



# The Credit Landscape

## Getting to know the National Credit Act

### June 2007



#### Disclaimer

This presentation should be read in conjunction with the relevant laws and the National Credit Act 34 of 2005, and should be used only as a guide to assist in the understanding of this legislation

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**THE NATIONAL CREDIT ACT  
34 OF 2005**



**Consumer credit market is worth R740 billion.**

**Two thirds of the population only have access to 6% of it**

**I want, I want, I must have, I have to have  
= Sellers Market**

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**THE NATIONAL CREDIT ACT  
34 OF 2005**



**R760 bn consumer credit households:**

- More than doubled in size since 2002 (most growth in mortgages)  
49% of GDP
- 73% Debt to income ratio
- 51% Mortgages
- 14m credit active consumers with 50m open accounts
- 80 000 judgements for debt per month
- 11% of households with debt >20% of disposable income

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**THE NATIONAL CREDIT ACT  
34 OF 2005**



**Portrait of a South Africa Consumer**

- Feel wealthy
- Spend in anticipation
- Known to borrow and spend
- Appetite for consumables and credit
- Access to credit has become easier –
- And more affordable due to lower interest rates

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**THE NATIONAL CREDIT ACT  
34 OF 2005**



- Nearly every retail shop offers “in store credit”
- Increase in micro lenders or “loan sharks”
- Reckless credit granting, based on risky credit scoring
- Consumer ignorance regarding the concept of interest (repayment based credit)
- Increase in debtors book – additional cost of debt drives prices up
- Spiralling debt trap
- Risk of economic failure due to inability of consumers to service debt

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## Background and Purpose of the Act

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## Background and Purpose of the Act



- Replaces Usury and Credit Agreements Act
- Consumer focused (initially Consumer Credit Bill)
- Increases availability of credit and reduces the cost of credit
- Improves regulation of the credit environment
- Creates transparent credit processes with a focus on client education and understanding
- Creates a healthier credit market through the introduction of reckless credit and over-indebtedness
- Improves the collection and recovery processes
- Effective date : 1 June 2007

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## Background and Purpose of the Act



### Objectives of the NCA include...

- Create a framework where competition and transparency is promoted.
- Equal rights and protection of rights to consumers.
- Measures to manage over-indebtedness.
- Avoidance of reckless lending.
- Regulatory framework for credit bureaus, credit providers and debt counselors.
- Regulatory formal complaint procedures for protection and compensation

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## Application of the Act

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## Application of the Act



### **Applies to all credit agreements where:**

- Parties are dealing at arm's length
- The agreement will be effective in South Africa

### **Does not apply if:**

- One of the contracting parties is:
  - The State
  - An organ of the State
  - A juristic person
    - Company/CC/Trust – With an asset value or annual turnover in excess of R1 million
- The credit provider is:
  - The Reserve Bank
  - Located outside of the Republic

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# Credit Agreements

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## Credit Agreements



### Types of Credit Agreements impacted...

Type	Example
Credit Facility	Credit Card Overdraft on a cheque account
Credit Transaction	Pawn Incidental Credit Agreement Installment Agreement Mortgage Agreement Lease (on moveable property)
Credit Guarantee	Deeds of Surety

A combination of the above such as the Access Bond

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## Credit Agreements



**Types of Credit Agreements impacted...**

### Exclusions:

- Stokvel agreements
- Credit extended by an insurer
- Lease on immovable property

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# Consumer Rights

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## Consumer Rights



- Apply for credit (Sec 60)
- Protection against discrimination (Sec 61)  
*(Race, colour, language, gender, marital status, age, disability and Religion)*
- Request reasons for credit being refused (Sec 61(6))
  - Refusal must be based on reasonable commercial grounds
  - Credit provider must provide the dominant reason for the decline in writing

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## Consumer Rights



- Right to information in an official language that they can read or understand (Sec 63(1))
- It must be reasonable with respect to usage, practicality and expense on the part of the credit provider.
- Right to information in plain and understandable language (Sec 64(1))
- The ordinary consumer with average literacy skills and minimal credit experience is able to understand the content of the documents

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## Consumer Rights



- Right to receive documents in a method chosen by the consumer (Sec 65(2))
- All required documents must be delivered to the consumer in one of the following methods:
  - In person at the credit providers premises (attorney on behalf of Bank)
  - At a location chosen by the consumer (at their expense)
  - Ordinary mail
  - Fax
  - E-mail
  - Printable web page

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## Consumer Rights



- Confidentiality (Sec 68)
  - Have the right to have confidentiality of information protected by anyone who receives, compiles, retains or reports on it.
- Information can only be used, for purpose of Act
- Information can only be released to
  - the consumer,
  - or to a 3<sup>rd</sup> party if consented to,
  - or under law

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# Quotation

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## Quotation



- Before entering into a credit agreement, credit providers must:
  - Deliver a written quote that contains all the financial details of the transaction
    - Instalment
    - Interest rate
    - Insurance premiums
    - All costs and fees
- The quote is valid for five days and details the cost of credit

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**Reckless lending**

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## Reckless Lending Practices



- Credit Providers have a duty to ensure that they do NOT approve reckless lending / credit
- Criteria for Reckless Credit:
  - Credit Provider performed no assessment of the consumer's financial circumstance
  - Consumer did not understand the obligations and cost of credit
  - Agreement concluded when consumer was already over-indebted

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## Reckless Lending Practices



- Consumers must fully and truthfully answer requests for information when they are being assessed
- The Credit Provider is protected against allegations of reckless credit where there was
  - Dishonesty and/or
  - Part-disclosure by a consumer at the application stage
- Reckless credit agreements can:
  - Be set aside
  - Be restructured (Debt Counsellor)
  - Be suspended
    - Client need not make further payments
    - No interest, fee or charge may be levied against the account

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# Over Indebtedness

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## Consumer Over-indebtedness



- A consumer is over-indebted if he/she will be unable to meet all their financial obligations in a timely manner
- A consumer cannot borrow more than they can afford to repay!!

### Role of the Debt Councillor:

- If a consumer is over-indebted, he may apply to a debt councillor for assistance in determining whether he is over-indebted and requires rearrangement of debt
- The consumer pays the Debt Councillor for his services
- All Debt Councillors must be registered with the NCR (National Credit Regulator)

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# Credit Marketing Practices

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## Credit Marketing Practices



- External pressures from media and ruthless sales consultants have caused unwanted credit for consumers
- The Act aims to regulate the ways in which credit is marketed to the consumer to provide protection against abusive marketing practices

**X No more pushy salesmen!!**

Credit Providers MAY NOT:

- Increase the credit limits on a customers' credit card, overdraft or any credit facility without their consent
- Harass a consumer at home or work (or telephonically) without prior invitation or permission to persuade them to enter into a credit agreement
- Include negative option marketing on any material

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## Credit Marketing Practices



Negative marketing means that –  
“unless you tell me you do not want  
something, I assume that you do want it”

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## Credit Marketing Practices



When a consumer enter into a credit agreement –  
certain options have to be in writing to select from:

- Decline automatic limit increase to credit facilities
- Be excluded from telemarketing campaigns
- Be excluded from marketing or consumer lists which credit providers might sell
- Be excluded from mass distribution of e-mail or sms messages

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## Credit Marketing Practices



When a credit provider advertises the granting of credit, it must show the:

- Interest Rate
- Credit Costs
- Number of Instalments
- Residual (if applicable)

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# Unlawful Agreements

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# Unlawful Agreements



## Unlawful credit Agreements

### Lack of contractual capacity

Not of legal age & parents/guardian has not consented

Declared mentally unfit

Under admin order & contracted without consent of administrator

### Credit Agreement caused by negative marketing option

Company sends offer if the consumer does not turn the offer down, contract comes into effect

### Credit Provider must be registered but is not

Persons with 100 credit agreements + Or principal debt of more than R500K have to register (informal loans in business)

If a credit agreement is unlawful, it cannot be enforced





# Cancellation of Mortgage Agreements

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## Credit Marketing Practices Cont



- Penalty fees have been prohibited by the Act, but cancellation fees are still allowed...
- Calculation of the fee has remained similar to the current calculation
- The charge/fee may not exceed the interest that would have been levied on the account for the period equalling a 3 months notice period, i.e.
  - If the client gives 3 months notice, the fee will be R0 (3 – 3)
  - If the client gives 2 months notice, the fee will be equal to 1 month's interest (3 – 2)

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# Consumer Protection Bill

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# The Consumer Protection Bill



## Consumer Rights...

- ☐ Right to Equal access to the consumer market
- ☐ Right to Confidentiality and Privacy
- ☐ Right to Disclosure and Information
- ☐ Right to Fair and Responsible Marketing and Promotion
- ☐ Right to Honest Dealing and Fair Agreements
- ☐ Right to Fair Value, Good Quality and Safety
- ☐ Right to be heard and obtain redress

**Perpetuation of  
Constitutional  
Rights &  
codification of  
common law  
Principles**

- It will regulate customer loyalty programs, promotional competitions, pyramid schemes, referral selling (no rebates/referral commissions/kick backs)
- Policed by the National Consumer Regulator

**The Bill will regulate all businesses that fall outside the ambit of the NCA**