GUIDELINES REGARDING APPLICATIONS IN TERMS OF SECTION 86 OF THE NATIONAL CREDIT ACT 34 of 2005[1] (DEBT REVIEWS)

These guidelines should be read in conjunction with the guidelines regarding motion court.

These guidelines come into operation with immediate effect (from 30 October 2023 onwards).

1 NOTICE OF MOTION IN DEBT REVIEW MATTERS

1.1 The Notice of Motion must contain the following statement:
"If no such notice of intention to oppose be given, the application will be made on a date allocated by the clerk of the court."

1.2 Reminder: Attached to the Notice of Motion should be **the consumer's affidavit**.

1.3. All Notices of Motion must be issued from Room 1063.

1.4. After it is issued the Notice of Motion shall be served upon the respondents.

2. APPLICATION FOR A COURT DATE

2.1. In **all instances** where a debt councillor wishes to request a court date the following duly completed **forms** and documents need to be filed with the clerk of the court:
- (i) The **Request for a Court Date** (DEBT REVIEW FORM 1);
- (ii) The **Debt Review Checklist** (DEBT REVIEW FORM 2);
- (iii) The **Service Affidavit**;
- (iv) The **Debt Councillor's Affidavit** (not the founding affidavit to the Notice of Motion).

2.2 The matter will be referred to a magistrate in chambers for consideration. Where the forms are not properly completed or the matter is not ready for hearing the Request for a Court will not be considered and the party will need to apply afresh.
Where necessary a query may be raised.

2.3. ACCEPTANCES: Where **ALL** the credit providers or the **MAJORITY** agree to or accepted the debt councillor's proposal subsequent to the delivery of the Notice of Motion the following arrangement is in place:,
- (i) The Debit Councillor's Affidavit must be served on all parties;
- (ii) The Debit Councillor's Affidavit must contain the following:
  a. All acceptances are to be attached as annexures;
  b. Make references to the acceptances;
  c. Include the debt councillor's fresh proposal (if any) and explain its contents;
  d. Show whether the consumer accepted the acceptances and the fresh proposal;
  e. Show that the consumer made payments in accordance with the acceptances and fresh proposal;
  f. What accounts have been paid up in full since the inception of the debt review process (i.e. since filing the Form 16);
  g. Any other relevant matter or issue.

2.4 Where the magistrate certifies the matter ready for hearing the clerk of the court will allocate a date and inform the party accordingly.

2.5. No court date shall be allocated UNLESS a magistrate has certified the matter ready for hearing.

[1] All statutory references in these guidelines is to this Act.

National Credit Regulator v Nedbank Ltd and Others 2009 (6) SA 295 (GNP) at 313A-C per Du Plessis J:

"There is…no reason why the debt counsellor should not make submissions regarding his or her proposal. In view of the investigation that he or she undertakes in terms of s 86, the debt counsellor will have knowledge of the relevant facts and submissions to explain the proposal and will no doubt assist the court.

In order more accurately to reflect the provisions of the Act and the remarks I have made, I propose to make an order as follows: 'A debt counsellor who refers a matter to the magistrates' court in terms of ss 86(7)*(c)* and 86(8)*(b)* of the National Credit Act, 2005, has a duty to assist the court and should be available and able to render such assistance by way of furnishing evidence or making submissions as to his or her proposal or to answer any queries raised by the court.' "

3 COURT SITTINGS AND COURT DAYS FOR DEBT REVIEW APPLICATIONS

3.1 Debt review matters are to be set down for hearing in **Court 27** and no other court.

3.2 Only Mondays, Tuesdays, Wednesdays and Thursdays – which are not public holidays – are allocated.

3.3 The dates for matters will be allocated as follows:

(i) **Mondays** – Acceptances (see paragraph 2.3 above);

(ii) **Tuesdays** – Opposed matters (two opposed matters per day) and matters without acceptances or with limited acceptances.

(iii) **Wednesdays** – Applications for Rejections in terms of Section 87.

(iv) **Thursdays** - Acceptances (see paragraph 2.3 above).

4 PRACTICE NOTE

4.1 The PRACTICE NOTE (DEBT REVIEW FORM 3) must be placed on the file at least by 15h00 the Thursday preceding the week prior to the hearing.

4.2 Each application must be accompanied by a DEBT REVIEW FORM 3.

4.3 This practice is equally applicable to opposed and unopposed applications.

4.4 The practice note shall set out the name of the applicant as well as consumer and the case number. In addition it will contain a table making provision (as per the specimen below) for:

(i) the name and relevant reference number of each credit provider;

(ii) the page reference in respect of each credit provider regarding consent to service by email;

(iii) the page reference in respect of each credit provider regarding the certificate of balance (where provided);

(iv) whether the papers need to be read before the hearing and what parts are relevant for determination of the application;

(v) page references to new proposals and acceptance (those generated and obtained subsequent to the delivery of the application);

4.5 DEBT REVIEW FORM 4 must also be filed on each occasion that the application is enrolled.

4.6 Where the application is postponed or reinstated for hearing a DEBT REVIEW FORM 3 must be filed with the notice of set down.

5 SERVICE AFFIDAVIT

In all instances where service is required, including a notice of set down, a service affidavit needs to be filed.

6 POSTPONEMENTS
6.1 Where a date is allocated and the matter placed on the roll for hearing a court will be generally not consider granting a postponement. The matter will be removed from the roll and the party needs to apply afresh for a hearing date.
6.2 Where the court grants a postponement a DEBT REVIEW FORM 4 must be completed.

7 HEARING
7.1 In the event that the original proposal – as served on each credit provider - is amended; such amended proposal needs to be served upon all the credit providers.
7.2 The amended proposal is to be accompanied by an explanatory affidavit deposed to by the debt counsellor.
7.3 A notice of set down must be served on all credit providers cited in the papers.

8 COURT ORDER
8.1 The debt review order should make provision that:
(i) the consumer is declared over-indebted;
(ii) the consumer's debt obligations in terms of the National Credit Act 34 of 2005 are re-arranged in accordance with the information/proposal/terms contained in the Table; and
(iii) provision is made regarding costs.
8.2 The Table should make provision for either fixed payments or fluctuating payments that have a cascading effect.
8.3 Unnecessary information should not be included in the order.
8.4 Where a credit provider has accepted the proposal, such acceptance must be attached to the order. The order must contain a reference to each and every acceptance so attached and the acceptance must be numbered. Other unnecessary documents must not be attached to the order.
8.5 Draft orders must be filed in duplicate and space must be left for a magistrate to sign.
8.6 **A pro forma order** (DEBT REVIEW FORM 5) with options are attached hereto for the guidance of practitioners. The orders must be adapted to meet the exigencies of each case.