

## **OPEN LETTER TO DEBT COUNSELLORS**

Dear Debt Counsellor

### **CONDITIONAL MORATORIUM BY BANKS ON TERMINATIONS AND LEGAL ENFORCEMENT OF MORTGAGE AND RELATED AGREEMENTS UNDER DEBT REVIEW.**

As part of regularising the position of part paying consumers under debt counselling without any consent or court order, the NCR embarked in discussions with the Banking Industry to find a solution to these cases with a specific emphasis on mortgages.

We recognise the challenges with regard to terminations including different legal interpretations on whether terminations may be effected whilst the matter has been placed on the court roll. We further recognise the impact that this is having on consumers especially on mortgages. In this regard, the NCR has approached the High Court for a declaratory order which we hope will provide much needed clarity on this issue.

Following these discussions, the Banking Industry implemented a conditional temporary moratorium on enforcement action against mortgage customers under debt review that are making partial payments to the banks on the mortgage and other agreements with respective banks. This moratorium is effective from 6 December 2010.

The key terms of this conditional moratorium are as follows:-

1. It applies only to (a) clients who have mortgages and (b) only to agreements with the mortgage bank and (c) only to clients who were already under debt counselling on 30 November 2010;
2. By 31 March 2011, these clients must meet at least 80% of the contractual instalment in respect of mortgages, 70% of the contractual instalment in respect of vehicle finance and 1.67% of the outstanding balance in respect of unsecured debts of the client with the primary mortgage with the bank.
3. Subject to the above, the mortgage banks undertake not to terminate the agreements subject to a new proposal being finalised and consent or court order being obtained in terms of the newly agreed rules before 30 June 2011;
4. Note that First Rand Bank has an additional condition, being that consumers must currently be paying a minimum of 50% of the contractual instalment which should increase to the above thresholds by March 2010.

5. Please note that this moratorium does not apply to cases already finalised through the courts, or where consumers under debt review are already making payments above these thresholds.
6. We urge all DC's to assess their clients against these parameters and to contact such clients to inform them of the above requirements.
7. The engagement on the specific cases must be between the DC, consumer and individual bank.
8. Once the payments have been adjusted or increased to meet these thresholds, the DC must confirm this in writing to the relevant bank. The banks indicated that they will confirm acceptance in writing.

The primary aim of the moratorium is an attempt to keep as many as possible consumers with primary residential mortgages in their houses whilst allowing time for these unresolved debt review cases to be resolved through consent agreements under the revised debt review process as recommended by the NCR task Team or through court decisions by 30 June 2011.

We wish to emphasise the fact that it is crucial that once the repayments have been reviewed that formal confirmation be sent to the relevant credit provider that payment has been adjusted. It is also important for debt counsellors to engage with the relevant banks in order to assist their clients.

Please take note that if there are any complaints regarding the above, such complaints must in the first instance be raised with the Bank concerned. If such a complaint is not addressed, it must be escalated to the NDMA which can be contacted at 086 111 6362.

#### **SEE APPENDIX A FOR DETAILED INFORMATION ON THE MORATORIUM**

**The banks can be contacted at the following numbers:**

- **ABSA: 0861 005 901**
- **First Rand Bank: FNB: 0860 111 005 & Wesbank 0861 288 272**
- **Nedbank: 0860 109 279**
- **Standard Bank: 0860 439 770**

10 December 2010

Appendix A

**Conditional moratorium by Banks on legal enforcement of mortgage and related agreements with the same lender under debt review**

Following extensive negotiations between the NCR and the Banking Industry, ABSA, First Rand Bank, Nedbank and Standard Bank on 6 December 2010 implemented a conditional temporary moratorium on termination of debt counselling and enforcement action against mortgage customers under debt review that are making partial payments to the banks on the mortgage and other agreements with the bank.

The primary aim of the moratorium is an attempt to keep as many as possible consumers with primary residential mortgages in their houses whilst allowing time for these unresolved debt review applications to be resolved

The consumers will need to meet certain minimum qualification criteria to benefit from the moratorium and will need to achieve or exceed certain minimum payment levels on their credit agreements under debt review by latest 31 March 2011.

If they achieve or exceed these payment levels by 31 March 2011, the moratorium will continue to apply until 30 June 2011 to allow time for the rework of these cases under the new debt review process and consent restructuring rules flowing from the NCR debt review Task Team's recommendations to settle the matter through consent or the resolution of the matter in court.

This moratorium will only apply to consumers who have a mortgage of up to R 1.5 million on their primary residence and would only apply to other debts with the same (mortgage) bank, subject to the conditions below.

**1. Moratorium stages:**

The moratorium will consist of two distinct stages:

**Stage 1:** Part paying eligible consumers must meet or exceed certain monthly payment levels on each agreement by latest 31 March 2011, failing which legal action to enforce the agreements may follow if the debt review matter has not been resolved in court; and

**Stage 2:** The part paying eligible customer must at least reach and there after maintain the stage 1 payment from 1 April 2011 and the debt review matter need to be finalized through a consensual settlement (under the new process and consent rules agreed by the industry) or court order by 30 June 2011 failing which legal action to enforce the agreements may commence.

## **2. Eligibility conditions**

A consumer will be eligible for the benefits of the moratorium if the following conditions are met:

- a. The consumer must be under debt review and so listed on the credit bureaus;
- b. The consumer must be making regular monthly payments to the bank on the relevant agreement;
- c. The consumer must have entered the debt review process by 30 November 2010.
- d. The 60 business day completion period in the NCA for the debt review process must have expired and the consumer must be in default on the agreement for the moratorium to kick in on the affected agreement.
- e. The consumer's debt review application has not yet been settled through a court order or in terms of a consent agreement between the parties.
- f. The consumer must have a primary residential mortgage with the bank with a balance not exceeding R1.5 million in which case any vehicle debt with that bank with a balance not exceeding R300 000 and all other unsecured debt of the consumer with that bank will be eligible for the moratorium benefits.
- g. The monthly payments received on the account over the three month period preceding the expiry of the 60 business day debt review completion period must not demonstrate a declining trend in order for the customer to qualify for the moratorium benefits in Stage 1.(6 December 2010 to 31 March 2011) .

## **3. Stage 1: Meeting or exceeding minimum payment levels**

- a. Commencement date (at which time the bank will apply the moratorium if the eligibility conditions are met): 6 December 2010.
- b. End date (by which time the qualifying payment threshold levels for stage 2 must be met): 31 March 2011.
- c. Minimum payment threshold required for the enforcement moratorium to apply in stage 1 (Period between 6 December 2010 and 31 March 2011):
  - i. Primary residential mortgage with balance up to R1.5 million:

Any payment made monthly provided there is no declining trend in payments, except in case of FRB (FNB and Wesbank) being the bank which requires at least 50% of the contractual payment to qualify for the moratorium.
  - ii. Vehicle debt with balance up to R300 000 of the client with the mortgage with the bank:

Any payment provided there is no declining trend in payments, except in case of FRB (FNB and Wesbank) being the bank which requires at least 50% of contractual payment due for the debt to qualify under the moratorium.

- iii. Unsecured debts of the client with the primary residence mortgage with the bank: A minimum monthly payment of 1.67% of balance outstanding.

#### **4. Stage 2: Resolving the matter through consent or a court order**

- a. Commencement date (at which the consumer must be meeting the stage 2 minimum payment levels on the relevant agreement): 1 April 2011
- b. End date (by which date the debt review matter must have been reworked and settled through a consent agreement or resolved through a court order): 30 June 2011.
- c. Minimum payment level required for enforcement moratorium to apply during stage 2:

- i. Primary residential mortgage with balance up to R1.5 million:

At least 80% of the contractual instalment due (commencing 1 April 2011) without evidence of a declining payment trend prior to 1 April 2011 for the moratorium to continue to apply until end of stage 2 (30 June 2011).

- ii. Vehicle debt with balance up to R300 000 of the client with the primary residence mortgage with the bank:

At least 70% of the contractual instalment due (commencing 1 April 2011) without evidence of a declining payment trend prior to 1 April 2011 for the moratorium to continue to apply in stage 2.

- iii. Unsecured debts of the client with the primary mortgage with the bank:

A minimum monthly payment of 1.67% of balance outstanding must be paid (commencing 1 April 2011) without evidence of a declining payment trend.

#### **5. Post moratorium (after 30 June 2011):**

Once stage 2 of the moratorium expires on 30 June 2011, legal enforcement of agreements under debt review eligible for such enforcement may recommence regardless of payments being received unless the matter is settled through a consensual arrangement during the moratorium period or a court order is obtained in time.

## **6. Call for urgent action by debt counsellors**

As indicated the four major banks (ABSA, FRB (FNB and Wesbank), Nedbank and Standard Bank) have implemented the above moratorium as from Monday 6 December 2010.

As the moratorium offers consumers the opportunity to retain their primary residence and essential vehicles financed by the same bank, Debt Counsellors are urged to immediately contact their customers who are eligible for the benefits under this moratorium in terms of the eligibility criteria under 2.

These customers need to be advised that:

1. They must immediately contact their bank and inform the bank that they want to utilize the opportunity offered by the moratorium to get their situation resolved. Contact must be established through the following numbers:
  - ABSA: 0861 005 901
  - First Rand Bank: FNB: 0860 111 005 & Wesbank 0861 288 272
  - Nedbank: 0860 109 297
  - Standard Bank: 0860 439 770

The Bank will confirm the moratorium arrangement and conditions in writing once contacted as per above.

2. They must continue to make monthly payments and avoid any declining trend in payments made to the bank concerned as such a trend would disqualify them for the benefits of the moratorium. If they are FRB customers they must be advised that the monthly payment must be 50% or more of the contractual payment on mortgages and vehicles in order to qualify for this moratorium. This means that monthly payment needs to be 50% or more from December 2010.
3. If their present payments are below the threshold set for stage 2 customers need to be advised to as soon as possible but no later than 31 March 2011 increase payments as follows:
  - On mortgages - payment need to be the higher of the present payment or 80% of contractual payment.
  - On vehicles - payment need to be the higher of the present payment or 70% of the contractual payment.
  - Unsecured debts monthly payments need to be a minimum of 1.67% of balance outstanding.

4. Before the expiry of the 2<sup>nd</sup> stage of the moratorium on 30 June 2011, their matter will have to be reworked in terms of the new review process and the agreed consent rules (which should be fully deployed in the market by March 2011) in order to settle the matter through a consent agreement with the bank under the new rules or obtain a court order.

## 7. Resolution of moratorium related complaints

The four banks have subscribed to the credit industry Code of Conduct to Combat Over-indebtedness publicly launched by the NCR and committed to by all credit provider associations at the launch. The Code becomes effective on 1 January 2011 for those credit providers who have subscribed. Subscription involves affiliation with the National Debt Mediation Association (NDMA).

In terms of this code any complaint in respect of the above commitments made by the banks has to be dealt with as follows:

- a. The complaint must in the first instance be raised with the Bank concerned through the above contact number.
- b. If the complaint is not resolved in interaction with the Bank, a formal complaint in terms of the complaint mediation policy of the National Debt Mediation Association can be lodged with the NDMA who will attempt to mediate the successful resolution of the complaint under the arrangements set out in this letter. The NDMA can be contacted a 0861 116 362
- c. Should the NDMA complaint mediation process fail to satisfactorily resolve the complaint, the matter can be referred to the Credit Ombud for a determination. The NDMA will be in a position to assist in the referral of the matter to the Credit Ombud at the end of the complaint mediation process.

Your assistance in utilizing this opportunity to allow part paying mortgage customers with unresolved debt review applications that may face debt review termination and credit agreement enforcement action to avoid such action will be sincerely appreciated.



**Peter Schiebusch**  
Standard Bank



**Gavin Opperman**  
ABSA



**Line Wiid**  
FRB



**Gavin Payne**  
Nedbank