



LITIGATION

Frequently asked questions

What is a Domicilium Citandi?

The general meaning a domicilium Citandi is the address nominated by a party in a legal agreement at which he/she elects to receive all legal notices and documents with regard to the said agreement.

When a contract contains such a clause the contracting parties should be aware of the following:

The parties may deliver any legal document with regard to that agreement at the chosen address and such party would be deemed to have received the legal notice or document regardless of whether or not he was present at the address at the time of delivery.

If any of the parties change the abovementioned address, the other party should be notified of that change with notification should be in writing in terms of most agreements.

What is a civil litigation?

A civil action/application is when a person or company sues another Civil litigation is the process in which civil matters are resolved in a court of law.

Civil matter can be described as situations dealing with relationships between people. Examples of civil matters are the following:

- Marriage and/or divorce;
- Contract dispute;
- Fraud leading to damage;
- Motor vehicle collision;
- Mortgage bonds;

What are the costs involved in a civil matter?

In considering this question there are two main issues to consider being the costs payable by the client to his attorney (attorney and client costs) and the costs that may be recovered from the other party should the clients claim be successful (party and party costs).

- Nelson Borman and Partners Inc have adopted a fee structure that is in-line with the court tariffs plus 30 %. The current court tariffs as at 31 March 2014 can be found [here](#). Therefore, Nelson Borman and Partners Inc will calculate your invoice in terms of the abovementioned fee structure and add 30% to the final amount alternatively another fee agreement may be reached between you and the attorney.
- The costs that may be recovered from the other party is prescribed by the Rules of the Court and the same fee structure as mentioned above will be applicable here however the client will not be able to recover the added 30% mentioned above and will also only be able to recover the costs if the court makes an order that the other party should pay the costs.

What do I do when I receive a summons / combined summons?

Immediately contact an attorney to assist you. From the date you received the summons, you have 10 days to defend the action. If you fail to defend within 10 days the creditor provider may proceed to take judgment against you. Ensure you provide the attorney with a copy of the complete summons and inform him / her of the date you received it.

What happens if I missed the dead line and judgment is taken against me?

All is not lost. You may apply for the rescission / setting aside of the default judgment. You are however only entitled to apply for the rescission of judgment if:

the creditor provider consents thereto in writing or; if you can show that at the time that the judgment was granted, you were not in wilful default and that you had a valid and bona fide defence to the action the creditor provider instituted against you.

What is Credit Record Amnesty?

A credit record amnesty has been declared by the Minister of Trade and Industry, which came into operation on 1 April 2014. The amnesty will in effect erase all adverse / negative records of millions of debtors.

Do I qualify for a Credit Record Amnesty?

If you have any of the following listings reflecting on your credit record, you will qualify for amnesty:

A. Defaults (Adverse Listings)

These listing will be removed from your credit record, whether you have settled the debt or not. Please note, that you are still liable for payment of the debt and if you do not pay, the creditor may still pursue legal action to enforce its claim.

Any of the following subjective notations / classifications are regarded as Adverse Listings: "Delinquent", "Default", "Slow Paying", "Absconded", "Not Contactable", "Trace Alert", "Collection", "Legal Action", "Written off".

Any adverse consumer credit information contained in the payment profile represented by means of mark, symbol, sign or in any manner or form.

B. Paid up Judgments

All civil court judgments debts, including default judgments where the consumer has settled the capital amount under the judgments.

What is a warrant of execution against movable property?

After judgment has been obtained against a debtor, a warrant of execution against movable property is issued. The sheriff is ordered to attend the execution debtor's residence and there demand payment of the judgement debt and cost as indicated on the warrant of execution or require the execution debtor to point out so much moveable property as the said sheriff may deem sufficient to satisfy the warrant.

If the property pointed out is insufficient to satisfy the warrant, the sheriff shall nevertheless proceed to make an inventory of so much moveable property as may be pointed out in part execution of the warrant.

May the Sheriff Attach any movable property?

No, the following movable property is protected from seizure and shall not be attached or sold:

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- . The necessary beds, bedding and wearing apparels of the execution debtor or his family;
 - . The necessary furniture (other than beds) and the household utensils in so far as they do not exceed in value the sum of R2000;
 - . Stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the sum of R2000;
 - . The supply of food and drink in the house sufficient for the needs of such debtor and his family during the month;
 - . Tools and implements of trade, in so far as they do not exceed in value the sum of R2000;
 - . Professional books, documents or instruments necessarily used by such debtor and his profession, in so far as they do not exceed in value the sum of R2000;
 - . Such arms and ammunition as such debtor is required by law, regulation or disciplinary order to have in his possession as part of his equipment.

What are Section 65 proceedings and an emoluments attachment order?

Section 65 proceeding is proceedings whereby the debtor is called upon to attend court on a specific date and time in order for the court to conduct an enquiry into the financial affairs of a debtor.

The court and the creditor are given an insight into the debtor's financial affairs and will enable the court to determine whether the debtor is able to repay the judgment debt.

If the debtor is employed and able to make monthly payments towards the debt, the court will grant an

emoluments attachment order authorising deductions of a fixed amount from the debtor's salary at the end of each month until such time that the debt is paid in full.

What happens if I do not attend court?

If the court is satisfied on the ground of sufficient proof that you had knowledge of the notice in terms of Section 65 calling upon you to appear in court and you failed to appear / remain in attendances before the court on the date and time specified in the notice, the court may, at the request of the judgment creditor's attorney, authorise the issue of a warrant of arrest.

The warrant of arrest directs the sheriff to arrest you and to bring him or her before a competent court at the earliest possible opportunity in order for the court to conduct the Section 65 inquiry.