



## **Credit Control & Debt Collection Policy**

**COUNCIL APPROVED: 27 May 2016**

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## **PREAMBLE**

In terms of section 96 of the Local Government: Municipal Systems Act, 2000, a Municipality shall-

- collect all money due and payable to it, subject to the provisions of the Act and any other applicable legislation; and
- for this purpose, implement and maintain a credit control, debt collection policy which is not in conflict with its rates and tariffs policies and which complies with the provisions of the Act.

In order to give effect to the foregoing provisions of the Act, the council of the Eden District Municipality will have to adopt a policy relating to credit control, debt collection and as set out hereinafter.

## 1. DEFINITIONS

For purposes of this policy, and unless inconsistent with the context, any word or phrase to which a specific meaning was ascribed by the Act, will have that meaning and

**“account”** includes-

- (1) rental agreements;
- (2) fire services
- (3) air quality services
- (4) environmental health levies;
- (5) any other levies and money owing to the Municipality;

and **“municipal account”** has a corresponding meaning;

**“Act”** means the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) as amended from time to time;

**“arrears”** means any amount due and payable excluding interest to the Municipality which has not been paid on or before the date of payment;

**“council”** means the municipal council of the Eden District Municipality ;

**“date of payment”** means the date on which the Municipality’s accounts are due.

**“Manager: Financial Services”** means a person appointed by the council in that capacity to administer the council’s finances and includes any person –

- (1) who is in an acting capacity in that position;
- (2) to whom the Manager: Financial Services delegated a power, function or duty in respect of such delegated power, function or duty;

**“Municipal Manager”** means the person appointed in that capacity by the council in accordance with Section 82 of the Local Government Municipal Structures Act No 117 of 1988 as amended by Section 54A of the Local Government Municipal Systems Act No 32 of 2000 and includes any person –

- (a) acting in that position;
- (b) to whom the Municipality delegated a power, function or duty in respect of such delegated power, function or duty;

**“municipal services”** means a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether

(a) such a service is provided, or to be provided by the municipality through an internal mechanism contemplated in section 76 or by engaging an external mechanism contemplated in section 76; and

(b) fees, charges or tariffs are levied in respect of such service or not.

**“Municipality”** means the Eden District Municipality ;

**“owner”** in respect of immovable property means-

(1) the person in whom ownership vests;

(2) in the event of the person in whom the ownership vests being insolvent or deceased, or subject to any legal disqualification, the person under whose control and administration such immovable property vest in his/her capacity as curator, trustee, executor, administrator, judicial manager, liquidator or any other lawful representative;

(3) in any event where the council is unable to determine the identity of such a person, the person who is entitled to the beneficial use of such immovable property;

(4) in the event of immovable property in respect of which a lease agreement of 30 years or longer had been concluded, the lessee thereof;

(5) in respect of –

(1) a portion of land demarcated on a sectional title plan and registered in accordance with the Sectional Titles Act, 1986 (Act No. 59 of 1986), the developer or the governing body in respect of the joint property;

(2) a portion of land as defined in this Act, the person in whose name that portion is registered in accordance with a title deed registered in a Deeds Registrars Office according the Deeds Registries Act, 1937 (Act No 47 of 1937), including the lawfully appointed representative of such person;

(6) any persona, including but not limited to:

(1) a company registered in accordance with the Companies’ Act, 1973 (Act No 61 of 1973) as amended, a trust *inter vivos*, a trust *mortis causa*, a close corporation registered in accordance with the Close Corporations Act, 1984 (Act No 69 of 1984) as amended, and a voluntary association;

(2) any government department;

- (3) any council or governing body established in accordance with any legislation in force in the Republic of South Africa; and
- (4) any embassy or other foreign entity;

**“premises”** means any portion of land, situated within the area of jurisdiction of the municipality, and of which the outer boundaries are demarcated on:

- (1) a general plan or diagram registered in accordance with the Land Survey Act, 1927 (Act No 9 of 1927) or the Deeds Registries Act, 1937 (Act No 47 of 1937); or
- (5) a sectional title plan registered in accordance with the Sectional Titles Act, 1986 (Act No 95 of 1986);

**“standard rate of interest”** means a rate of interest one percent higher than the prime rate in the RSA

**“interest on overdue accounts”** is based on a full month and part of a month shall be deemed to be a full month whilst interest on overdue account will be calculated on total overdue account

## **2. CUSTOMER CARE AND MANAGEMENT**

### **2.1 MUNICIPAL ACCOUNTS**

In so far as it is possible, the Municipality shall ensure that a person liable for payment of municipal services shall receive monthly statements on which the following shall be reflected:

all outstanding amounts and the balance brought forward; amounts owing;

- total amount due;

### **2.2 ENQUIRIES, APPEALS, AND SERVICE COMPLAINTS**

2.2.1 Should a person be convinced that his or her account for municipal services, is inaccurate, he or she may direct a request to the Municipality to have that account reviewed.

2.2.2 In the meantime, the person must pay an amount, as determined by the Manager: Financial Services, before the date of payment and until the matter has been resolved.

2.2.3 The Municipal department concerned shall, within one month of receipt of such a request, investigate the matter and inform the person concerned of the outcome of such an investigation.

2.2.4 Failure to pay the amount determined in accordance with paragraph 2.3.2 on or before the date of payment in respect of municipal services, will result in credit control action be taken as spelled out in this policy

2.2.5 A person may appeal against the findings of the Municipality referred to in paragraph 2.3.3.

2.2.6 An appeal in accordance with paragraph 2.3.3 must be made and delivered to the Municipal Manager within 21 days of the appellant becoming aware of the finding referred to in paragraph 2.3.3 and shall-

(1) set out the grounds of the appeal

2.2.7 The Municipal Manager must commence with an appeal within six (6) weeks and decide the appeal within a reasonable period.

### **2.3 PAYMENT FACILITIES**

2.4.1 The Municipality shall provide and maintain strategically situated accessible payment offices and cash points throughout its area of jurisdiction

2.4.2 The following alternative payment facilities shall also be provided or be available:

- electronic bank transfers (A.C.B. system);
- internet transfers;
- direct depositing of money into the Municipality's approved bank account;

2.4.3 Where any of the alternative payment facilities is used, the onus is on the person using such facilities to provide proof of payment, and the Municipality does not accept liability for the non-receipt of such payments, or for incorrect allocations, where such incorrect allocations are due to a mistake on the part of such person.

2.4.4 Where payment of the money due is made by way of a direct deposit into the Municipality's approved bank account, the onus rests on the debtor to notify the Municipality of such deposit in writing or facsimile to reach the Municipality not later than the date of payment of such monies.

2.4.5 Municipal accounts are due and payable on the 15<sup>th</sup> of the month.

### **2.4 ALLOCATION OF REVENUE**

In accordance with section 102 of the Act, a Municipality may-

- consolidate any separate accounts of persons liable for payments to the Municipality; and
- credit a payment by such a person against any account of that person.



### **3. CREDIT CONTROL AND DEBT COLLECTION MEASURES**

#### **3.1 LIABILITY FOR PAYMENT OF MONEY DUE AND PAYABLE TO THE MUNICIPALITY**

- 3.1.1 The person responsible for the payment of money due and payable to the Municipality will be the following in the instances mentioned hereafter:
- 3.1.2 any other services – the person to whom such services were delivered.
- 3.1.3 Where an account is not paid in full, any lesser amount offered and accepted by the Municipality shall not be deemed to be in full and final settlement of such account, unless the Municipal Manager in writing accepts such lesser amount as being in full and final settlement of the account in question.
- 3.1.4 The onus rests on the debtor to obtain a statement of his or her accounts so that they may be paid on or before the date of payment.

#### **3.2 DATE OF PAYMENT OF MONEY DUE**

##### **3.2.1 Municipal Services, Rental Agreements, Sundry debtors**

- (1) Moneys payable in respect of municipal services are due and payable on the date indicated as such on the account delivered each month in respect of those services and such payment must be made on or before the 15th day of the month after the month in which the account is rendered or such future date as the Council may determine from time to time.
- (2) Payment of amounts due to the Municipality, and fees due in respect of municipal services, must be made on the date indicated on the account rendered to such debtor in respect of such amount owed, which date will be no more than 30 days after the rendering of the particular service.
- (3) Where the last date of payment of any amount owing to the Municipality falls on a day on which the offices of the Municipality are closed, the final date for payment will be deemed to be the first subsequent day on which the offices are open.

### **3.3 ACTIONS TO BE TAKEN WHERE DEBTORS FALL IN ARREARS OR FAIL TO PAY MONEYS DUE ON OR BEFORE THE DATE OF PAYMENT**

#### **3.3.1 FEES AND LEVIES IN ARREARS IN RESPECT OF MUNICIPAL SERVICES**

3.3.1.1 Interest shall be levied and be payable on all amounts in arrears.

3.3.1.2 If a person is unable to pay fees in arrears in respect of municipal services, the Municipality may enter into an agreement with such a person in terms of which he or she is permitted to pay the fees in arrears in monthly installments and that such the person regularly pays all future accounts in respect of municipal services; the person acknowledges that interest on such amounts in arrears shall be payable at the prescribed rate of interest and he or she agrees to pay such interest;

3.3.1.3 the person acknowledges that should he or she at any time fail to comply with the provisions of such an agreement, the agreement shall be deemed to be null and void; no further negotiations with that person shall be possible, and immediate steps shall be taken to have the electricity and water supplies to the premises in question disconnected or restricted, after which legal proceedings shall follow.

3.3.2 When a person is served with an account of which the amount due in respect of municipal services is exceptionally high and it is the result of –

- an act or omission on the part of the Municipality; or
- and provided that such amount in arrears is legally due and payable by that person, the Municipality may, in the discretion of the Manager: Financial Services, enter into an agreement with that person in terms of which he or she is permitted to pay the amount owing by way of monthly installments, provided that where such a high account is the result of an act and/or omission on the part of the Municipality, no interest shall be payable in respect of that outstanding amount.

3.3.2.2 If fees, or any portion thereof, due in respect of municipal services remain unpaid for a period exceeding 30 days calculated from the date of payment, and an agreement has not been entered into with the debtor, the Manager: Financial Services must,

- hand the account thus due and payable to a debt collector or attorney for collection, if, in his opinion, there is a fair chance that the debt may indeed be collected; (for purposes hereof a debt collector will be deemed to include any official of the council who is vested with the authority to collect debts)
- or institute legal proceedings against the debtor for the recovery of the debt.

### **3.3.2 ARREARS RENTAL AGREEMENTS**

- 3.3.2.1 Where agreements provide for interest payable on rentals in arrears, interest will be levied in accordance with the provisions contained in such lease or loan agreements.
- 3.3.2.2 Where installments due to the Municipality are not paid on or before the date of payment, a letter of demand is sent to the person involved in which he or she is requested to pay such arrears, together with interest, if any, within 21 days of the date of such notice.
- 3.3.2.3 An agreement to pay the arrears by way of monthly installments may at any time be entered into with the person so in arrears, subject, however, to the terms and conditions contained in paragraph 3.3.2.2, which terms shall apply *mutatis mutandis*.
- 3.3.2.4 Where no agreement has been concluded to pay arrears by way of monthly installments, and such amounts still remain in arrears after more than 30 days calculated from the date of payment, the Manager: Financial Services shall take the steps as set out in paragraph 3.3.2.3.

### **3.4. FEES DUE OTHER THAN THOSE IN RESPECT MUNICIPAL SERVICES AND RENTAL AGREEMENTS**

The provisions of paragraphs 3.3.2.2 in respect of agreements in arrears are applicable *mutatis mutandis*.

### **3.5 LEVYING OF INTEREST**

- 3.5.1 Interest at the standard rate shall be levied and collected in respect of all amounts in arrears due and payable to the Municipality, including fire accounts and Medical accounts
- 3.5.2 Interest is levied from the day following the date of payment in respect of such amounts in arrears as have not been paid by such date of payment.

### **3.6 COLLECTION OF DEPOSIT**

- 3.6.1 When an entity applies for municipal services and before such services are provided, a deposit may be collected from that entity to serve as security or partial security for the payment for municipal services provided to that entity.
- 3.6.2 A deposit as envisaged in paragraph (3.6.1) is utilised to extinguish or reduce debts owed by a entity to the Municipality for municipal services rendered.
- 3.6.3 The amount of the deposit is determined as per specific agreement for municipal services.

3.6.4 When an entity, having paid a deposit to the Municipality, requests in writing that the municipal services provided to him or her be terminated and that the deposit thus kept by the Municipality be refunded to the entity, such deposit or any portion thereof which has not been utilised in accordance with paragraph 3.6.2, shall be refunded to such entity.

3.6.5 The Municipality is not liable for the payment of interest on deposits held by the Municipality.

### **3.7 INSTITUTION OF LEGAL PROCEEDINGS**

3.7.1 The institution of legal proceedings includes, but is not limited to-

- (1) the suing of a debtor for payment of amounts in arrears;
- (2) the attachment of rent payable in respect of a property;
- (3) the attachment of a debtor's remuneration;
- (4) the attachment and sale in execution of movable things;
- (5) the attachment and sale in execution of immovable property;
- (6) the evacuation of a tenant from a rented property in the event of rental due to the Municipality in respect of such leased property.

3.7.2 The institution of legal proceedings is undertaken with due consideration of all legal requirements and in compliance with the applicable regulations and procedural rules.

3.7.3 Discretionary powers vest in the Manager: Financial Services to decide whether –

- (1) an account should be handed over to a debt collector or an attorney for collection and if
- (2) legal proceedings should be instituted against a debtor

in those instances where the total indebtedness of the debtor is R500,00 or less.

In the exercise of his powers the Manager: Financial Services determines as a sole consideration whether it will be cost-effective to hand over the account for collection and/or to institute legal proceedings against the debtor or not.

3.7.4 The Manager: Financial Services shall be empowered to determine which of the judicial measures listed in paragraph 3.8.1 will be the most appropriate and effective in respect of each and every debtor against whom legal proceedings are to be instituted in accordance with this policy of the Council.

### **3.8 WRITING OFF OF BAD DEBT**

#### **STEPS TO BE TAKEN BEFORE WRITING OFF DEBT**

Before consideration is given for the write-off of any debt the following steps should be taken:

(1) CREDIT CONTROL AND DEBT COLLECTION POLICY ACTIONS

All the applicable actions as contained in the Credit Control and Debt Collection Policy of the Municipality should have been executed and implemented.

(2) ESTATE NOTICES MONITORING

Estate notices in the Government Gazette must be checked regularly by the legal section to enable the municipality to institute claims against insolvent and deceased estates of persons owing money to the Municipality.

(3) TRACING OF DEBTORS

In the event that the debtor's address is not known, all reasonable steps must be taken to trace the debtor. A reasonable effort to trace the debtor will include, but is not limited to, the following:

(a) Utilising all the information available (such as vehicle registration number, school attended by children, etc.) to locate the debtor;

(b) Utilising the telephone directory for the last town or city in which the debtor lived to locate the debtor and/or his/her relatives; and

(c) Contacting the following institutions or persons in order to locate the debtor:

- The Vehicle Registration Authorities;
- The Department of Home Affairs; and
- Officials and/or colleagues at the debtor's last place of employment.

The Manager Financial Services shall consider all other economically viable avenues for debt recovery, including the use of tracing agents, factoring of debts, recourse against sureties, guarantors or lessees, etc.

#### **3.8.1 PREVENTION OF PRESCRIPTION OF DEBT**

(a) Prevention:

Proceedings out of the appropriate court having jurisdiction for the recovery of a debt must be commenced as soon as is appropriate in order to prevent prescription of the debt. A summons process for payment of the debt must be successfully concluded as soon as possible to prevent prescription of the debt in terms of the Prescription Act.

(b) Prescription Act, 1969 (Act No. 68 of 1969):

Section 10 (1) of the Prescription Act provides that a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt. The Municipality cannot legally enforce payment of a debt once the debt has prescribed, but the period of prescription is interrupted:-

- (i) By the service on the debtor of any process whereby the creditor claims payment of the debt. "Process" means a Summons or Notice of Motion, which must actually be served on the debtor and not simply issued by the court, and does NOT include a registered letter of demand
- (ii) the debtor acknowledges liability, whether expressly or tacitly payment of a portion of the debt can constitute a tacit acknowledgement of liability.

The completion of prescription may also be delayed in certain circumstances.

- (c) In terms of Section 11 of the Prescription Act, 1969 (Act 68 of 1969), the periods of prescription of debts are as follows:
  - (i) **Thirty years** in respect of -
    - any debt secured by a mortgage bond;
    - any judgment debt;
    - any debt in respect of any taxation imposed or levied by or under any law; and
    - any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances.
  - (ii) **Fifteen years** in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (i) above.
  - (iii) **Six years** in respect of a debt arising from a bill of exchange or other negotiable **instrument** or from a notaries contract, unless a longer period applies in respect of the debt in question in terms of paragraph (i) or (ii) above.
  - (iv) **Three years** in respect of all other debts, save where an Act of Parliament provides otherwise.

### 3.8.2 GENERAL

Should all the above efforts prove to be unsuccessful and the debtor cannot be traced or it would be uneconomical to take the matter any further, only then must a submission be made requesting the write-off of the debt. This submission must detail all steps taken and the Municipality must maintain audit trails in such instances, and document the reasons for the abandonment of the actions or claims in respect of the debt.

### 3.8.3 WRITE OFF DEBTS OWING TO THE MUNICIPALITY

#### (1) GENERAL CONDITIONS

The Municipality will consider debts for write-off in the following general circumstances:

- (a) When debts have prescribed, as contemplated in paragraph 3.8.1 above;
- (b) When debts have not been recovered from the deceased, where their estates have been finalized, and recovery of the debts from the heirs is not possible;
- (c) When debts are owed by debtors who cannot be traced, notwithstanding compliance with the provisions in paragraph 3.3 above;
- (d) When no source documentation is available to substantiate or prove the claims, provided that the Manager Financial Services must have satisfied him/herself that all reasonable steps have been taken to locate the source documents;
- (e) When the debtor has emigrated without paying the debts, leaving no assets available for attachment and the debtors' whereabouts are unknown;
- (f) When it is not economical to pursue the debt further.

**Note:** Unless affordable arrangements can be made with tracing agents or attorneys, the costs associated with the tracing of a debtor and subsequent legal costs occasioned thereby, could exceed the amount claimed. It would therefore not be in the Municipality's interest to attempt recovery of debts where the prospects of recovery are remote, and where the possibility exists that the costs associated with recovery may exceed the debt.

#### (2) SPECIFIC CONDITIONS

The Municipality will consider debts for write-off in the following specific circumstances:

##### 2.1 Sundry Debt:

Debt owed to Council arising from auxiliary services rendered by Council will be regarded as irrecoverable in the following instances:

- If the debt has prescribed;
- In circumstances contemplated in 3.8.3 (i) (a) to (f) above

### 3.8.4 FINAL ACTION

Whenever all the legal avenues, procedures and steps listed above have been exhausted, the arrear amounts should be classified as irrecoverable and should be written off by the person to whom the authority to do so has been delegated under the Municipality's system of delegations

Immediately after 30 June each year, or more regularly if requested by Council, the

Manager Financial Services must present to the Council a report listing the following:

- (a) For noting – details of the debts that was written off during the year ending 30 June under delegated authority, together with the reasons for the write offs; and
- (b) For consideration – details of any debt, not included under (a) above, which is believed to be irrecoverable, together with the reasons for this conclusion. The council shall then approve the write-off of such arrears, if it is satisfied with the reasons provided.

### **3.8.5 BAD DEBTS RECOVERED**

The approval of Council for the write-off of any debt does not mean that actions to recover the money will be terminated, however, further actions will be instituted depending on the costs involved and if debt is recovered it will be recorded in the financial records of Council as recovered.

## **4. GENERAL PROVISIONS**

### **4.1 COLLECTION COSTS**

All legal costs and any other expenses incurred by the Municipality in order to recover monies owing by a debtor to the Municipality, shall be debited against that debtor's account and/or collected by an attorney.

Collection commission and other expenses incurred by the municipality in order to recover monies owing by a debtor to the municipality, is not recoverable from the debtor.

### **4.2 DISHONOURED PAYMENTS**

Should any payment made to the Municipality by means of a negotiable instrument be dishonoured by a bank at a later stage, the Manager: Financial Services may –

- (1) impose costs and administration fees on the account of that debtor at a rate to be determined by the council from time to time; and
- (2) after payment tendered by a debtor is dishonoured for a third time by a bank, notify that person in writing that all future payments may only be made in cash.

### **4.3 ACCESS TO PREMISES**

An occupier of premises in the area of jurisdiction of the Municipality must give an authorised representative of the Municipality or of a service provider access at all reasonable hours to the premises.



#### **4.4 SIGNING OF NOTICES AND DOCUMENTS**

A notice or document issued by the Municipality pursuant to a by-law promulgated by the Municipality and signed by a staff member of the Municipality is deemed to have been properly issued and shall be accepted by the court as evidence of that fact upon the mere submission thereof.

#### **4.5 CERTIFICATION OF DOCUMENTS**

Any order, notice or other document which needs to be certified by the Municipality, is deemed to have been sufficiently certified if it is signed by the Municipal Manager or a duly authorised official of the Municipality to whom such powers were delegated by means of a decision of the Municipality's council or pursuant to a by-law.

#### **4.6 PRIMA FACIE EVIDENCE**

In lawsuits initiated by the Municipality, the mere submission of a certificate reflecting the amount due and payable to the Municipality and signed by the Municipal Manager or a suitably qualified official authorised thereto by the Municipal Manager, shall be accepted by the court as *prima facie* evidence that the amount is due.

#### **4.7 DATA MAINTENANCE**

Should the client contact the municipality at any time, his/her details as reflected on the financial system should be verified and checked and adjusted accordingly.

#### **4.8 SHORT TITLE**

This policy is called the Credit Control, Debt Collection Policy of the Eden District Municipality.