
The National Credit Act

ABSA HOME LOANS

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Consumer credit legislation needed an overview...

- Consumer credit market has evolved over last decade to include less formal practices such as micro-lending
- Legislative framework could not comfortably accommodate the new credit market
 - Usury Act 1968 and Credit Agreements Act 1985 needed review
- DTI started holistic review of credit legislation and policies in 2002 (consultative process)
- Preliminary draft of proposed National Consumer Credit Bill published in mid 2004
- Several dozen written submissions received and meetings held with major stakeholder groups to address concerns
- In December 2005 provided first sight of the proposed draft Regulations
- **National Credit Act 34 of 2005** published on 15 March 2005 and will come into effect on 1.6.2006, 1.9.2006 and remainder on 1.6.2007

The Consumer Protection draft Bill was published by the DTI during March 2006

Replaces both Usury Act and Credit Agreements Act

- Creates framework that promotes competition and transparency - all credit transactions treated the same within identified market sectors
- Consumers have equal rights and protection of these rights
- Measures introduced to manage over-indebtedness of consumers and avoid reckless credit lending practices
- Regulatory framework established to regulate credit bureaux, credit providers and debt counsellors
- Complaints mechanisms formalised and regulated - ensures maximum protection and redress for consumers
- Endeavours to balance commercial principles with consumer rights and protection
- Regulated by National Credit Regulator (NCR) and provincial regulators where applicable
- NCR will register credit providers, credit bureaux and debt counsellors, monitor compliance and investigate complaints
- Will monitor credit market, access to credit, credit volumes and prices
- Entities have to comply with all provisions of the Act - failure will lead to de-registration and/or penalties and offences

Credit granting process involving consumers and credit providers

- Every element of the credit granting process to be aligned with provisions of Act
- Documentation - existing and new documentation introduced
- Communication with client - marketing, advertising and correspondence
- Credit assessment - credit bureaux information, credit scoring and profiling, over-indebtedness
- Debt counselling procedure
- Complaints procedures and mechanisms
- Consumer's liability, interest, charges and fees
- Collection and repayment practices
- Debt enforcement
 - required procedures before
- Compliance with provisions of Act a challenging process

Penalties of up to 10% of annual turnover during preceding financial year

Impact on 3rd Parties

Agents (Section 163)

- Credit provider must train employees or agents in respect of matters to which Act applies
- Where a credit provider makes use of agents for solicitation, completion or conclusion of credit agreements:
 - agents must show identification card in prescribed manner and form to any person with whom agent interacts in solicitation, completion or conclusion of credit agreements
 - credit provider must maintain a register in the prescribed manner and form of all agents
- Where a person who is not an agent of a credit provider solicits, completes or concludes a credit agreement for or on behalf of a credit provider or consumer
 - that person must be identified by name and identity number in the credit agreement
 - that person must disclose to the consumer the amount of any fee or commission that will be paid if the agreement is concluded
 - any fee or commission to be charged to the consumer
 - must not exceed the prescribed amount; and
 - may be paid to that person only if the credit agreement is concluded

Estate agents, Mortgage originators & Brokers are not deemed agents of the bank, but rather act on behalf of the consumer. Attorneys are classified as agents.

Right to information in official language (Section 63)

- “A consumer has a right to receive any document that is required in terms of this Act in an official language that the consumer reads or understands, to the extent that is reasonable having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by the person required to deliver that document.”
- Submission to NCR proposing to make documents available in at least two official languages
- Must offer each consumer an opportunity to choose an official language in which to receive any document (from two NCR approved official languages)
- Documents required in terms of the Act include the following:
 - application for credit forms
 - small, intermediate and large agreement quotation
 - pre-agreement statement for small, intermediate and large agreement
 - small, intermediate and large credit agreements which include the statement of options
 - change to or amended credit agreements and
 - statements of account
 - assumingly all communications with a consumer should also be in the language that the consumer reads and understands

Submission for registration included a selection of languages

Statement of options (Section 74)

- Statement of options **when entering into** credit agreement:
 - provider must give the consumer certain options to select from
 - to decline automatic limit increases of credit facilities
 - to be excluded from telemarketing campaigns (by or on behalf of the credit provider)
 - to be excluded from marketing or consumer lists which the provider might sell (other than required by the NCA) or
 - to be excluded from mass distribution of email or sms messages
 - provider must record the options in prescribed register and not act contrary to option selected by consumer
 - register to contain the following records of consumer:
 - name and account number and contact details
 - options selected and date on which options selected

These records are kept until the consumer's account is closed

Documents required to be signed by NCA

- Debit order authorisation (Section 124):
 - the charge or series of charges may be made only for an amount that is:
 - calculated by reference to the obligation it is intended to satisfy under the credit agreement and
 - specifically set out in the authorisation
 - the charge or series of charges may be made only on or after a specified date, or series of specified dates:
 - corresponding to the date on which an obligation arises, or the dates on which a series of recurring obligations arise, under the credit agreement and
 - specifically set out in the authorisation
 - any authorisation not given in writing, must be recorded electromagnetically and subsequently reduced to writing

No priority may be given to one credit provider over another in processing of payments

Impact on 3rd Parties

Documents required to be signed by NCA

- Alteration of original or amended agreement documents:
 - Any change to a document recording credit agreement or amended credit agreement, after it is signed by the consumer or delivered to the consumer, **is void unless**
 - the change reduces the consumer's liabilities under the agreement;
 - after the change is made the consumer signs or initials in the margin opposite the change
 - the change is recorded in writing and signed by the parties **OR**
 - any oral change is recorded electromagnetically and subsequently reduced to writing

As per Section 116

Credit Insurance (Section 106)

- Credit provider may require a consumer to maintain credit life insurance not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement
- Mortgage agreement - insurance cover iro the immovable property not exceeding the full asset value of that property
- Must not offer or demand that the consumer purchase or maintain insurance that is unreasonable or at an unreasonable cost to the consumer
- If credit provider proposes a particular policy of credit insurance:
 - consumer must be given, and be informed of, the right to waive any proposed policy and substitute a policy of the consumer's own choice
- Where policy of insurance arranged by the credit provider - must disclose to the consumer in the prescribed manner and form:
 - the cost of the insurance supplied
 - the amount of any fee, commission, remuneration or benefit receivable by the credit provider, in relation to that insurance
 - explain the terms and conditions of the insurance policy to the consumer and provide the consumer with a copy of that policy

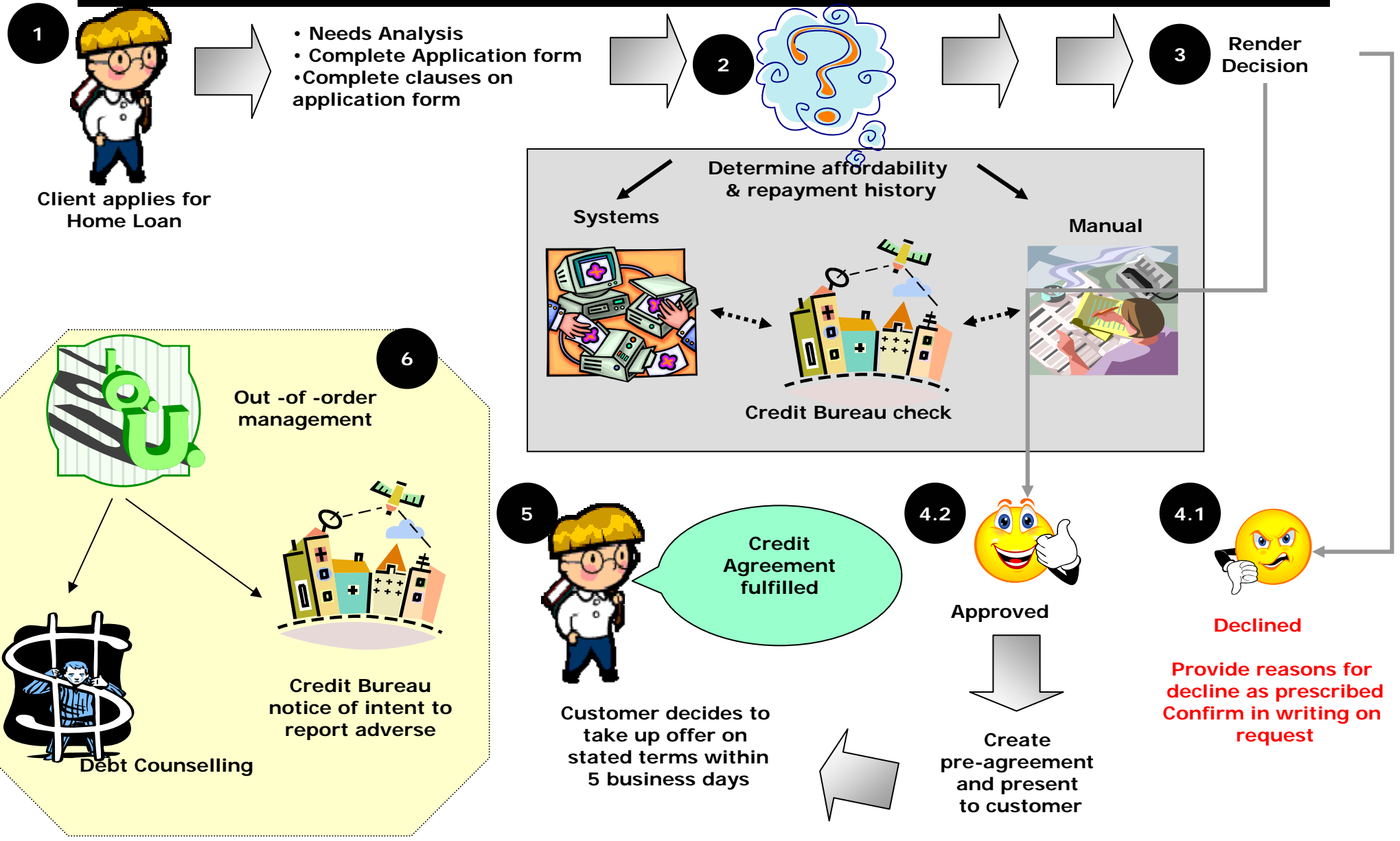
Insurance disclosure to consumer must be in Form 21

Interpretation of signature / initialling

- When the Act refers to signatures or initialling by parties to a credit agreement it may include an advanced electronic signature or an electronic signature
- **Advanced electronic signature or an electronic signature:** The Accreditation Authority has a process which a person or entity must follow in order to have its services or products accredited which will then constitute an advanced electronic signature which is linked to the identity and purposes of such a user
- **Electronic signature:** electronic representations of information in any form attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature
- Must be applied by all parties whilst in each other's physical presence and the credit provider must take reasonable measures to make sure that this signature is only used for the specific document or agreement

As defined by Electronic Communications Act 25 of 2002

End to end customer experience



Projected timeframe impact

The timeframe will be impacted as follows:

- Consumer has 5 business days before Quote expires. This could result in a delay in terms of applications as it will remain pending until actioned. Consumers do have the choice to accept the Quote immediately
- Instructions submitted to Attorneys will reduce as the consumer would have already indicated acceptance by accepting the Quote. The NTU (not taken up) rate will therefore reduce, freeing up Attorneys to discuss the Mortgage Loan Agreement (MLA) with the customer
- Absa does not foresee the actual process being substantially delayed, except where the customer first want to shop around
- The main impacted event on Absa is that the consumer must be contacted to discuss the Quote before a decision can to be made

The impact on Marketing will be as follows:

Marketing:

- Must not advertise a form of credit that is unlawful, misleading, fraudulent or deceptive;
- Must not contain any statement prohibited by regulation (e.g. no credit checks required; blacklisted consumers welcome; pre-approved etc.)
- Any advertisement concerning the granting of credit must contain interest rate and other credit costs in prescribed manner and form.
- Negative option marketing prohibited
- May not market credit at consumer's home or workplace unless consumer arranged visit with credit provider
- Aim - to prevent credit providers from harassing consumers in persuading them to enter into credit agreements or related transactions

The impact on the interviewing process will be as follows:

Interviewing process:

- Level of consumer education needs to increase
- Explain rights, risks, obligations and costs to consumer
- Explain impact of Retail debt on assessment of consumer
- Understand how to deal with consumers who are under the Debt Recovery and Collections process
- Interviewer must:
 - Have knowledge of product changes
 - Have knowledge of pricing changes
 - Understand the Quote Management System in terms of printing quotes
 - Able to explain the Cost of Credit to the consumer

The application form has been changed as follows:

Application form changes:

Income & expenses needs to be completed

- Additional declarations & consents:

- Truthfulness of income & expenses

- Consent to pass information for take up of Absa Life & Home Owners Comprehensive (HOC) policies

- Confirmation that customer was informed on Risks, Rights, Costs & Obligations

- Questions on application form:

- Is consumer under debt counselling process?

- Is consumer currently involved in a dispute with a credit Bureau?

- Does consumer prefer to pay Initiation Fee in cash?

- Customer must sign declarations before loan can be processed

When assessing the consumers affordability the following must be considered:

Handling of assessment:

- All debt will be taken into account
 - Total limit of overdrafts will be used
 - Repayment on full limit will be used to establish monthly repayments
- Maximum funds available for Home Loan dependant on affordability
- If consumer is under a debt counselling process only applications for debt consolidation will be entertained
- If a consumer is involved in a dispute with a Credit Bureau, this must be resolved before the application will be processed
- All loans must be updated on Central register (this register will only come into effect at a later stage)

The following new quotation process will be implemented:

Consumer must be supplied with a Quote and Pre-Agreement Statement

- Absa has incorporated Quote and Pre-Agreement Statement into MLA
- Quote must contain total cost of credit of Home Loan account
- Absa Life policy & Absa HOC premiums must be included if customer requested to view this on the Quote
- After Final grant Quote must be explained to consumer by Absa
- Consumer can request a copy of Quote via e-mail, fax or collect at branch
- Quote valid for 5 working days, after which the application will need to be re-assessed
- On acceptance of Quote instruct Attorney
- Consumer signs Bond documents at Attorney
- Attorney explains risks, rights, obligations and costs to consumer as set-out in MLA

The following Home Loan products will be impacted:

Product and feature changes, examples:

- Flexi Reserve must be applied for and Absa will **no** longer default this option
- Collateral Replacement Indemnity Scheme (CRIS) premium for MyHome customers may no longer be debited to the Home Loan account

Pricing changes:

- Absa is no longer allowed to recover valuation fee
- Maximum allowed under initiation fee is 10% of the loan amount with a maximum of R5000
- Maximum service fee allowed is R50 per month

Forms and letters:

- Forms and letters changed to be in line with the NCA

Impact on Attorney

The impact on the Attorneys can be summarised as follows:

Agent register process:

- Attorneys are classified as Agents of Absa
- Agents register must be maintained with details of Attorneys
- Cards must be issued
 - Contains: Attorney firm name and registration number, description of activities as stipulated on the Power of Attorney registered in the Deeds Office
- Risks, rights, obligations and costs must be explained to the consumer as contained in MLA
- Conveyancer Certificate of Compliance has been enhanced to include confirmation that consumer has been informed as per the NCA requirements and stipulations

HOC:

- HOC insurance is a condition of grant for all Absa home loans - will be specified under "Special Conditions"
- Absa Insurance will include premium on Quote, but consumer does have a choice of Insurance company he/she wishes to use
- An outside insurance policy must be assessed for acceptability by Absa Home Loans and this policy will need to be ceded

Life Policy:

- If Life policy is a condition of grant of the Absa home loan as per "Special Conditions", consumer has a choice of the Insurance company he/she wishes to use
- Absa Life will supply a letter for MyHome customers that accepted a MyHome life policy to assist Attorneys in identifying if a policy is in place

The following forms applicable to the Attorneys have been changed

- **Form content changed:**

- Mortgage Loan Agreement (incorporating Quotation & Pre-Agreement Statement)
- Conveyancer Compliance Certificate
- Cession of Trust funds
- Instruction to Lodge
- Mortgage Loan Payment Authority
- Variation Agreement
- Power of Attorney

- **Forms cancelled:**

- Application for Home Owners Insurance policy replaced with HOC FIAS requirements
- PPR document

- **New forms for clients signature:**

- Absa Home Owners Insurance summary

Copy of the Mortgage Loan Agreement, HOC Insurance summary and Compliance certificate attached.

Conversion period

Handling of applications during conversion period

All applications received by Attorneys prior to 1 June 2007 and not yet signed, must be printed before 1 June 2007 and recorded. These applications will remain as Pre-NCA except where amendments are required, then the process will be as listed below.

- **Increase in instalment**

- Decrease in term
- Increase in rate
- Increase in loan amount

Obtain additional expenses, external commitments

Contact customer

Quote will generate

New fees

Flexi will not default, customer will need to apply for Flexi choice

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- Name changes or
- Bond amount change

New application and re-assessment

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