

GUIDELINE ON CONSUMERS RIGHT TO RECEIVE REASONS FOR BEING REFUSED CREDIT

1. INTRODUCTION

Section 16 (1) (b) of the National Credit Act 34 of 2005 ("Act"), empowers the National Credit Regulator ("NCR") to provide guidance to credit market and industry by issuing explanatory notices on the interpretation of the Act.

2. PURPOSE OF THE GUIDELINE

The purpose of this guideline is to provide guidance to the credit market on consumers right to reasons for credit being refused in line with the prescripts and purpose of the Act.

3. THE LEGAL PROVISIONS

3.1. Section 62 of the Act states that:

"Right to reasons for credit being refused."

(1) On request from a consumer, a credit provider must advise that consumer in writing of the dominant reason for -

- (a) refusing to enter into a credit agreement with that consumer;*
- (b) offering that consumer a lower credit limit under a credit facility than applied for by the consumer, or reducing the credit limit under an existing credit facility;*
- (c) refusing a request from the consumer to increase a credit limit under an existing credit facility; or*
- (d) refusing to renew an expiring credit card or similar renewable credit facility with that consumer.*

(2) When responding to a request in terms of subsection (1), a credit provider who has based its decision on an adverse credit report received from a credit bureau must advise the consumer in writing of the name, address and other contact particulars of that credit bureau.

(3) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligation in terms of this section if the Tribunal is satisfied that the consumer's requests for information are frivolous or vexatious.

4. CONSUMERS RIGHT TO REASONS FOR BEING REFUSED CREDIT

- 4.1. Every adult person in South Africa has a right to apply to a credit provider for credit in terms of the Act. This right, however, does not always result in a positive outcome for a consumer.
- 4.2. A credit provider who has received an application for credit from a consumer has the right to refuse to enter into a credit agreement with any prospective consumer.
- 4.3. The reasons that a credit provider uses for refusal must be based on grounds permissible in terms of the Act, for example, an unfavourable affordability assessment or on reasonable commercial grounds that are consistent with the credit providers customary risk management and underwriting practices.

- 4.4. A credit provider's risk management and underwriting practices must not unfairly discriminate directly or indirectly against a consumer on any one of the grounds set out in Section 9 of the Constitution of the Republic of South Africa Act 108 of 1996 ("Constitution") or Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("Equality Act"). This includes, but is not limited to, when deciding whether to refuse an application to enter into a credit agreement with a consumer.
- 4.5. Upon receiving notification of refusal of credit application, a consumer has the right to request reasons for being refused credit.
- 4.6. On receiving the request from the consumer, a credit provider must provide written reasons to the consumer outlining the dominant reason for the refusal. In addition to the reasons for the refusal, where a decision is made from information received off the consumer's credit bureau report, for example, that the consumer has defaulted on one or more of his credit agreement or information alluding to the conclusion that the consumer is overindebted, the credit provider must advise the consumer of the full contact details of the credit bureau where the report was obtained from.
- 4.7. The written reasons to the consumer must be provided to the consumer in a plain and understandable language and in an official language that the consumer understands.
- 4.8. Should a consumer believe that their credit application is refused due to any of the discriminatory grounds list in the Constitution or the Equality Act, such as, race, sex, age or gender, a complaint can be submitted to the Complaints Department of the NCR through any of the following methods:
 - 4.8.1. Telephone: 0860 627 627;
 - 4.8.2. Email: complaints@ncr.org.za; or
 - 4.8.3. Physically, by visiting our offices at 232-15th Road, Randjespark, Midrand 1683: Monday to Thursday from 08h00 to 17h00 and Friday from 08h00 to 16h30.

5. EFFECTIVE DATE

This Guideline is effective immediately.

FOR MORE INFORMATION, QUESTIONS OR CLARITY RELATING TO THIS GUIDELINE:

Please address all queries to the **Executive Legal Unit** at ExecutiveLegalUnit@ncr.org.za

Disclaimer:

While the NCR has taken reasonable care to ensure the factual accuracy of this guideline, it cannot guarantee such accuracy, especially with regards to future events. Accordingly, NCR does not accept any liability for damages incurred by any party as a result of decisions or actions taken pursuant to this guideline.