

## LAW MATTERS

COLLECT THOSE DEBTS  
AND LOAN ACCOUNTS  
BEFORE THEY PRESCRIBE

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DEBTS prescribe. In simple terms, this means that you lose the right to collect the debt, from the individual or entity that was indebted to you, as the debt no longer exists. Prescription is governed by the Prescription Act 68 of 1969 and is designed to bring finality to disputes.

The general rule is that the prescription period for debts is three years from when the debt fell due. A debt will become due once everything has been done that would entitle the creditor to call for payment. Debtors can therefore free themselves of a debt if the prescription period is not interrupted within three years of the debt falling due. A creditor may still attempt to collect a debt from the debtor after the three-year period has lapsed, but the debtor will have the perfect legal defence of prescription.

An important case in this regard is the Constitutional Court judgment of Trinity Asset Management (Pty) Limited v Grindstone Investments 132 (Pty) Limited. In this matter, the court looked to strike a balance between the express intention of the parties, and the policy considerations that underlie prescription. The court held that a creditor should not be able to delay the running of prescription and that all debts which are payable on demand are immediately enforceable on the conclusion of a contract, and that is when prescription will begin to run.

Prescription will therefore run from the moment that a creditor is able to claim, and not only when he chooses to claim. The words “on demand” therefore hold no force or effect. It is important to keep this in mind as a creditor, because you may find a claim to have prescribed even though a demand has not been made, therefore leaving you unable to claim your debt. Loan accounts are also at risk.

A further important development that has come out from the Supreme Court of Appeal case is the matter of KLD Residential CC v Empire Earth Investments 17 (Pty) Limited. This matter dealt with ‘without prejudice’ communications. These are communications which are privileged and may not be used as evidence in a court against the sender. These communications are employed in settlement negotiations as they allow the parties to speak freely without fear that what they say, may be used against them. Where a debtor makes an acknowledgement of liability, the running of prescription is interrupted. In this matter, the court held that if an acknowledgement of liability is made for the sole purpose of interrupting prescription, even if made on a ‘without prejudice’ basis, then such acknowledgement would be admissible before court.

Creditors need to remain ever vigilant and regularly audit the prescription status of the debts due to them.

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