



# **BAD DEBT PROVISION AND WRITE-OFF POLICY**

Notwithstanding the review date as shown, this policy shall remain effective until approved otherwise by Council and may be reviewed on an earlier date as deemed necessary.

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## **1. PREAMBLE**

- 1.1.** The District Council is faced with a significant amount of outstanding debt and the continuous defaulting by certain consumers who can afford to pay services.
- 1.2.** The Debt Collection and Credit Control By – Laws have been gazetted in March 2008, Gazette No. 1454. The By – Laws were not implemented since the inception of the municipality resulting in a huge amount of outstanding consumer debt that council might not be able to collect.
- 1.3.** The policy seeks to bring relief to consumers who have huge outstanding debts and have no income or are registered as indigents and are currently unable to pay for the outstanding debts.
- 1.4.** The policy seeks that household consumers with no or lower income are not denied a reasonable service and that the municipality is not financially burdened with non-payment of services.
- 1.5.** The policy will enable Council to write off irrecoverable debt as recommended by the committee that will be established as in accordance to the provision of this draft policy, therefore lessening the costs of recovering the debt that is irrecoverable.
- 1.6.** Despite strict enforcement of the Credit Control and Debt Collection By – Laws, Council will continuously be confronted by circumstances requiring the possible write-off of irrecoverable debt.
- 1.7.** The policy will enable Council to apply the principles of writing off of irrecoverable debt in circumstances and information submitted before Council wherein it is indicated that the debt will not be recovered.
- 1.8.** The policy does not override the fact that “the Municipal Manager must ensure that all avenues are utilised to collect the municipality’s debt” as stipulated in the Municipal Systems Act.
- 1.9.** The policy seeks to ensure that Council follows all principles and procedures for recovering outstanding debt prior to writing off of debt.
- 1.10.** The policy seeks to ensure that Council appoints a committee in terms of section 79 of Municipal Structures Act 117 of 1998 to review and recommend to it the debt considered by the committee to be irrecoverable.

## **2. PURPOSE OF THE POLICY**

- 2.1. Section 96 of the Local Government: Municipal Systems Act 32 of 2000 provides that a municipality must collect all money that is due and payable to it, subject to the provisions of that Act and other applicable legislation.
- 2.2. The purpose of this policy is:
  - 2.2.1. to provide the principles and procedures for writing off irrecoverable debt.
  - 2.2.2. to ensure that recovery would not cause undue hardship to the debtor or his/her dependants.
  - 2.2.3. to determine circumstances leading to the write-off of debts
  - 2.2.4. to provide framework for procedures for writing off of debts

### **3. RESPONSIBILITY / ACCOUNTABILITY**

- 3.1. The Council has the overall responsibility for adopting and approving the Bad debt and Write-Off policy.
- 3.2. Council has an oversight and monitoring role in the implementation and enforcement of the policy.
- 3.3. The Municipal Manager, as the implementing authority, must establish effective administrative mechanisms, procedures and processes to ensure the implementation of this draft policy.

### **4. PRINCIPLES**

- 4.1. The following should be the guiding principles in implementing the Bad debt provision and Write-Off Policy:-
  - 4.1.1. The policy is in accordance with the Local Government Municipal Finance Management Act 2003, Local Government Municipal System Act 2000, as amended and other related legislation.
  - 4.1.2. Before any debt is written off it must be proved that the debt has become irrecoverable. To ensure that recommendations for write off of debt are consistent and accurate, the following principles or a combination of some of them must be followed prior to any write off :

- legal recourse has been exhausted and the Municipality is still unable to secure payment of the outstanding debt; or
- the success of future legal action by the Municipality to recoup the outstanding debt is compromised due to actions or inactions by the Municipality; or
- the costs of instituting legal action for the recovery of the outstanding debt would be higher than the value of the outstanding debt; or
- the debtor in question cannot be traced and a tracing agency has rendered a non-traceable report on the debtor in question; or
- a deceased estate is insolvent and has no liquid assets to cover the outstanding amount; or
- a competent Plea of Prescription has been raised by the defendant in the Plea, or alternatively if the Plea of Prescription is raised ex facie the Plea but carries the real risk that it would be upheld if raised properly in the Plea; or
- if, as a result of the lack of evidence, it is not possible to prove the debt outstanding; or
- if the outstanding amount is due to an irreconcilable administrative error by the municipality; or
- if the Sheriff of the Court has issued a report that the person has insufficient disposable property which can be attached to satisfy the judgment.

4.1.3. The above factors do not constitute an exhaustive list of factors that may be taken into account, and the Municipality may, in its opinion, consider any other factor.

4.1.4. In exercising its discretion, the Municipality must act lawfully and reasonably having regard to the principles of fairness and equity.

4.1.5. A request by an account holder to write off an amount or amounts as bad debt must be made in the form of a submission/motivation and must be in the prescribed or required form as stipulated by the Municipality from time to time. Any deviation from the prescribed form shall result in the rejection of such submission/motivation.

4.1.6. In making submission for a debt write off, a Municipality Official shall take all necessary and reasonable steps to ensure compliance with this

Policy and shall take all necessary and reasonable steps in the detection of fraudulent activity on the part of the account holder and shall be obliged to report such fraudulent activity to the CFO.

- 4.1.7. An official who knowingly participates in fraudulent conduct with an accountholder in the write off of a debt shall be subjected to the disciplinary action as set out in the Municipality's Disciplinary Code of Conduct, as well as civil or criminal prosecution in a competent court of law.

## **5. POLICY PROVISIONS**

### **5.1. CATEGORIES OF DEBTORS THAT MAY QUALIFY FOR THE WRITE-OFF**

#### **5.1.1. Approved Indigent Household Consumers in terms of the Municipality's Indigent Policy**

- 5.1.1.1. Upon approval for registration as an indigent household consumer, the debtor's interest on the arrear amount will be written off and the outstanding balance on his/her municipal services account will be handed over to the appointed committee for review and possible write off.
- 5.1.1.2. Any new arrears accumulated by the debtor (i.e. any amounts in excess of the indigent allowance for free basic services) whilst registered as an indigent consumer, will not qualify to be written off and must be dealt with strictly in accordance with the Municipality's Debt Collection and Credit Control Policy and Indigent Household Policy.

#### **5.1.2. Balances too small to recover considering the cost for recovery**

- 5.1.2.1. Where final accounts have been submitted and paid by the respective consumer and the remaining balance after finalisation of any final readings and other administrative costs results in a

balance of one hundred rand (R100) or less, such account must be forwarded once to the consumer for payment.

- 5.1.2.2. Where such account is not paid by the respective consumer within a period of sixty (60) days such amounts will automatically be written off subject to the provisions of Section 8.4 below.

### **5.1.3. Insolvency of the Debtor and Insolvent Deceased Estates**

- 5.1.3.1. Where a debtor becomes insolvent the Municipality must ensure that a creditor's claim is timeously registered. Any amount not being recovered due to insufficient funds or if there is a risk of a contribution being made to an insolvent estate must, after notification, be written off.
- 5.1.3.2. In case of death of the debtor a creditor's claim must be timeously registered against the deceased's estate. Any amount not being recovered due to insufficient funds or if there is a risk of a contribution being made to a deceased estate must, after notification, be written off.

### **5.1.4. Untraceable Debtors**

- 5.1.4.1. Where for any reason the forward address of a debtor becomes untraceable or the debtor becomes untraceable from the current address, such account must be handed over to a collection agent for recovery of the debt. The collection agent will be paid on an attorney client scale relating to matters of debt collection. The Terms of Reference for such collection agent must include the appointment of a tracing agent to locate the debtor. Should a debtor be untraceable, the collection agent must report to the Municipality on the actions that were taken to attempt to trace the debtor. The municipality should be responsible to pay the tracing agent.
- 5.1.4.2. Any amount owed by a debtor that has become untraceable must, after notification, be written off or sold to a debt collection agency at a discount which will be determined by Council from time to time.

- 5.1.4.3. Debt written off in the above instances will automatically result in the debtor being reported to the credit bureau by the Municipality.

#### **5.1.5. Special Arrangements in order to obtain a Clearance Certificate**

- 5.1.5.1. In terms of legislation the Municipality will under normal circumstances not issue a Clearance Certificate on any property unless all outstanding amounts are paid to date, or alternatively payment of the current two years outstanding debt is made and a guarantee by the attorney handling the property transfer is issued in favour of the Municipality for the balance of the debt.

- 5.1.5.2. Section 118 of the Municipal Systems Act , No 32 of 2000 determines the following regarding **Restraint on transfer of Property**:

(1) A registrar of deeds or other registration officer of immovable property may not register the transfer of property except on production to that registration officer of a prescribed certificate –

- a. Issued by the municipality in which that property is situated ; and
- b. Which certifies that all amounts due in connection with that property for municipal service fees , surcharges on fees , property rates and other municipal taxes , levies and duties during the two years preceding the date of application for the date of application for the certificate have been fully paid

(2) In the case of the transfer of immovable property by a trustee of an insolvent Estate, the provisions of this section are subject to section 89 of the Insolvency Act , 1936 ( Act No. 24 of 1936.

(3) An amount due for municipal services fees, surcharges on fees , property rates and other municipal taxes , levies and duties is a charge upon the property in connection with

which the amount is owing and enjoys preference over any mortgage bond registered against the property.”

- 5.1.5.3. Council must certify that all municipal charges during the two years preceding the date of the application for the clearance certificate have been paid fully.
- 5.1.5.4. The amount due for municipal charge enjoys preference over any mortgage bond registered against the property.
- 5.1.5.5. The owner is required that before a rates clearance certificate is issued that Municipal charges during the two years preceding the date of application for the certificate have been fully paid.
- 5.1.5.6. A judgment must be obtained for debt older than two years to instruct the conveyancing attorney to deduct the amount due to Council from the proceeds of the Sale of the property.
- 5.1.5.7. Where property is sold in sale of execution the Sheriff must be informed of the amount due to Council and the Sheriff will have to deduct the amount due from the proceeds of the sale of the property due to the preference municipal charges enjoys over the mortgage bond registered against the property.
- 5.1.5.8. The implementing authority must design a form for arrangements of guarantees with the attorneys handling the property transfer. The form must be attached to the policy as addendum.

**5.1.6. Special Incentives introduced by Council for Household Consumers in terms of the Approved Revenue Enhancement Strategy**

- 5.1.6.1. Notwithstanding the Municipality’s Credit Control and Debt Collection Policy a debtor may enter into a written agreement with the Municipality to repay any outstanding and due amount to the Municipality under the following conditions:-
  - a) The outstanding balance, costs and any interest thereon shall be paid in regular and consecutive monthly instalments;
  - b) The current monthly amount must be paid in full; and

c) The written agreement has to be signed on behalf of the Municipality by a duly authorised officer. Such authorisation must be in writing and given by the Accounting Officer.

5.1.6.2. In order to determine monthly instalments, customers have been categorised as follows:

- a) Indigent customers (Gross household income of less than R 2, 500 per month as prescribed in the Municipal Indigent Policy).
- b) Gross household income exceeds R 2, 500 per month.
- c) Non domestic (excludes Government Departments)
- d) Government Departments.

The Council must follow the arrangements methods of paying of municipal services as stipulated in the Debt Collection Procedure Manual of the municipality, also as in accordance to the categorisation of customers stipulated in 5.6.2 of this draft policy.

5.1.6.3. Due to ineffective/ non implementation of credit control measures in the past, the majority of household consumers have accumulated significant arrear amounts and that these consumers are not in a position to pay of these arrear amounts in full together with their current monthly accounts. In order to improve the current payment levels from consumers the Council of Capricorn District Municipality may resolve to implement special incentives to address the arrear debt.

## **6. ESTABLISHMENT OF A COMMITTEE TO MONITOR ANY DEBT TO BE WRITTEN OFF**

- 6.1. The Accounting Officer shall appoint a committee that shall monitor the implementation of this Policy.
- 6.2. The above Committee will meet at least quarterly to receive and review a report from the Accounting Officer containing full details of any actions taken by officials with respect to this Policy, and to consider any circumstances not covered by this Policy.

- 6.3. The quorum for the Committee shall be 50% of the members plus one.
- 6.4. Formal minutes of Committee meetings must be prepared and submitted to the Accounting Officer.

## **7. DELEGATIONS OF WRITE – OFFS TO THE ACCOUNTING OFFICER**

- 7.1. The Accounting Officer will, after thorough review of any applications in terms of this Policy, delegate to write off any amounts to the maximum of:-
  - a) in the case of a household consumer an amount of R100-00 (excluding interest and penalties) per submission; and
  - b) In the case of a business consumer an amount of R200-00 (excluding interest and penalties) per submission.
- 7.2. Any amount in excess of the delegation provided for in paragraph 7.1 above must be submitted together with a recommendation from the committee to the Accounting Officer for consideration. The Accounting Officer will, after thorough review of any recommendation by the committee and in terms of this Policy, make recommendations to Council to write off any amounts to the maximum of:
- 7.3. All amounts to be written off above must be considered individually and each case on its own merits must be separately reported to the Accounting Officer.

## **8. PROVISION FOR BAD DEBTS**

- 8.1. The system will consider the current consumer debtors after any payments received in the first month of the next financial year has been taken into account.
- 8.2. The total balance of accounts with a handed over portion is considered bad debts after any payment received in the first month of the new financial year has been deducted.
- 8.3. The municipality has to make provision for the debts that are identified as being irrecoverable. However, the municipality must ensure that all the means applicable to recover the debts as outlined in the Credit Control and Debt Collection policy are utilized.

- 8.4. Provision for bad debts on municipal accounts will therefore be calculated as follows:
- a) 0 - 90 days debt - is not to be considered bad
  - b) 91-120 days debt - 25% of the debt is considered bad
  - c) 121-365 days debt - 50% of the debt is considered bad
  - d) 365 days debt - 100% of the debt is considered bad / Irrecoverable

## **9. IMPLEMENTATION AND MONITORING OF THIS POLICY**

- 9.1. This policy shall be implemented once approved by Council. All future submissions for the writing off of debt must be considered in accordance with this policy.
- 9.2. This policy may be reviewed on an annual basis and be tabled to Council for approval