

The unkindest (salary) cut of all ...

Getting into debt that you are unable to pay could result in a garnishee order. This means that the City is forced to deduct money from your salary each month, by order of the court, to pay your debtors. This could leave you with insufficient money to live on, and should be avoided at all costs. Here's how it works, what's legal and what's not, and what you can do if you are getting into bad debt.

Many South African employers process large numbers of emolument attachment orders (more commonly known as garnishee orders) against their payroll each month.

Most employers – including the City of Cape Town – are very concerned about the amount of nett pay received by their employees after the garnishee is deducted. This article explains what a garnishee order is, how to deal with it and how to prevent getting one.

What is a garnishee order?

We've all heard of the term 'garnishee order'. It is associated with people who are unable to pay their debts and also don't have any assets to sell to pay off these debts.

The correct legal term is actually 'emolument attachment order' as a result of being 'garnished' by the courts – garnishment is the legal process by which property due to a debtor and in the hands of a third person is attached – but since most people refer to these salary deductions as garnishee orders, let's stick with that.

Over-indebted people are often advised to apply to the courts for a debt administration order. Once the court grants the debt administration order, the court appoints a debt administrator and institutes an emolument attachment (garnishee) order against your salary.

The garnishee order instructs your employer to deduct a certain amount of your salary each month and pay it over to the debt administrator. The Magistrate's Court Act provides for the debt administrator to take 12,5% of the amounts collected before paying the rest over to your creditors.

Why do garnishee orders have a bad name?

The regulations governing the debt administration industry are contained in Section 74 of the Act. Unfortunately, there are some loopholes in the regulations that have been exploited by unscrupulous debt administrators.

This is why debt counselling was introduced with the National Credit Act (NCA) in 2007. It is the intention of the NCA to replace the debt administration industry with the well-regulated industry of debt counselling.

Due to the loopholes in the regulations governing debt administration, there are serious problems associated with garnishee orders, such as the following:

- It is common practice that administrators



are overcharging and instead of charging a maximum of 12,5%, many are charging between 25 and 50% plus many other ad hoc fees.

- Many debt administrators are under debt administration themselves, or have been struck off the roll of attorneys.
- There is no time limit for which the administration order/garnishees may run, which means that debtors can be kept under these orders indefinitely.

How to avoid garnishees

Once the court has decided to garnish you, you can't avoid the consequences. What you need to do, therefore, is avoid the matter ever getting to court in the first place!

It is clear that you should explore all other possible avenues before you apply for a debt administration order.

If you are in financial difficulty and cannot afford your monthly debt obligations, first speak to your creditors and try to arrange a rescheduled payment plan, or else seek help from a registered debt counsellor.

Registered debt counsellors can be found on the website of the National Credit Regulator (NCR) at www.ncr.org.za, or by phoning the NCR on 860 627 627.

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What to do if you have a garnishee order
Contact the debt administrator and ask for a regular statement of your account. Ask for a breakdown of the costs they are charging and make sure that no more than 12,5% of the money paid over to the administrator is taken by them as an administration charge.

Ask the debt administrator what interest is being charged on your debt and how long it will take to pay it off.

Be very careful about contacting the debt administrator too often, as they charge you a fee every time you contact them or they contact you.

Put any extra money you have into paying this debt off first, as this will be the most expensive debt you have. If you are not satisfied with the treatment you receive, contact the Credit Ombudsman. It's his job to deal with complaints like this. The Ombudsman can be contacted on www.creditombud.org.za or 0861 662 837.

Avoid any more garnishee orders! If you have other debt you are struggling to pay, then contact a debt counsellor before you have more garnishee orders granted against you.

How to remove a garnishee order

You can apply to the court for the order to be rescinded when you have repaid your debts, but because the admin order is recorded on the credit bureau, you won't be able to get credit for at least five years after the debt has been paid off and rescinded.

What to do if you are threatened with legal action by a creditor?

In terms of Section 129 of the NCA, if a creditor is going to take legal action against you to recover a debt, they must send you a letter giving you the option to pay the arrears on the account, or to seek help from a debt counsellor.

If you fail to respond within 10 days, the

creditor goes ahead with legal action and you may find yourself with no option but to place yourself under debt administration and the garnishee order follows.

So, if you get a Section 129 letter, take action immediately! Talk to the creditor, or seek help from a debt counsellor.

What is debt counselling?

- You can apply for debt counselling if you are unable to meet monthly debt repayments
- You enjoy protection from the NCA when you apply for debt counselling and creditors cannot take legal action while you are under this protection.
- You cannot take on new debt when you are under debt counselling.
- You have to repay debt according to a plan worked out by the debt counsellor, agreed with the creditors and approved by a magistrate's court.
- The repayment plan will take into account your personal budget and may mean a longer term repayment plan or lower payments.
- You can pay off your debt faster than the plan, but not slower.
- Once you have repaid your debt, a clearance certificate is issued. The effect of this is that your name is cleared immediately.

Beware of unlicensed credit grantors!

If you are in financial difficulty, please do not resort to borrowing money from unlicensed credit grantors. You will have no protection from the NCA if you borrow from credit grantors who are not registered with the NCR and who do not display their NCR registration number at their place of work.

The NCR is clamping down on unscrupulous lenders – in April, three lenders were arrested for obtaining and withholding consumers' bank cards, ID books and pin numbers, which is a criminal offence in terms of Section 133 of the NCA.

However, there are still many lenders out there waiting to pounce on unsuspecting borrowers.

• *Written by Paul Barnard CA (SA) of North Star Solutions, which offers training in personal money management skills, individual financial coaching and debt counselling. Tel 021 686 3540/083 260 2970, e-mail paul@northstarsolutions.co.za, or visit www.northstarsolutions.co.za.*

City debt counselling initiative

Because the City of Cape Town is concerned about the financial strain currently experienced by employees as a result of over-indebtedness, it is in the process of organising a debt counselling educational initiative for employees.

This will help employees understand the best options for managing debt and getting out of indebtedness.

All employees will be advised of voluntary group educational sessions that will be held starting in May 2009.

The benefits of debt counselling vs debt administration (garnishee orders)		
Issue	Debt counselling	Debt administration (garnishee orders)
Regulations	Regulated industry governed by the National Credit Regulator	Regulated by the Magistrate's Courts Act, but loopholes allow unscrupulous individuals to over-charge.
Monthly costs	5% of monthly payment for the first two years, thereafter 3%.	Supposed to be a maximum of 12,5% of monthly payment for as long the order runs. However, due to loopholes, often much more than 12,5% is charged plus ad-hoc collection fees.
Clearing of credit record once debt is paid	Once debt is paid, debt counsellor issues clearance certificate and credit record is immediately cleared.	Once debt is paid, will take at least five years before credit record is cleared.
Repayment plan	Repayment plan clearly communicated to client with definite repayment timeframe.	Repayment plan not clearly communicated and may be unreasonably long due to fees charged.