

## DEBT COLLECTORS ACT, 1998

Some lease agreements contain certain terms regarding the levy of collection costs for either late or arrear payments that may not be recoverable in terms of the Debt Collectors Act, 1998 (hereinafter referred to as the act).

The Debt Collectors Act prohibits a person or entity from acting as a debt collector unless registered as such with the council of debt collectors. Failure to comply with this provision will render a contravener guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

### 1. In terms of the act a "debt collector"

means-

- a) a person who, for reward, collects debts owed to another on the latter's behalf;
- b) an attorney or his or her employee or the attorney's agent on his behalf who acts in the capacity as set out above;
- c) a factoring agent (defined as an entity who acquires the debts or accounts of another entity at a discount) or his employee;
- d) a person who, in the course of his or her regular business, for reward takes over debts referred to in paragraph (a) in order to collect them for his or her own benefit;

BUT, employees of attorneys and factoring agents who act purely in a clerical, administrative or subservient position are excluded from the definition.

### 2. Recoverable amounts – in terms of Section 19 of the Act and Section 60 of Act 32 of 1944 as amended:

A debt collector shall not recover from a debtor any amount other than--

- a) the capital amount of a debt due and interest legally due and payable thereon for the period during which the capital amount remains unpaid; and
- b) necessary expenses and fees as set out below **[at present]** and prescribed by the Minister.

### 3. Certificate of Registration

A debt collector must hold a valid certificate of registration with the Council of Debt Collectors.

Not only does section 8 of the act prohibit a person, other than an attorney or the employees of the attorney, from acting as a debt collector unless he or she is registered as a debt collector in terms

of the act but it **also requires (in the case of a company or CC) every director, member and officer of the company or close corporation who is concerned with debt collecting to be registered in terms of the act.**

It also declares all agreements entered into prior to registration as a debt collector, void.

#### **4. Persons considered being incompetent to be registered as a debt collector in terms of the act:**

1. A natural person who has in the preceding 10 years been convicted of an offence of which violence, dishonesty, extortion or intimidation is an element;
2. a person who has been found guilty in terms of section 15 of improper conduct;
3. a person who is of unsound mind and has been so declared or certified by a competent authority;
4. a person who is under the age of 18 years; or
5. a person who is an unrehabilitated insolvent; or
6. a director of the company or a member of the close corporation who is in terms of paragraph (a) not competent to be registered as a debt collector.

#### **5. Improper conduct by debt collectors**

Acts of improper conduct are set out in Section 15 of the act while a debt collector is also bound to the Code of Conduct as set out in terms of section 14 of the act and which you may access at [www.debtcol-council.co.za](http://www.debtcol-council.co.za).

Improper conduct includes the use of force, intimidation, fraud, misrepresentation and the contravention of any provision of the act and the code of conduct.

#### **6. Offences and Penalties**

In the event of a debt collector being found guilty of a improper conduct he, she or it may be subject to the following penalties:

- a) Withdrawal or suspension of the certificate of registration;
- b) Imposing of a fine;
- c) An order to reimburse the debtor; or
- d) A combination of penalties.

#### **7. Trust accounts**

In terms of Section 20, every debt collector who practices for his or her or its own account, shall open and maintain a separate trust account at a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), **and shall deposit therein as soon as is possible after receipt thereof the money received or held by him or her on behalf of any person.**

**This account must be audited annually by a public accountant or auditor** contemplated in the Public

Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991) and report to the Council thereon.

**A settlement account**, containing a complete exposition of all credits and debits reflected in the said account shall be delivered to that person at least once a month.

**All interest**, if any, on money deposited shall be paid, as at the prescribed time and in the prescribed manner, to the Council.

## Expenses and fees

(Effective from 2 November 2007) [Regulation 11]

**Note: The total amount to be recovered from the debtor in respect of items 1 to 7 of the Annexure shall not exceed the capital amount of the debt or R630, whichever is the lesser.**

### Item Description Amount

1. (a) Necessary ordinary letter, registered letter, facsimile or e-mail: R12.60 (and in the case of a registered letter, the costs of the registration fee to be added).

(b) Registered letter (Sec 57 of the Magistrates' Courts Act, 1944 (Act 32 of 1944)):

The amount as from time to time prescribed in item 8 of Annexure 2 Table A, Part II of the Rules of Court of the Magistrates Courts Act 32 of 1944

2. Necessary phone calls, which are not a consultation (per call): R12.60

3. Other necessary expenses not specifically provided for: a total amount of: R12.60

4. Acknowledgement of debt and undertaking to pay debt in terms of section 57 or section 58 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

(including the necessary consultation with debtor):

The amount as prescribed from time to time in items 9 and 10 of Annexure 2,

Table A, Part II of Rules of Court of the Magistrates Courts Act 32 of 1944

5. On request of the debtor, the drawing up and furnishing of a settlement account, other than the six monthly settlement account: R25.20

6. Correspondence received and attended to: R6.30

7. Necessary consultation with debtor: R31.50

8. Attending taxation: R50.40

9. On receipt of an installment (one or more) in redemption of the debt, inclusive of installments made directly to the client: A fee of 10% of the installment received subject to a **maximum amount of R315.00**.

No additional fee shall be charged for any attendance in connection with the receipt or payment of any installment.



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