counsellor's initial proposal of over-indebtedness. This means that the consumer has to present to the Magistrates Court the new or additional facts to support the fact that he/she is not over-indebted and that he/she is able to pay contractual repayments, including any arrears that exist at that point in time. If the Magistrates Court finds the consumer not over-indebted, the debt review ends and the debt counsellor is required to update DHS to Status G1 to indicate that the consumer is not over-indebted. The debt counsellor should send out a Form 17 W(c) (Annexure A) accompanied by the order of the court to credit providers where the Magistrates Court has found the consumer not over-indebted.
 - iii. The debt counsellor will charge the consumer debt counselling fees in line with the NCR Debt Counselling Fee guidelines applicable from time to time, and the consumer remains liable for the payment of these fees to the debt counsellor.
 - iv. If the Magistrates Court finds the consumer over-indebted, the debt review process continues, and the consumer cannot withdraw from debt review.
- 5.2. After the Magistrates Court has granted a debt re-arrangement order:
- i. Section 71 of the NCA is applicable. Once a debt re-arrangement order or debt re-arrangement consent order has been granted, the consumer can no longer withdraw from debt review.
 - ii. The only way to end or exit the debt review is in terms of section 71 through the issuance of a clearance certificate by a debt counsellor once all the substantive and procedural statutory requirements have been met.
 - iii. For the sake of clarity, no process exists in the NCA that enables voluntary withdrawal from the debt review process after the consumer has applied for debt review in the prescribed manner and form.

6. CAN A CONSUMER BE DECLARED NO LONGER OVER-INDEBTED AFTER A MAGISTRATES COURT ORDER DECLARING THE CONSUMER OVER-INDEBTED HAS BEEN GRANTED?

Legal clarity was obtained in the Van Vuuren Judgement that no court has the power to declare the consumer no longer over-indebted after a Magistrate has made an order that the consumer is over-indebted. The only remedy to exit debt review is to repay the debt as set out in section 71 of the NCA.

7. CAN A DEBT COUNSELLOR WITHDRAW A CONSUMER FROM DEBT REVIEW?

7.1 A debt counsellor does not have the statutory powers to withdraw the debt review. Once the consumer has applied for debt review, the debt counsellor cannot withdraw a consumer from debt review.

7.2 The debt counsellor could, however withdraw or suspend his or her debt counselling services to the consumer.

8. CAN A CONSUMER WITHDRAW FROM DEBT REVIEW AFTER A DETERMINATION OF OVER-INDEBTEDNESS BY THE DEBT COUNSELLOR HAS BEEN MADE?

8.1 Once the consumer has applied for debt review in the prescribed manner and form, the consumer can no longer withdraw from debt review.

8.2 If the Magistrates Court rejects the debt review application, as set out in paragraph 5.1(ii) above, the consumer will remain liable for the payment of the debt counselling fees for work completed as well as legal fees in line with the NCR Debt Counselling Fee Guidelines.

8.3 If the Magistrates Court finds the consumer over-indebted the debt review process continues, and the consumer cannot withdraw from debt review.

9. CAN A DEBT COUNSELLOR SUSPEND HIS/HER SERVICE FROM A CONSUMER UNDER REVIEW?

9.1 Where a consumer is not co-operating with the debt counsellor (e.g. not providing relevant information or proof, non-payment of debt counselling fees, etc.) a debt counsellor can suspend provision of his/her service to the consumer. The suspension of service can be lifted by the debt counsellor when arrear fees are paid by the consumer or documents have been duly provided.

9.2 To suspend services, the debt counsellor will submit Form 17W(b) to all credit providers and will select the suspension indicator field on DHS to reflect suspension of services. For the duration of the suspension, the consumer will remain on the same DHS status that was applicable at the time of suspension.

9.3 In matters where a debt counsellor has suspended his/her service, a debt counsellor will assist the consumer with:

- i. A clearance certificate when proof is received that all statutory requirements have been met; and
- ii. A transfer to another debt counsellor if the outstanding debt counselling fees and legal fees for work completed are paid by the consumer. The outstanding debt counselling fees and legal fees as set out in the NCR Debt Counselling Fee Guidelines are limited to work which has actually been performed up to the suspension of the debt counselling services. Proof of work done to earn such fees must be provided to the debt counsellor requesting the transfer and the consumer together with the request for payment of such fees.

10. WHAT HAPPENS IF A CONSUMER ELECTS TO PAY CREDIT PROVIDERS DIRECTLY?

10.1 If a consumer elects to pay his/her credit providers directly (i.e. not via a Payment Distribution Agent (PDA), the consumer remains under debt review and has to provide paid up letters to the debt counsellor when requesting a clearance certificate.

10.2 A consumer cannot be under debt review without a debt counsellor. The consumer remains liable for payment of debt counselling fees as set out in the NCR Debt Counselling Fee Guidelines for work actually completed.

11. CAN THE CONSUMER WITHDRAW FROM DEBT REVIEW IF ALL CREDIT AGREEMENTS HAVE BEEN TERMINATED BY CREDIT PROVIDERS?

11.1 If all the consumer's credit agreements have been terminated from debt review (by way of section 86(10) or section 88(3) enforcement) of the NCA; the consumer will remain in debt review.

11.2 When credit agreements are terminated from debt review, the consumer no longer enjoys the concessions that were agreed to by the credit provider(s) and the original contractual terms of the relevant credit agreement become applicable again. In this instance, the only way that the consumer can have their debt review status removed from the credit bureau, will be to make payment of the full outstanding amount owing on the terminated credit agreement(s), excluding any previous concessions.

12. CAN A CONSUMER BE TRANSFERRED TO ANOTHER DEBT COUNSELLOR?

A consumer can be transferred to another registered debt counsellor at any stage during the debt review process. When a consumer is transferred the following applies:

- i. The debt review process does not start afresh. The receiving debt counsellor has to continue with the debt review process where the previous debt counsellor left off. To this end, the transferring debt counsellor must supply all consumer and debt counselling related documents to the receiving debt counsellor upon transfer. The receiving debt counsellor may not charge a new application fee, administration fee, restructuring fee or legal fee if these fees were already paid by the consumer to the previous (transferring) debt counsellor.
- ii. After-care fee by the receiving debt counsellor can only be charged from the date of transfer.
- iii. A consumer is required to pay all outstanding debt counselling fees for work actually completed up to date of transfer before the transfer date.

13. RE-APPLICATION BY INACTIVE CONSUMERS LISTED ON THE DEBT HELP SYSTEM

- 13.1 If a consumer who is on an inactive status code (i.e. A1, F, G, G1 and H) on DHS and wants to re-apply for debt review, the DHS is enabled to allow a debt counsellor to load this re-application without the intervention of the NCR. This will be deemed a new application and will be linked to status code A.
- 13.2 Where the status code of the consumer wishing to re-apply remains on an active status code on DHS, the consumer may dispute this information by approaching the NCR and submitting the documents to substantiate the inactive status allegations.
- 13.3 If a consumer withdrew from debt review in terms of the NCR Withdrawal Guidelines 002 of 2015 and prior to the Van Vuuren Judgment in 2019 and the relevant status code at the time was not updated, the consumer may dispute this information by approaching the NCR and submitting the documents to substantiate the allegations.

14. FREQUENTLY ASKED QUESTIONS AND ANSWERS ON THE WITHDRAWAL PROCESS

- 14.1 What happens when a consumer under debt review is sequestered?
Answer: A consumer may be sequestered (or in the instance of a trust, liquidated) while the consumer is under debt review and the granting of the sequestration or liquidation order will bring the debt review process to an end. The NCR must be requested in writing, together with proof of the sequestration order, to update the DHS with Status J.
- 14.2 Can a Consumer under debt review withdraw voluntarily from debt review?
Answer: No
- 14.2 What happens if the debt review application process has not been followed correctly by a debt counsellor?
Answer: A consumer can lodge a complaint with the NCR. If a consumer alleges that he/she did not apply for debt review the NCR will investigate the matter by requesting proof of application for debt review from the consumer and debt counsellor and related evidence from credit providers and credit bureaus. If the finding of the NCR is that the correct debt review process was not followed, it will be deemed that the consumer did not apply for debt review and the debt review process will end and listing on the credit bureau removed.
- 14.4 Can a Magistrate Court grant an order declaring that a consumer is no longer over-indebted and no longer in debt review?
Answer: Based on the current legal framework and prevailing case law once a debt review order has been confirmed by a court order in terms of section 87(1)(b) of the NCA, no court is empowered to declare a consumer not over-indebted or to end the debt review. The only way to end the debt review is in terms of section 71 read with section 88(1)(c) of the NCA. This means that there is no voluntary withdrawal process which could deviate from the current case law and legal provisions contained in the NCA. To emphasize this position, no voluntary process currently exists. Any consumer, debt counsellor or credit provider that participates in such a voluntary process would expose themselves to various legal and compliance risks.

FURTHER INFORMATION Please contact Timmy Van Der Grijp on 011 554 2802 or tvandergrijp@ncr.org.za should you have any queries.