

YOUR MONEY SORTED



WHEN DEBT IS PRESCRIBED

By LETITIA WATSON

Send suggestions for topics and requests for info to yourmoney@you.co.za. We may answer your questions in this column but won't reply personally.

It's true – in the right circumstances you can't be forced to pay off your debt. Let's see how this works

WHAT IT MEANS

By law certain debts can become prescribed, which means they become invalid and you can't be forced to pay them. In ordinary civil claims debt is regarded as prescribed if you haven't acknowledged it for the past three years, says Sunél Beeselaar, a Cape Town lawyer. This means that in the three years concerned you haven't verbally or in writing said you'd pay it. In addition, you must have made no payments on it in the past three years. You must also have received no summons from the creditor regarding the debt for those three years.

THAT FORGOTTEN GYM FEE

Let's assume you joined a gym and have forgotten about it. Five years later the gym tells you you owe R2 000 and must pay it immediately. This debt is prescribed if you didn't agree to pay it, make any payments on it, or if the gym hasn't sued you. In such circumstances you don't have to pay the debt. If the gym sues you now you can use prescription as your defence.

IN A NUTSHELL

Debts that can become prescribed after three years are, for example, gym membership fees, personal loans and shop, cell-phone, medical and credit card accounts. Debts in accordance with a court order, bond and tax debt become prescribed only after 30 years. Sometimes the prescription time is shorter (one year to claim for a professional injury). You have three years to claim from the Road Accident Fund before the claim becomes prescribed. But if it's a hit-and-run accident you must claim within two years to prevent prescription, Beeselaar says.

DELAYED PRESCRIPTION

There are cases where prescription can be delayed or stopped. Examples include: if the debt is part of a claim against the estate of a deceased debtor, against the debtor's insolvent estate or against a company under liquidation. Delayed prescription can also occur if the creditor or debtor is deceased and the executor of the estate hasn't been appointed, or if the debtor is overseas.

5 QUESTIONS ABOUT PRESCRIBED DEBT

- 1** When does the three-year period start? As soon as the debt comes into being, the day the account is delivered or the work is completed.
- 2** I got into debt in 2011 and made one payment in 2012. Did the debt become prescribed in 2014? No. If you've made a payment you've acknowledged the debt. The three-year period runs from the date of that payment, lawyer Sunél Beeselaar says.
- 3** Can the creditor threaten me with a bad credit record regarding prescribed debt? No. If debt has become prescribed it shouldn't appear on your credit record.
- 4** What happens if I've signed a summons? A signed summons terminates prescription. Then you have to pay up.
- 5** Can a debt collector who's bought my prescribed debt from my creditor claim it from me? No. If it's prescribed, it's prescribed.

0,48% MORE DEBT



The total outstanding gross debtors book of consumer credit for the quarter ended September 2015 was R1,63 trillion, representing a quarter-on-quarter growth of 0,48 percent. Credit facilities specifically, which consist mainly of credit cards, store cards and bank overdrafts, increased by 2,69 percent

quarter on quarter from R17,09 billion to R17,55 billion. SOURCE: NATIONAL CREDIT REGULATOR: CONSUMER CREDIT MARKET REPORT – THIRD QUARTER SEPTEMBER 2015

TIP! Don't allow yourself to be bullied into agreeing to pay prescribed debt. If you do you'll have to pay up.

GET MORE HELP HERE

- legalwise.co.za
- Questions and answers: debtbusters.co.za
- National Credit Regulator: ncr.org.za

Interest on debts grows without rain

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