

Emolument Attachment Orders



Statistics



- March 2015
 - 23.11 Credit Active Consumers
 - 10.4 Million – Impaired records (45%)
 - 82.04 Million Accounts
 - 22.38 Million – Impaired Records (27%)
- Aged between 31-45 own 53% of the debt
- More than 50% of consumers owe more than 75% of their income

Statistics



- **21.7%** of South Africans live in extreme poverty, not being able to pay for basic nutritional requirements
R335.00 pm
- **37%** of people don't have enough money to purchase both adequate food items and non-food items so they have to sacrifice food to pay for things like transport and airtime **R501.00 pm**
- **53.8%** of people barely afford enough food and non-food items and fall under the widest definition of poverty in SA, surviving on under **R779.00** per month

Statistics

- From 2007 to 2012 – Outstanding unsecured credit increased from 41M to 159M
- 40% of the money loaned was used to buy essentials
- Loans were being repaid by taking out new loans
- **Countries with the highest level of loans in 2014 (World Bank)**

1 South Africa

86% of population took loans

2 Iran

80%

3 Kenya

79%

4 Uganda

79%

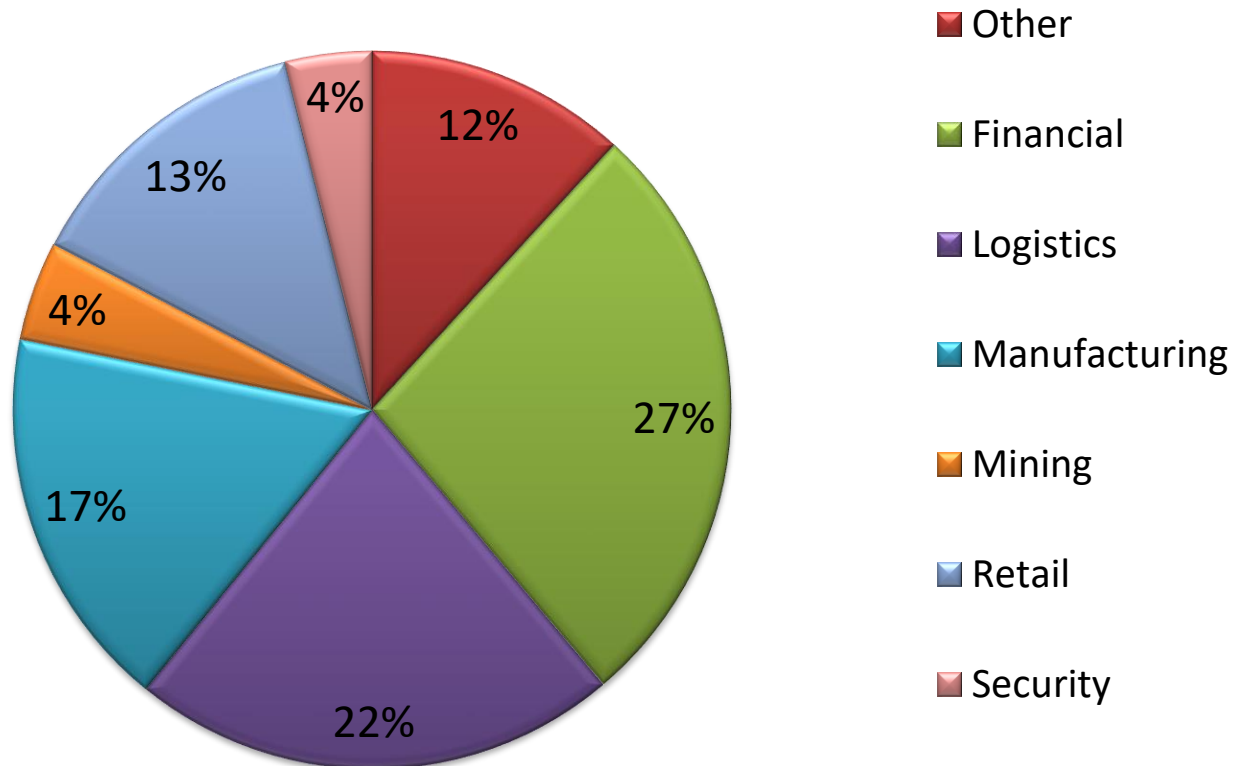
5 Niger

71%

6 Philippines

70%

Survey of 24789 EAO's





Really Important!!

- Western Cape High Court: Judge Desai
Legal Aid Clinic and Others vs Organs of State, Micro Lenders and Debt Collectors
 - NO limit to number of EAO's
 - NO minimum take home pay
 - NO affordability test done
 - Court not near employee's residence (Sect 45 and 65J in conflict, and 65J wins)
 - Consent to judgement is being "threatened" out of people (unconstitutional)
 - NO judicial oversight (Clerk of the court)

In-Duplum Rule

The National Credit Act in summary states that "the amounts contemplated in section 101(1)(b) to (g) that accrue during the time that a consumer is in default under the credit agreement *may not, in aggregate exceed the unpaid balance of the principal debt* under that credit agreement as at the time that the default occurs".

The amounts contemplated include:

- agreement initiation fee
- a service fee
- interest,
- credit insurance
- default administration costs
- collection costs

Statement

- Section 65J only provides for the furnishing of a statement at the request of the employer
- The creditor or attorney is not compelled to provide regular statements
- Costs are often added after the fact or to “use up” overpayments
- Not reconciled by anyone..... What’s that about??



Collection Commission

- The collecting attorney is entitled to a 10% collection commission, capped at an amount of R300.00 of each installment collected.
- However, when EAO's are used, the garnishee employer is entitled to a 5% administration fee payable by the **creditor**
- The collecting attorney may only collect a further 5% from the debtor.



Collection Commission

Attendances payments to client	R	50.00	10	R	500.00
10% Collection Commission of Payments				R	912.38
SUB-TOTAL				R	31 765.22
5% drafting of account				R	1 588.26
SUB-TOTAL				R	33 353.48
14% VAT				R	462.63
SUB-TOTAL				R	33 816.11
Expenditure				R	1 192.22
SUB-TOTAL				R	35 008.33
MINUS Payments received				R	9 123.80
TOTAL				R	25 884.53

PLEASE NOTE that further legal fees will be debited

100.00 – keep 5% + VAT – pay 94.70 across. This is allocated against their account already, and then an additional collection fee added here! That's 15%.....

Prescribed Debt

- Debt does not last forever. It gets written off.
 - WHEN?
 - If there has been no activity on the debt in the form of acknowledgement, payment or legal action for 3 years the debt is prescribed (written off) by the Creditor
- Attorney vs Debt Collector
 - Buy Loan Books and then use scare tactics
- Acknowledgement of Debt cancels the prescription period

New Garnishee Bill

- Tabled in Parliament in May 2016
 - Debtors should be present and given opportunity for submission
 - Total instalments payable may not exceed 25% of salary
 - Notice of Intention to obtain EAO must be served on Employer and Judgement Debtor (Employee)
 - Free Monthly statement issued by Judgement Creditor
 - Criminalises the “I consent to judgement” clauses in loan agreements
 - Garnishee (that’s you!) will be liable to repay the debtor (your employee) if you:
 - do not deduct timeously and interest or costs are accumulated
 - do not stop deducting when debt has been paid in full





Payroll

- **Ask for Information.** You cannot apply the law unless you know the background.
 - Account? Creditor? Default Amount? Date? Statement from date of default?
 - This will answer questions like:
 - Is it prescribed?
 - Does the interest exceed the limit per the in-duplum law?



Payroll

- **Check the basics.**
 - Affordability?
 - Where was it issued?
 - Signed, Stamped, Dated, Case number, Alterations?
 - Is it a DEBT COLLECTOR or an ATTORNEY?
- If you have a problem, go back to the Debt Collector or Attorney. Do not let them Bully you or Threaten you.



Payroll.

- **Reconcile.....or show the employees how to do it!**
 - Have sessions where you actually assist them.
 - Make them responsible for checking and keeping tabs
 - Once they understand how much they are paying, it often makes a difference.
 - Empathy!!! Having someone try to assist and understand is such a relief to many people

Payroll



..... But if
you do, this is
a good
one.....