

How to challenge listing on credit bureaus, on what grounds to challenge such listings and the new retention periods

1. Your argument does indeed have merit! Let me explain as follows:
2. If you had not paid that personal loan debt, I would have been able to successfully claim extinctive prescription for you and have that debt completely extinguished. This simply means that had extinctive prescription been claimed, the debt would have been completely written off. The creditor then would have been obligated to update all systems including credit bureaus accordingly on the simple basis that derogatory remarks cannot exist for a debt that does not exist in law. If there's no debt then it follows logically that there should be no derogatory remarks. This however, naturally, doesn't apply to your individual situation as by your own admission you have in effect paid a debt which would have been eligible for an extinctive prescription claim;
3. For the sake of clarity I deem it necessary to distinguish between a payment profile and a listing, a payment profile stay on the credit bureau for 5 years where listings have varying periods of retention from 1 year to 10 years after which it must be automatically removed(the period of listing will depend on the type of listing). The only exception is where you have been liquidated in which case the listing can stay on the credit bureaus literally for an unlimited period of time!!!
4. Your main issue in dispute now is when was the debt listed on the credit bureaus and perhaps more importantly why it was not automatically expunged;
5. There are two pieces of law that applies in your individual case: 1: The National Credit Act 34 of 2005 and more relevant to your current predicament 2: National Credit Regulations 2006;
6. The National Credit Regulations of 2006 is called enabling legislation, it's purpose is to give effect to the National Credit Act 34 of 2005;
7. We now need to identify the type of listing. The listing in your individual case is called a bank default listing and falls under the category of 'adverse listing,'
8. Allow me to impress upon you that even a judgment debt listing can only be retained on credit bureaus for 5 years after which it must be automatically expunged. Failure to do so would otherwise constituted an irregularity!
9. One of the reasons why there is often confusion as to the interpretation of a statute is simply because one person will be referring to a repealed section of the same act and another person will rightfully be referring to the new amended section of that same act. The secret in law is simply to keep updated with the latest amendments and proper interpretations thereof!
10. In the past the default listing of personal loan banking default adverse listing could only be retained on a credit bureau for 1 year from date of listing, this was found in chapter 3 of the National Credit Regulations 2006, section 17. There has however been an amendment! This amendment is referred to as "Amendment of the Regulations made in terms of the National Credit Act, 2005 (Act No. 34 of 2005) as published in Government Gazette No. 28864 Vol 491 on 31 May 2006". In practice what this simply done was to add a new classification:" Adverse classifications of enforcement action Classifications related to enforcement action taken by the credit provide 2 years." In practice to be listed for this 2 years the creditor must have handed over the account to an attorney or debt collector, so it will say:'handed over,' I do know for a fact however that certain creditors don't hand over the account at all but to punish you for the maximum period they inform the credit bureaus that it was handed over so that the listing can stand for 2 years.;
11. What to do now? You now essentially want to assert your rights

12. To do so you need to essentially formally complain to the National Creditor regulator about the listing itself, the circumstances surrounding the listing and further insist that your challenge to the listing must also be included on all credit bureaus so that anyone who lawfully makes an enquiry on your name gets both sides of the story, instead of just seeing the creditors adverse version of events.
13. What many consumers unfortunately are unaware of is that a financial institution has not complied with the NCA regulations if they don't give you prior notice of their intention to list with the credit bureau and/or give you an opportunity to make arrangements to pay. You can rightfully complain about xyz bank on this ground and also put them to the proof of having given you such prior notice!
14. Here's where it gets interesting! There is a body called the Consumer Credit Association. All their members have agreed not to remove a default listing even when you as the debtor have come forward and paid them in full!!!! In general in this case you must first ask the creditor if they are a member of the CCA, and if they inform you that they are, you simply tell them that you want a signed letterhead stating that should you pay them in full and final settlement they will give instructions to the credit bureau to remove the default listing. This is called a suspensive condition, it suspends certain rights and obligations until the fulfilment of an uncertain future event. If you get the signed letter, you then pay, upon paying the creditor then sends out instructions to the credit bureau
15. How do you do this: Firstly you can visit the NCR website, which is very informative, at www.ncr.org.za, their contact details are 0860 627 627 and the email address that you sent your complain to is complaints@ncr.org.za
16. How to phrase your complaint:

In subject box of your email: Complaint: ID No:0000000000

Body of your email

Dear Sir/Madam,

1. I refer to the above matter;
2. I hereby formally complain against the listing made by xyz bank against me regarding a personal loan account no:00000, listed on 10/05/2009;
3. My complaint is in terms of section 72 of the National Credit Act of 2005 read in conjunction with the National Credit Regulations of 2006, section 20(1), (2) 7 (3)
4. The basis of my complaint is as follows:
 - 4.1 Firstly, the credit provider xyz bank did not inform me beforehand of their intention to list the default. They are lawfully bound by section 72(1) of the NCA to inform me beforehand of this intention which they failed, alternatively neglected, alternatively refused to do. Section 72(1) reads as follows: "72 (1) Every person has a right to-(a) be advised by a credit provider within the prescribed time before any 30prescribed adverse information concerning the person is reported by it to a credit bureau, and to receive a copy of that information upon request." I hereby complain that xyz bank has committed an irregularity;
 - 4.2 Secondly, in terms of section 72(c) of the NCA I hereby challenge the listing by XYZ on the following grounds, it should have been expunged after 2 years from the date on which it had been listed. Section 72(c) reads as follows:"(c) challenge the accuracy of any information concerning that

person-(i) that is the subject of a proposed report contemplated in paragraph (a); or(ii) that is held by the credit bureau or national credit register, as the case may be, and require the credit bureau or National Credit Regulator, as the case may be,to investigate the accuracy of any challenged information, without charge to the consumer; and(d) be compensated by any person who reported incorrect information to a registered credit bureau or to the National Credit Register for the cost of correcting that information.”
4.3 Thirdly I also want my challenge to be included on all credit bureaus.

Kindly revert and pleas advise accordingly.

Kind regards,

xyz

Just for your further information:

The retentions periods before the amendment were as follows:

BEFORE

	Categories of Consumer Credit Information	Description	Period for which Information must be retained from
1.	Details and results of disputes lodged by consumers	Number and nature of complaints lodged and whether complaint was rejected. No information pertaining to	18 months
2.	Inquiries	Number of inquiries made on a consumer's record, including the name of the entity / person who made the inquiry and a	2 years
3.	Payment Profile	Factual information pertaining to the payment profile of the consumer	5 years
4.	Adverse information	Qualitative information on consumer	1 year
5.	Debt Restructuring	As per section 86 of the Act, an order given by the Court or Tribunal	Until a clearance certificate is
6.	Civil court judgments	Civil court judgments including default judgment	The earlier of 5 years or until the

			abandoned by the credit provider in terms of section 86 of the Magistrates' Court Act
7.	Administrations Orders	As per the court order	The earlier of 10 years or until order is rescinded by a
8.	Sequestrations	As per the court order	The earlier of 10 years or until rehabilitation
9.	Liquidations	As per the court order	Unlimited period
10.	Rehabilitation Orders	As per the court order	5 years

AFTER AMENDMENT (MEANING APPLICABLE NOW)

1. Amend the Regulations made in terms of the National Credit Act, as published in Government Gazette No. 28864, as follows:
 - 1.(1) Delete regulation 17, and replace with new regulation 17 as below.

"Retention periods for credit bureau information

17.(1) The consumer credit information as per the following Table may be displayed and used for purposes of credit scoring or credit assessment for a maximum period from the date of the event, as indicated:

	Categories of Consumer Credit Information	Description	Maximum period
1.	Details and results of disputes lodged by consumers	Number and nature of complaints lodged and whether complaint was rejected. No information may be displayed on complaints that were upheld.	18 months
2.	Enquiries	Number of enquiries made on a consumer's record, including the name of the entity/person who made the enquiry and a contact person if available	2 years
3.	Payment Profile	Factual information pertaining to the payment profile of the consumer	5 years
4.	Adverse classifications of consumer behaviour	Subjective classifications of consumer behaviour	1 year
5.	Adverse classifications of enforcement action	Classifications related to enforcement action taken by the credit provider	2 years
6.	Debt	As per section	Until a

	restructuring	86 of the Act, an order given by the Court or Tribunal	clearance certificate is issued
7.	Civil court judgments	Civil court judgments including default judgment	The earlier of 5 years or until the judgment is rescinded by a court or abandoned by the credit provider in terms of section 86 of the Magistrates' Court Act, 32 of 1944.
8.	Administration Orders	As per the court order	The earlier of 10 years or until order is rescinded by a court
9.	Sequestrations	As per the court order	The earlier of 10 years or until rehabilitation order is granted
10.	Liquidations	As per the court order	Unlimited period
11.	Rehabilitation orders	As per the court order	5 years
12.	Other information	Any other information not included in any category above	2 years

Kind regards,
Vanash Naick
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