Consumer Note 2

Vehicle Finance
Please note that the information provided does not constitute expert legal or financial advice. You should consult a professional legal or financial adviser for expert advice.

We have only mentioned sections of the National Credit Act (NCA) where they are applicable to the complaints we receive. The Act however contains many other sections and details that may not have been mentioned. For more information and detail on the Act, you should consult a legal professional.

The purpose of the document is to provide you with practical information based on our experience. Each case we investigate is however assessed on its merits.

Background

We often receive applications and inquiries from the public relating to vehicle finance. Disputes and inquiries can include the following:

- The vehicle purchased exhibits various defects and the consumer wishes to return the vehicle and cancel the finance agreement with the bank;
- The bank intends repossessing the vehicle due to non-payment and the consumer requests us to prevent the bank from doing so;
- The bank has already repossessed the vehicle and the consumer requests us to force the bank to return the vehicle.

Vehicle defects

When you purchase a vehicle from a dealer the bank does not inspect it in any way. The bank merely relies on the information you provide in your application for finance. Contractually the bank regards the vehicle as security for the loan. In other words, an asset that it can attach and sell should you default on the loan. The bank is therefore not responsible for any defects in the vehicle you have purchased. You will have to approach the dealer if you encounter any problems with the vehicle. You can lodge complaints against a car dealer with the Motor Industry Ombudsman:

Telephone: 012 841 2945
E-mail: mi.ombudsman@netactive.co.za
Fax number: +27 12 841-2842
Postal address: Suite 156, Private Bag X025, Lynnwood ridge, 0040

The National Credit Act does allow for cancellation of a credit finance agreement within 5 business days after it has been signed (Section 121). This cancellation right is however only applicable in very limited circumstances and there is a specific process that must
be followed. The clause is generally only applicable if the finance contract was concluded and signed at your home or workplace for example. The purpose of the cancellation clause is to provide for circumstances where salesmen sell goods to consumers and induce them to conclude credit finance agreements rather than pay in cash. The clause is generally not applicable to

a vehicle finance agreement signed at a dealership or the bank. Most vehicle dealerships are registered as business premises by the bank and most finance contracts are signed at the dealership. Therefore, this clause is generally not applicable to most vehicle finance contracts signed. You can obtain more information in this regard from your legal adviser.

**Consumer Protection Act 68 of 2008**

Section 20 of the Act provides that a consumer may return goods to a supplier under certain circumstances for a full refund. Section 56 of the Act further provides that defective or unsafe goods can be returned to the supplier within a period of 6 months. The supplier must then repair or replace the failed, unsafe or defective goods or refund the consumer the price paid for the goods.

**Replacing a defective vehicle**

If you purchase a vehicle from a dealer and find that it is defective or not suitable, you may return it to the dealer to exchange it for another vehicle. If you reach an agreement with a dealer that you will return the defective vehicle you purchased and replace it with another vehicle, you must ensure that all the loan agreements with the bank are properly finalised. It is in your best interests to check this personally with the bank. There are two possibilities in this regard.

If the second vehicle is exchanged for the same price as the defective one, then the bank must issue an amended credit agreement that reflects the second vehicle’s details that you have purchased (Section 98).

If the second vehicle you want to purchase is a different price to the one you are returning, then the original finance agreement you signed with the bank must be properly settled and cancelled. A new application for finance for the second vehicle must be lodged and a new finance agreement signed. Do not take possession of the second vehicle until all these aspects have been properly resolved.
Trading in a vehicle

When trading in a vehicle with a dealer, ensure that the original finance agreement with the bank is properly settled and cancelled. Irrespective of what the dealer may say, you remain liable for the debt on the account until it has been properly settled or cancelled. It is best to check personally with the bank.

Vehicle repossessions

Consumers often request advice on what to do when the bank intends to repossess a financed vehicle. Applicants often request us to prevent the bank from repossessing a vehicle or to force the bank to return a repossessed vehicle to them. While we can investigate specific disputes if necessary, the repossession of a vehicle generally relates to a larger problem of over-indebtedness. Please see our Consumer Information Note 1 for information on this issue.

If you do not pay your monthly payments in accordance with your vehicle finance agreement you have breached your contract with the bank. Even if you are just one cent in arrears, you have technically committed breach of contract and the bank can take legal action against you (in practice the bank will however only initiate legal proceedings after trying to contact you regarding the arrears).

The banks have specific internal debt collection processes which they follow to collect the arrears from you. This process involves bank representatives contacting you to arrange payment of the arrears. If this process does not result in you repaying the arrears, then the bank is forced to take legal action. The bank must comply with the National Credit Act when acting against you to collect the debt owing. When you are in arrears the bank will normally send you a letter in terms of section 129 of the National Credit Act to advise you that you are in arrears and what your options are. A court will not grant judgment against you unless the bank can show that it sent this letter to you. The banks usually send this letter by registered post as required by the act [Section 65 (2) (a) (i) read with Section 168, read with section 1 of the regulations]. There is no specific requirement on the bank to prove that you received the letter - only that it was sent to you.

Setting aside of court judgements

We often receive claims where the account holder disputes receiving the various court documents from the bank – for example “section 129” letters, summons, notice of default judgment, notice of sale in execution etc. They then request our assistance in having these court orders or judgements set aside.
We do not have any jurisdiction over the courts and have no power to set aside court judgements. Once judgment has been obtained we essentially have no jurisdiction over the dispute. The rules and laws relating to court processes can only be challenged in a court of law. If you wish to contest the basis on which a judgement was granted you are at liberty to obtain legal advice on pursuing the matter in a court of law. We are generally unable to assist in this regard.

**Voluntary process**

A bank can only repossess the financed vehicle with a court order or with your consent. To save legal costs, the bank might first try to obtain your consent to repossess the vehicle. It might therefore send bank representatives (debt collectors) to your home to determine whether you are willing to voluntarily surrender the vehicle to the bank (Section 127).

The bank representatives may not use violence, intimidation or threats etc to force you to surrender the vehicle. You have the right to refuse them entry to your property. Should unlawful techniques be used you can report representatives to the police or the Council for Debt Collectors:

**Council for Debt Collectors**

Physical address: West Wing, Ground Floor, Rentmeester Park 74, Watermeyer Street, Val de Grace, PRETORIA
Postal address: PO Box 836, Silverton, 0127
Telephone numbers: + 27 12 804 9808; + 27 12 804 8483; +27 12 804 3402
Fax number: +27 12 804 0744
Website: www.debtcol-council.co.za

If you voluntarily surrender the vehicle, the bank representatives must give you a form or agreement to sign to prove that you are surrendering the vehicle voluntarily [Section 127 (1) (a)]. The form should contain all the information relevant to the surrender of the vehicle and the process that will be followed thereafter. Once the bank is in possession of your vehicle, it must have the vehicle valued within 10 business days to determine how much it can be sold for [Section 127 (2)]. The bank will send you a letter by post stating the amount. You are granted a period of 10 business days after receiving the letter to settle the arrears owing in full and collect the vehicle. The banks generally require payment of at least 80% of the arrears before they will consider returning the vehicle to you. This decision is however within the bank’s exclusive discretion. Should you not settle the arrears the bank will sell the vehicle at an auction. You will be held
liable for any outstanding balance owing on the account after the vehicle is sold. After selling the vehicle the bank must provide you with an account showing the amount the vehicle was sold for and the amounts credited and owing on your account [Section 127 (5)].

You are also able to use this process if you are no longer able to afford the vehicle and you want to hand it over to the bank voluntarily. You can contact the bank and it will then send representatives to your property to collect the vehicle and have it valued. The same process as described above will be followed.

Legal process

If you refuse entry to the bank representatives or refuse to surrender the vehicle, the bank will be forced to approach a court of law. This process involves appointing an attorney to issue summons against you and to obtain a court order to repossess your vehicle. All these costs are added to your account. If the court grants the order the bank will then instruct the sheriff of the court to attach your vehicle. The bank can then sell your vehicle at an auction. You will be held liable for the outstanding balance on the account after the vehicle is sold. Once judgement has been granted, the contract between you and the bank is then cancelled. You no longer have the option to settle the balance owing and take the vehicle back.

Auction prices

The prices obtained at auctions are generally very low. The price obtained may be more or in some case less than the estimated valuation of the vehicle the bank sent to you. You will be held liable for the outstanding balance on the account. The valuation amounts and auction prices obtained are not in any way related to market value. In terms of the National Credit Act banks are expected to sell goods for the best price reasonably obtainable. There is no specific requirement on the banks sell repossessed goods at market or retail value.

The Ombudsman for Banking Services
Reviewed January 2018