Credit Bureau listings against your name? Here's what to do!

I often sit with clients who are furious with me because they wanted to purchase a new car or apply for a loan, only to find out that there is a judgment or default listing against their credit profile.

The National Credit Act, Act 34 of 2005 and its regulations, regulates judgment- and default listings by credit bureaus in South Africa. It is important to take note of the difference between a default listing and a default judgment. Determining which reflects against your credit record will affect how you go about to remove it.

Default listings:

A default listing is the classification of consumer behaviour on the credit profile of a consumer resulting from non-payment or slow payment of a monthly instalment or debt. In terms of the National Credit Act, a credit provider must give you 20 days' written notice, warning you that your default will be reported to the credit bureau. People often do not read the e-mail in which this notice is sent or fail to collect the registered letter from the post office. When they fail to react to the notice, the creditor may proceed to list the default against their profile. A default listing will reflect against the consumer's credit profile until the consumer pays the instalment or debt. The credit bureau may only keep information relating to default listings for a period of 12 months, which means that the default listing will automatically be removed after 12 months if the consumer fails to pay the instalment or debt. It is important to note the instalment or debt will still be payable after it is automatically removed from a profile. A creditor may still proceed with legal action to collect the amount due until the debt prescribes. A debt normally prescribes after three years, depending on the facts. Some debts only prescribe after a longer period.

If you realise that a default listing reflects against your name, you can pay the amount due. The creditor must inform the credit bureau that the debt has been paid. Upon receipt of such a notice, the credit bureau must remove the default listing. The consumer may also request a copy of the notice and inform the credit

bureau themselves.

If you dispute the amount due, you may lodge an internal dispute with the credit bureau to have the default listing removed. The credit bureau will inform the creditor of the dispute and investigate the matter. If the credit bureau finds that the default was erroneously listed against your profile, they will remove same.

Judgment listings:

A default judgment is a listing on the credit profile of a consumer indicating that legal action was instituted and judgment granted against the consumer for a specific debt. A default judgment will reflect against a consumer's credit profile until the judgment is paid. It will automatically be removed after a period of five years. It is important to note that a creditor may still proceed with legal action to enforce the debt for up to 30 years from the date on which the judgment was granted.

As indicated above, a judgment listing can only be entered against your profile if a court granted judgment against you. A creditor would have had to issue summons and eventually obtained judgment against you. Another manner in which judgment may be obtained against you is if you consented to judgment when signing an acknowledgement of debt. In such an instance, a judgment creditor would be entitled to obtain judgment against you without any prior notice.

Should you become aware of a judgment against your name, you may contact the creditor or its attorney to pay the judgment amount. Thereafter you will need to have the judgment removed from your profile by way of an application to court. This is known as a rescission of judgment application. Your attorney will be able to assist you with such an application. Once the court order is ready, you will need to send it to the credit bureau to remove the judgment from your name.

If you dispute that the judgment amount is due, you will also require the assistance of your attorney to have the judgment against you rescinded and to defend the matter. Once the judgment is rescinded, you will need to send the court order to the credit bureau to remove the judgment from your name.

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