

DISCIPLINARY CODE OF THE ASSOCIATION OF DEBT RECOVERY AGENTS

Preamble

It is recognized that as no code can comprehensively make provision for every possible manifestation of conduct its application and interpretation must be adequately flexible to accommodate unforeseen manifestations of misconduct and/or undesirable conduct. To this end the Disciplinary Code of the Association of Debt Recovery Agents (“the Code”) and all provisions hereof must be applied and interpreted in such a manner as to give credence and effect to the objectives, mission, and values of the Association of Debt Recovery Agents (“the Association”). In particular, in the absence of any rule, the conduct of members and the application and interpretation of the Code must be guided by the values of the Association. The substantive provisions of the Code are therefore intended as a guide of the conduct to be adopted by members and not an exhaustive directive to members.

Underlying Principles

The code is based on the following principles:-

- a)** The standards enforced by the Association are not the minimum standards prescribed by law but the elevated standards required of each member by the Association.
- b)** The right of the Association to take appropriate disciplinary steps against any member or office bearer who act in conflict with the interest of the Association and in contravention of the Code.
- c)** Members inherent right to fair and just disciplinary action.
- d)** The emphasis of the disciplinary system is on prevention, justice and rehabilitation in the interest of not only individual members but the body of members in general and the debt recovery occupation as a whole.
- e)** Although members are vicariously liable for the conduct of their employees and agents, only intentional or negligent transgressions may attract a sanction other than purely of a corrective nature.

Part 1

1. Conduct Towards Clients

- 1.1** In business relationships with clients, Members are encouraged to embody the terms and conditions of such relationship in a written contract signed by both parties and ensure that each client receive a copy of the duly signed contract.
- 1.2** Irrespective of whether the business relationship with a client is codified in a written agreement, the member shall ensure fairness, compliance and transparency in its agreements and business relationship with clients.
- 1.3** Upon entering into a business relationship with a client and in addition to the general provision stated immediately above, the member must ensure that agreement is reached on the following minimum fundamental aspects of the business relationship prior to commencing debt collection activities on behalf of a particular client:
 - 1.3.1** The contingency fee/commission at which instructions are to be undertaken on behalf of the client.
 - 1.3.2** Whether fees and expenses or costs in terms of any other statutory tariff may be recovered from the debtors of the client for the account of the member.
 - 1.3.3** If interest is to be recovered from a debtor, at what rate and structure and for whose account the interest is to be recovered.
 - 1.3.4** The order in which money recovered from a debtor is to be allocated vis-à-vis the client.
 - 1.3.5** How and when the member will account and make payment to the client.
 - 1.3.6** The particulars of the member's trust account into which funds recovered on behalf of the client are to be received by the member.
 - 1.3.7** An exit strategy detailing how accounts are to be dealt with upon termination of the member's mandate.
 - 1.3.8** The name and contact detail of a suitably qualified and experienced person within the employ of the member who will act as the responsible designated liaison between the member and the client.
- 1.4** Members shall make settlement with clients at least once each calendar month unless expressly authorized otherwise by the client in writing. Such settlement shall not be later than thirty (30) calendar days after the close of the calendar month in which the payment is received into the trust account of the member.

- 1.5 The member shall safeguard the security of collected monies by depositing same with the client or causing same to be deposited into the member's trust account and retaining all money held on behalf of the client in the member's trust account until transferred to the client.
- 1.6 The member shall reconcile its trust account every month and should there be any shortfall rectify same immediately and report such shortfall and the reason therefore to its client.
- 1.7 The member shall at the reasonable request of a client cooperate with client in the reconciliation of accounts handed over, including but not limited to the reconciliation of all financial transactions on such accounts.
- 1.8 The member shall ensure that by prior arrangement clients are able to visit their premises for the purpose of auditing and checking their accounts.
- 1.9 A member shall not engage in unlawful activities, schemes, financial arrangements or kickbacks with any person, including clients and employees of clients, or agencies.
- 1.10 A member shall not knowingly, negligently or with disregard of the truth, misrepresent its own qualifications, record, collection rates, capacity, experience or ability or that of any other Member or employee of any Member.
- 1.11 A member shall refrain from knowingly representing that it is affiliated with, or endorsed by an institution or organization when such an affiliation or endorsement does in fact not exist or that the Member has achieved a professional or occupational designation when such achievement does in fact not exist.
- ~~1.12~~ A member shall not attempt to procure or accept instructions from a client which it is for whatever reason, including but not limited to a lack of capacity, knowledge, expertise, experience or geographical physical presence incapable of managing in a professional, effective and timeously manner.
- 1.13 A member shall allow instructions to be withdrawn where instructions were erroneously handed over or for other lawful reason and forthwith seize all collection activity on such account.
- 1.14 Should it come to a member's notice that a client or potential client is exposed to any potential risk associated with the work performed or to be performed on behalf of the client, the member shall immediately notify the client of such risk or potential risk.
- 1.15 A member shall immediately upon becoming aware of any conflict or potential conflict of interest inform the client in writing of such actual or potential conflict and hence worth act only on the specific instruction of the client.
- 1.16 A member shall not approach, induce or persuade staff in the employment of a client

to join the Member's organisation, although nothing in this clause will prohibit the engagement by a member of such an employee where a bona fide application is made.

- 1.17** A member shall not allow any aspect of its mandate to be performed by any person or entity not specifically authorized to do so by the client and in the latter event the member shall ensure that such person to whom such instruction or activity has been subcontract acts in strict compliance of the agreement with and instructions from the client and shall the member indemnify and hold the client harmless against any activity performed by such subcontracted person.
- 1.18** A member shall not institute or cause legal action to be instituted in an instruction received from a client without the client's express consent.
- 1.19** A member who is not a practicing attorney shall not take legal action on behalf of a client and shall not perform any function or activity legally reserved for the legal profession.
- 1.20** Members shall provide adequate and continuous training for members of its staff, and in particular educate them on the principles of this Code and applicable legislation and law, and ensure that mechanisms are in place to ensure strict compliance therewith.
- 1.21** A member shall in the event of a dispute with a client not withhold reports and payments from the client and shall not act in a manner which might jeopardise the collectability of or the client's rights in any account.

2. Conduct Towards Association

- 2.1** The member shall cooperate with and abide by the Association's self-regulation efforts, its formal and informal complaint resolution programs and comply with the Association's Rules and this Code.
- 2.2** Actively participate in the activities of the Association and conduct its business in furtherance of the general objectives and values of the Association. In particular each member shall:
 - 2.2.1** Supply information on the nature of the applicant or Member's business, management personnel, registration with statutory regulators entitling the member to perform the activities associated with debt collection and all other reasonable information requested by the Association.
 - 2.2.2** Keep all information required by the Association updated at all times.
 - 2.2.3** Designate a contact person/s having sufficient responsibility within the organization to deal with client, consumer and Association enquiries and complaints and provide information about this contact person/s to the Association.

- 2.2.4** Promptly respond to all enquiries and complaints forwarded by the Association or from any other official complaint resolution program adopted by the Association, make a good faith effort to resolve all such complaints in accordance with generally accepted good business practices and the Procedural Rules for the Association as amended from time to time and comply with the terms of any findings issued in such proceedings.
- 2.2.5** Pay its registration and annual subscription fees and any other amounts due and payable to the Association within 30 days from date of receipt of an invoice for such amount/s.
- 2.2.6** Display the Association's official abbreviated name, logo and website address on the member's letterhead and website.
- 2.2.7** Refrain from using the name or logo of the Association for whatever purposes in a manner not specifically authorized by the Association and in the event of a dispute between the Association and the member as to the use of the Association name and logo, immediately cease to use the name and logo of the Association in such manner until such time as the dispute has been resolved.
- 2.2.8** Take adequate precautions to distinguish between the Member's personal views and the views of the Association, its subsidiaries and affiliates when communicating with third parties.
- 2.2.9** Not communicate, share or distribute any proprietary or confidential information which the Member acquires in the course of performing duties as an Association Member, officer, director, committee member or instructor which could have a detrimental impact upon the business or reputation of this Association, its affiliates, alliances or subsidiaries or any other member of the Association; nor shall any Member use any such information described herein to promote the Member's self-interest or business interest.
- 2.2.10** Notify the Association of any member of the Association who they suspect, or know, to be violating the Constitution, Code of Conduct or Association Directive and provide complete detail of such violation or suspected violation.
- 2.2.11** Refrain from discussing or debating the affairs of the Association and/or misconduct or suspected misconduct of any member in the public domain or with any third party unless specifically authorized to do so.

3. Conduct Towards Fellow Members

All members shall:

- 3.1** Not approach, induce or persuade staff in the employment of a fellow member to join its employ although nothing in this clause will prohibit the engagement by a member of such an employee where a bona fide application is made.
- 3.2** Refrain from any act or omission which might have the effect of casting a fellow member in a negative light with an existing or potential client of the member or fellow member.
- 3.3** Immediately upon becoming aware that a client instructed more than one member in recovering the same account, cease all collection activities and report such duplication to the client and fellow member and hence forth act only on the specific instruction of the client.
- 3.4** Respond in a courteous and professional manner and within 72 hours to all communication from a fellow member.

4. Conduct Towards Debtors

- 4.1** All debt recovery activities performed by members shall reasonably be directed at solving the arrear account/s due and payable by the debtor thereby contributing to the debtor's rehabilitation and ability to obtain credit in future.
- 4.2** Members will not exploit debtors in any manner and shall, if specific conduct is on a strict interpretation of the law legally permissible but such conduct shall in practice have a result not aligned with the objectives, Code of Conduct or values of the Association or in any other manner have a morally questionable result, refrain from such conduct.
- 4.3** In addition to a continuing duty to adhere to the requirements of any applicable laws, regulations and rules concerning credit and collection industry practices and in particular the Debt Collectors Act, the Magistrate's Court Act and the Code promulgated in terms thereof, each Member has a duty to:
 - 4.3.1** Upon receipt of a written request for verification of a debt from a consumer, suspend collection activities on the account, and provide verification of the debt. If such Member does not or is unable to provide verification of the debt in response to a consumer's written request for verification, the Member shall:
 - 4.3.1.1** Cease all collection efforts.
 - 4.3.1.2** Request that the client remove the account from the consumer's credit report.

4.3.1.3 When closing and returning an account, notify the client or owner of legal title to the debt that collection activity on the account was terminated due to the inability to provide verification of the debt.

4.3.1.4 If requested by the consumer in writing, notify the consumer that collection efforts have been terminated by the Member.

4.4 In instances of alleged identity theft, fraud or mistaken identity, take those steps as prescribed by the client and in lieu of any such prescript, conduct a reasonable investigation to determine the validity of the debt, the identity of the obligor on the account and the accuracy of the information in the possession of the Member.

4.5 In instances where a member obtains rights in a debt the member shall:

4.5.1 Seek to obtain access to accurate and complete information about any accounts being purchased by the Member and obtain evidence of the chain of title to the debts being purchased, and

4.5.2 Notify the debtor who the original creditor was and that the member obtained all rights which such original creditor had vis-à-vis the debtor.

4.6 If the debtor disclose multiple arrear accounts and it becomes clear that the debtor is over indebted as contemplated in the National Credit Act, the member shall inform the debtor of his rights in terms of Section 129, insofar as the arrear accounts are based on credit agreements.

5 Internal Complaint Resolution

5.1 Each member shall have in place an adequate process to deal with complaints from clients, debtors, industry regulators and/or the Association which must make provision for the following:

5.1.1 The Management level at which complaints are handled.

5.1.2 The time frame in which complaints are handled.

5.1.3 The remedy, if the complainant is not satisfied.

5.1.4 Ensuring that all complaints are dealt with in a professional, transparent and fair manner.

5.2 Members shall deal with complaints speedily, responsively and user-friendly manner and Member complaint procedures must be made available to the complainant or his/her advisor on request.

Part 2

1. Complaint and Provisional Investigation

- 1.1** A complaint shall be submitted to the Secretary of the Association in writing and materially comply with the prescribed format.
- 1.2** The director tasked with member's discipline or another director to whom such function may be delegated by the Executive Committee shall at the earliest possible opportunity conduct a provisional investigation into any allegations lodged with the Association or into any conduct of a member that may constitute misconduct, and shall submit a written report to the Executive Committee on the outcome of such provisional investigation. In conducting a provisional investigation, the director tasked with member's discipline may consult with or obtain information from anyone including the member against whom the complaint or allegations have been made, its office bearers, members or agents.
- 1.3** Should the Executive Committee be of the opinion that the alleged misconduct by the member does not justify a hearing by a disciplinary committee, but that it is nevertheless serious enough to justify a reprimand, the Executive Committee may, after hearing any representations by the member, issue such a reprimand to the member.
- 1.4** Any reprimand may be accompanied by corrective measures, and may include the reimbursement of funds.

2 Disciplinary Structures

- 2.1** Should the Executive Committee be of the opinion that there are reasonable grounds for a charge of misconduct against the member and that the alleged conduct by the member may justify steps being taken in accordance with 6(2), the Executive Committee may constitute a disciplinary committee and order that a hearing be held by this committee.
- 2.2** Should the Executive Committee decide to institute a disciplinary hearing, the Executive Committee will appoint a member of the National Board to act as representative of the Association in such hearing and a Chairperson who has the right to appoint an assessor or assessors with to assist the Chairperson in deriving at factual findings
- 2.3** It is within the discretion of the Association to appoint a chairperson from the ranks of its membership or should the circumstances warrant an ad hoc appointment of a person not affiliated to the Association the appointment of such suitably qualified non-affiliated individual.
- 2.4** Upon application the Executive Committee may in its discretion allow the parties legal

representation during disciplinary procedures or part thereof. In applying its mind in considering an application to allow legal representation specific consideration will be given to the complexity of the matter, the need to obtain clarity on aspects relevant to the industry and the severity of potential sanction a conviction might attract.

3. Charge Sheet

3.1 A charge sheet will be send by email or any other means which will ensure that the charge sheet is received by the member no fewer than ten (10) business days prior to the date of the hearing. This notification must specify:

3.1.1 The name of the Member and where an individual employee/s of the member is involved, the name/s of such individual employee/s, if known.

3.1.2 The provision in the Code of Conduct allegedly breached by the member.

3.1.3 Sufficient detail regarding the alleged misconduct so as not to prejudice the member in his defense to the charge\s.

3.1.4 The date time and place that the hearing will take place.

3.1.5 The identity of the representative of the association and the chairperson

3.1.6 The member's rights to:

3.1.6.1 attend the hearing when evidence is given and arguments are advanced;

3.1.6.2 reply in writing to the charge not later than four (4) business days before the hearing;

3.1.6.3 be assisted during the hearing by any other member in good standing of the Association;

3.1.6.4 cross examine all witnesses introduced by the representative of the Association or called for by the Chairperson

3.1.6.5 call witnesses and lead their evidence

3.1.6.6 introduce documentary and/or real evidence and to challenge such evidence introduced by the representative of the Association

3.1.6.7 the warning that, should the member be absent from the hearing without good cause, the member may be tried *in absentia*, and that the hearing will not be made invalid on these grounds.

3.1.6.8 Right to be assisted by another member or apply to have legal representation.

3.1.7 The member shall forward a written plea to the Association at least Three (3) business days prior to the hearing wherein the basis of the Members defense is disclosed and wherein the member is allowed to make admissions thereby curtailing proceedings.

3.1.8 The member shall be entitled to plead guilty to the charge/charges or any lesser charge with the proviso that the representative of the Association is not compelled to accept such a plea.

4. Hearing Procedures and Applicable Law

- 4.1** Apart from the procedural aspects contained herein, the Chairman may determine the procedure to be followed at a hearing whilst ensuring that the proceedings remain procedurally fair and in accordance with the principles of natural justice.
- 4.2** After all evidence has been presented, the accused member has the right to argue its own case or have it argued, and if found guilty of any charge or competent conviction, to offer evidence in mitigation or to have it offered and to address the disciplinary committee or have it addressed as to the appropriate measure in accordance with subparagraph 6.2.
- 4.3** All hearings shall be recorded electronically and such recording shall form part of the record of the hearing.
- 4.4** The hearing is held in camera with the exception that the complainant and/or any other person showing a material interest in the proceedings may be allowed access to the proceedings or part thereof as determined by the Chairman after hearing representations from the party seeking access, the representative of the Association and the member.
- 4.5** Proceedings in which a member is found guilty may be published by the Association and in the event of the member charged with misconduct requesting so or consenting thereto, proceedings in which the member is found not guilty may be published by the Association.

5. Provisional Suspension of Membership

- 5.1** The National Board may provisionally suspend with or without further conditions a member against whom a charge of misconduct has been made until such time as the disciplinary hearing, and should an appeal be lodged, the appeal be completed; provided that the director tasked with member's discipline investigates such an allegation expeditiously and provided further that the suspended member may address written representations to the National Board via the office of the Secretary within 5 (Five) working days after being informed in writing of his provisional suspension, furnishing reasons why he should not be suspended.
- 5.2** The National Board may, subsequent to the completion of a provisional investigation in terms of sub paragraph (2), suspend a member against whom a serious criminal charge or charge before a disciplinary enquiry of the Council for Debt Collectors is pending or who has been arrested on a serious criminal charge of such a nature and where the Association may suffer serious adverse consequences whether it be to its good name and reputation or financially, provided that a preliminary investigation is conducted and the Executive Committee orders that a hearing in terms of sub paragraph (3) be held as soon as possible after the completion of the criminal proceedings and/or disciplinary enquiry of the Council for Debt Collectors. In addition,

the suspended member may address written representations to the National Board within three working days after being informed in writing of his/her provisional suspension, furnishing reasons why he/she should not be suspended.

- 5.3** The National Board may at any time retrospectively rescind the member's provisional suspension. Notwithstanding such a rescission of a provisional suspension, procedures may continue regarding the charge of misconduct.

6. Findings of Disciplinary Committee

- 6.1** If an accused member is found not guilty of the misconduct of which the member was accused, the member will be notified and if the member was provisionally suspended, membership will be reinstated with immediate effect.
- 6.2** Should a member be found guilty of misconduct, the disciplinary committee may impose one or more of the following measures:
- 6.2.1** Warn that Member, and/or
 - 6.2.2** Order that, in the event where the conviction involve a liquid claim by the Complainant or a liquid claim is proven in favour of any third party, that the Complainant or such third party be reimbursed in the amount, and/or
 - 6.2.3** Order the member to submit to appropriate corrective measures and procedure to monitor the effective implementation of such corrective measures, and/or
 - 6.2.4** Suspend the Member for a definite or indefinite period with or without any specific conditions for uplifting the suspension, or
 - 6.2.5** Expel the Member from Membership on the recommendation by a simple majority of the National Board, and/or
 - 6.2.6** Make an appropriate order as to costs, which order is not limited to but may include inter alia;
 - 6.2.6.1** The costs incurred in appointing a chairperson, assistants and/or prosecutor
 - 6.2.6.2** Reasonable travelling and subsistence expenses of the members of the Sub-Committee and the representative of the Association and any witnesses called to be present at the enquiry.
- 6.3** In considering the application of the relevant measures the disciplinary committee is to ensure that those measures are reasonable and in proportion to the severity of the misconduct of which the member has been found guilty.
- 6.4** Without prejudice to the right of appeal provided for in paragraph 7, the findings of the disciplinary committee are final and the actions taken by the committee need not be ratified by National Board except in the event of a sanction in terms of 6.2.5.
- 6.5** The disciplinary committee has the right to suspend for a maximum period of 3 (Three) years the implementation of any measure on which it has decided, subject to such condition or conditions it may deem reasonable.

- 6.6** The Association shall publish the fact of any conviction of any contravention of its Code of Conduct in the ADRA Link magazine or any other official publication of the Association, which shall include:
- 6.6.1** The name of the Member and the member's employee and/or officer bearer who were involved in committing the contravention
 - 6.6.2** The charge/s upon which the Member is convicted
 - 6.6.3** A summary of the facts constituting the contravention.
 - 6.6.4** The sanction imposed.

7. Appeal

- 7.1** A member who has been found guilty of misconduct or the disciplinary committee may, within 14 (Fourteen) business days after the date on which notice of the decision of the disciplinary committee was received, appeal in writing against the decision, by submitting the full reasons on which the appeal is based to the Secretary of the Association.
- 7.2** Upon receipt of a Notice of Appeal, the National Board shall appoint an appeal committee consisting of not less than 3 (Three) National Board Members and/or senior officials of a member/s in good standing of not less than 5 years with the proviso that as far as reasonably possible at least 1 (One) member of the appeal committee should be a person with a formal education in law.
- 7.3** In conducting an appeal in terms of this paragraph, the parties are entitled at the member's own expense to legal representation.
- 7.4** When a party appeals against a decision of the disciplinary committee in terms of subparagraph (1), the disciplinary measures applied by the disciplinary committee in terms of paragraph 6.2, remain in force until the outcome of the appeal has been announced.
- 7.5** A copy of the notification of an appeal will be delivered to the Chair of the disciplinary committee upon receipt. The non-appealing party to the disciplinary hearing may respond to the grounds of the appeal within a 10 (Ten) days by providing a copy of the response to the Secretary of the Association. Arrangements will then be made for the appeal committee's hearing of the appeal, which should commence within 30 (Thirty) days of the receipt of the notification of appeal.
- 7.6** The appeal is considered exclusively in terms of the record kept during the investigation, together with any documents presented to the appeal committee during the course of the investigation, except in cases where the appeal committee, taking into account the grounds of appeal, may grant leave for the submission of oral evidence or where the appeal rests on an allegation of a fundamental irregularity which may have taken place during the proceedings and not be evident from the record.

- 7.7** After considering the appeal, the appeal committee may, except in a case which falls under subparagraph (8) below, uphold the appeal in its entirety or partially, and set aside or amend the findings of the disciplinary committee, including to impose a more severe sanction should such be appropriate, or reject the appeal and confirm the decision partially or in its entirety or the appeal committee may, before reaching a final decision on the appeal, refer any question with regard to the hearing back to the disciplinary committee or a newly constituted disciplinary committee and require a report on it or it may investigate the matter further and come to a decision.
- 7.8** If the appeal committee finds that fundamental irregularities have taken place during the proceedings of the relevant disciplinary committee, it is to rescind the decisions of the disciplinary committee. The matter is then referred back to the Executive Committee who will appoint a new disciplinary committee, constituted of members who did not serve in the original disciplinary committee, and who will then consider the relevant case anew.
- 7.9** The decision of the appeal committee is final and the National Board need not ratify measures taken by this committee.

8. Time Periods

The periods referred to in these rules of procedure may be extended by the Executive Committee or where a member is charged, the disciplinary committee or where an Appeal has been lodge, by the Appeal Committee, should they be of the opinion that there are sound reasons for such an extension.

9. Safekeeping of the records

- 9.1** The Secretary shall keep all documents and tape recordings relating to the disciplinary case. The member has the right to obtain copies of such records and tape recordings at his own expense
- 9.2** The documents and tape recordings are kept for a period of at least 5 (Five) years after the disciplinary committee has announced its findings or for a period of at least 5 (Five) years after the appeal committee's final decision in the event of an appeal by a member against a decision by the disciplinary committee.
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(Adopted by unanimous vote on 14 November 2013)

The Chairperson

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