



CODE OF CONDUCT FOR DEBT COLLECTORS

**PROMULGATED IN TERMS OF SECTION 14 OF THE DEBT COLLECTORS ACT, 1998
(ACT 114 OF 1998)**

(CONSOLIDATED AND ANNOTATED)

6 December 2007

GOVERNMENT NOTICE
COUNCIL FOR DEBT COLLECTORS

NO. R. 663

16 MAY 2003

DEBT COLLECTORS ACT, 1998 (ACT NO. 114 OF 1998)

CODE OF CONDUCT

The Council for Debt Collectors has, under section 14 of the Debt Collectors Act, 1998 (Act No. 114 of 1998), with the approval of the Minister of Justice and Constitutional Development, adopt a code of conduct in the Schedule.

SCHEDULE

1. In this code of conduct “the Act” means the Debt Collectors Act, 1998 (Act No. 114 of 1998), and any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it.

2.(1)The Council was established by the Act to exercise control over the occupation of debt collector.

(2) In terms of section 14 of the Act, the Council adopted this code of conduct in order to govern the conduct of debt collectors. When considering a complaint, the Council shall take the provisions of the Act as well as the code of conduct duly into consideration in determining whether or not a debt collector is guilty of improper conduct.

(3) The code shall be binding on all debt collectors in the Republic, and all debt collectors shall honour it in letter and in spirit.

3. All the transactions and actions of a debt collector in the process of administering and collecting debts shall at all times be just, fair and honest. In the course of administering or collecting a debt, a debt collector shall not deliberately lie about, or misrepresent any fact, truth, instruction or mandate in any way, with the intention of benefiting such a debt collector or his or her employer or principal at the cost or expense of a debtor, a creditor, or any member of the public.

4. A debt collector shall at all times respect the confidentiality and privacy of any information supplied by a debtor and shall be factual, truthful and tactful in using such information.

5.(1) Should a debt collector disclose or supply information about the conduct of a debtor's account for the use and benefit of creditors, to such creditors directly, or to a credit bureau, such information should not be specifically prohibited from disclosure by the debtor, or prohibited from disclosure or use by law, and subject to all such information being truthful and verifiable, and in compliance with this code.

(2) A debt collector, in the process of collecting a debt, shall have due regard for the person, the property and the civil rights of a debtor, and shall ensure that any action taken against a debtor does not humiliate, threaten or cause distress to such a debtor.

(3) In collecting or attempting to collect a claim a debt collector shall not –

- (a) collect or attempt to collect for a creditor money in excess of the amount owing by the debtor to the creditor, except for interest and costs legally recoverable;
- (b) misrepresent the true nature of his or her business, or threaten to institute legal proceedings, whether civil or criminal, if there is no intention to carry out such a threat;
- (c) utilize a communication which simulates legal or judicial processes;
- (d) threaten violence or harm to the debtor, those related to him, or his or her or their property;
- (e) use obscene, defamatory or threatening language when communicating with a debtor or persons related to him;
- (f) communicate with a debtor when his or her legal adviser has notified the debt collector in writing to communicate with the legal adviser;
- (g) abuse or intimidate a debtor in any manner, whether orally or in writing, in order to induce a person to pay a debt;
- (h) call on a debtor, or park in front of a debtor's residential or work address in a vehicle which is conspicuously marked in any way that discloses its purposes and whereby the debtor may be embarrassed;

- (i) make telephone or personal calls or send written communications which may constitute excessive harassment of the debtor, his or her spouse or any member of his or her family;
- (j) make telephone calls or personal calls for the purpose of demanding payment of a debt on a Sunday or between the hours of nine o'clock in the evening and six o'clock in the morning on any other day, unless the debtor or his or her spouse requests the debt collector to do so;
- (k) engage in any other excessive conduct which can reasonably be expected to harass the debtor or persons related to him or her;
- (l) disclose or threaten to disclose information which could adversely affect the debtor's reputation for creditworthiness, knowing or having reason to suspect that the information is false;
- (m) initiate or threaten to initiate communication with the debtor's employer prior to obtaining final judgment against the debtor, in order to exert pressure on the debtor, although this does not prohibit a debt collector from communicating with the debtor's employer solely to verify employment status or earnings or where an employer has an established debt counseling service or procedure;
- (n) communicate with an employer, acquaintance, friend, relative or neighbour of the debtor, unless such a person stands surety for the debtor, or unless it is to obtain the debtor's address or telephone number;
- (o) disclose or threaten to disclose to a person other than the debtor or his or her spouse if also liable, information concerning the existence of the claim, except through proper legal proceedings, although this does not prohibit lawful disclosure to another person of such information, provided the debtor is notified of such communication;
- (p) disclose or threaten to disclose information of a debt which with valid reason is disputed by the debtor, without disclosing the fact that the debtor disputes such debt;
- (q) give to any person, by implication, inference or express statement, any false or misleading information that may be detrimental to a debtor, his or her spouse or any member of his or her family;
- (r) give, or threaten to give, by implication, inference or statement, to the person who employs a debtor, his or her spouse or any member of his or her family, information that may adversely affect the employment or

employment opportunities of the debtor, his or her spouse or any member of his or her family;

- (s) make a demand for payment of an account by telephone, personal call or in writing, without indicating the name of the creditor to whom the debt is owing, the balance of the account and the identity and the basis of the claim of the person making the demand, or
- (t) commence or continue an action for the recovery of a debt in the name of the debt collector as plaintiff, unless such debt has been ceded to the debt collector in good faith.

6. A debt collector shall at all times comply with the Act and other laws of the Republic and shall adhere to all codes and regulations made in terms of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act 71 of 1988), or any other law, where the contents of such a law, code or regulation determines the relationship between a creditor, debt collector and any debtor.

7. (1) A debt collector shall ensure that, in the administration of a debtor's account, the collection process is handled professionally.

(2) In administering an account a debt collector shall not employ or allow any employee, agent or any other third party employed or instructed for the purpose of administering such account to make use of any method or technique or procedure aimed at deliberately humiliating or threatening the person of the debtor, the business entity of such a debtor, or the family or relatives of such a debtor.

(3) A debt collector shall ensure that criteria of fairness and activities of the highest moral standards are at all times maintained in any environment where debtors' accounts are administered and collected.

(4) A debt collector shall never allow any personal emotion or any unfriendly feelings towards any debtor to become evident in any dealings with such a debtor, but shall at all times retain a professional approach, and shall be guided in all dealings by sound principles and procedures of debt collection and debt management.

7A. In terms of a debt collector's general duty to members of the public and other persons and bodies a debt collector:-

- (a) shall not, in conducting his or her business, do or omit to do any act that is or may be contrary to the integrity of debt collectors in general;
- (b) shall protect the interests of his or her client at all times to the best of his or her ability, with due respect to all other parties concerned; and

- (c) shall not wilfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of a debt collector.

[Paragraph 7A inserted by Government Notice R 93 of 4 February 2005]

8. The primary purpose of the code of conduct is to promote exemplary conduct. Notwithstanding this, a debt collector shall be guilty of improper conduct, if he or she contravenes any provision of the code of conduct, or fails to comply with any provision thereof and may be dealt with in accordance with the relevant disciplinary procedure.