CONSUMER PROTECTION AND DEBT MATTERS

Cancelling A Credit Agreement

A credit agreement is entered into when a person (“consumer”) buys goods or services on credit or borrows money from another (“credit provider”) in return for the payment of interest and/or fees/charges. Read more about credit agreements.

Date updated: July 2022

For all your answers about cancelling a credit agreement, simply follow our guide below:

1. Can a credit agreement be cancelled?
2. When may a consumer cancel a credit agreement?
3. What is the procedure to cancel a credit agreement during the cooling-off period?
4. What is the procedure to surrender goods under a credit agreement?
5. What will happen if the goods sold was not enough to settle the consumer’s outstanding balance?
6. When may a credit provider cancel a credit agreement?
7. How can LegalWise assist you?

1. Can a credit agreement be cancelled?

- A credit agreement is entered into when a person (“consumer”) buys goods or services on credit or borrows money from another (“credit provider”) in return for the payment of interest and/or fees/charges.
- There are different types of credit agreements, for example, instalment agreements, credit facilities, leases of goods and so on.
- A credit agreement may be cancelled by a consumer or a credit provider in certain circumstances.

2. When may a consumer cancel a credit agreement?

- **Cooling-off period:** if a credit agreement was entered into at a place different than the credit provider's registered business address, the consumer may cancel the credit agreement within five business days. For example, when a person buys goods on credit from a credit provider that approached him/her at his/her home, or at a shop. The cooling-off period only applies to certain credit agreements, such as a lease of goods and an instalment agreement.
- **Early settlement:** a consumer may cancel a credit agreement by making early payment of the full outstanding balance – the outstanding balance includes the unpaid balance, interest, and/or other fees/charges up and to the settlement date. For example, when a consumer settles his/her bond, upon selling his/her home to someone else; this settlement may be subject to a penalty.
- **Surrender of goods:** a consumer may cancel a credit agreement by surrendering his/her goods under the credit agreement to the credit provider. The credit provider will sell the goods and use the proceeds towards settling the outstanding balance. Only a lease of goods, instalment agreement and secured loan may be cancelled in this manner.

3. What is the procedure to cancel a credit agreement during the cooling-off period?

- A consumer must provide the credit provider with a written notice of cancellation within five business days of entering into the credit agreement.
- The money or goods must be returned to the credit provider and services must be paid for.
- Within seven business days of receipt of the notice, the credit provider must refund the consumer the payments made under the credit agreement.
- The credit provider may set off any reasonable costs of returning the goods to a condition fit for sale, together with the reasonable rent of using the goods (unless the goods are returned in its original packaging and it appears unused).

4. What is the procedure to surrender goods under a credit agreement?

- The consumer must notify the credit provider, in writing, that s/he wants to cancel the credit agreement and surrender the goods.
- If the goods are in possession of the consumer, s/he needs to return the goods to the credit provider's business address within five business days of the above notice.
- Within ten business days of receiving the goods, the credit provider must notify the consumer of the estimated value of the goods and other information prescribed. It is advisable for the

consumer to obtain an independent valuation prior to returning the goods.

- After receiving the estimated value of the goods surrendered, the consumer may, within ten business days, withdraw the goods surrendered and resume payments under the credit agreement, OR the credit provider must continue to sell the goods. In order for the consumer to make an informed decision, it will be good to compare the estimated value of the goods with the outstanding balance of the credit agreement.
- The credit provider must sell the goods as soon as possible and at the best reasonable price that it can get. The proceeds of the sale must be set off against the outstanding balance of the consumer.
- The credit provider must send the consumer a notice setting out the settlement amount before the sale, the amount received from the sale, the net proceeds of the sale after deductions (such as the cost of the sale and/or default charges), the amount set off from his/her outstanding balance.
- If the consumer is not happy with the valuation or sale of the goods, s/he must try to resolve the dispute with the credit provider directly. If the consumer is still not happy with the outcome, s/he may approach the National Consumer Tribunal to review the sale.
- The National Consumer Tribunal must determine whether the valuation or sale was fair and may award the consumer an additional amount if it is finds that it was unfair.

5. What will happen if the goods sold was not enough to settle the consumer’s outstanding balance?

- If the sale amount is bigger than the outstanding balance, the difference must be paid by the credit provider to the consumer. For example, if a fridge was sold for R3000 and the outstanding balance, together with the reasonable costs of the sale, equals R2000, the credit provider must pay the consumer R1000.
- If the sale amount is smaller than the outstanding balance (“shortfall”), the difference must be paid to the credit provider by the consumer. For example, if a motor vehicle was sold for R25 000 and the outstanding balance, together with the reasonable costs of the sale, equals R30 000, the consumer must pay the credit provider R5000.
- If the consumer does not pay the shortfall to the credit provider within ten business days, the credit provider may approach the court to recover the shortfall. Interest will be payable on the outstanding balance, in accordance with the credit agreement.

6. When may a credit provider cancel a credit agreement?

- A credit provider may suspend a credit facility, if the consumer is in breach of it, for example, failure to pay an amount due on his/her store card.
- A credit provider may close a credit facility, without any reason, but subject to giving a consumer ten business days' written notice prior to its closure. However, a credit provider may not close a credit facility for any of the following reasons:
    - Declining a consumer's request for an increase in his/her credit limit.
    - A consumer declining the credit provider's offer for an increase in his/her credit limit.
    - A consumer requesting a reduction of his/her credit limit.
    - The identification code, number or device use to the access the facility expired.
- A credit provider must provide a consumer with written notice of his/her breach, prior to cancelling the credit agreement. A credit provider must notify the consumer, by registered post, of the following:
    - That s/he in breach of the credit agreement for longer than 20 business days.
    - The amount outstanding, together with the outstanding balance, interest and/or fees/charges in terms of the credit agreement.
    - His/her right to refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombudsman with jurisdiction in order to resolve the dispute under the credit agreement or to agree on a plan to bring the outstanding payments up to date.
- If a consumer fails to rectify his/her breach under the credit agreement within ten business days of delivery of the above notice, the credit provider may cancel the credit agreement and claim the full outstanding balance and/or repossession of the goods paid for by the credit provider. The credit provider will do this by approaching the court for a court order. A credit provider must comply with all the procedures set out in the National Credit Act, before approaching the court.
- As soon as the credit provider obtains a court order allowing him/her to repossess the goods, it may proceed to do so.
- Once the goods are repossessed, the credit provider may sell the goods (the same procedure followed when goods are surrendered).

7. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

© LegalWise South Africa (RF) (Pty) Ltd. This guide is general legal information, not legal advice. For assistance, call 0861 42 7777 or visit https://legalwise.co.za/guides/cancelling-credit-agreement.