



REPUBLIEK VAN SUID-AFRIKA

# STAATSKOERANT

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# GOVERNMENT GAZETTE

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No. 12566

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1442.

29 Junie 1990

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 67 van 1990: Woekerwysigingswet, 1990.

No. 1442.

29 June 1990

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 67 of 1990: Usury Amendment Act, 1990.

## USURY AMENDMENT ACT, 1990

Act No. 67, 1990

## GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the Usury Act, 1968, so as to insert certain definitions and amend certain definitions; to make other provision as to the recovery of additional finance charges on default or deferment of payment; to legalize the recovery of certain additional finance charges before the commencement of this Act; to abolish certain exemptions of leasing transactions in respect of property the book value of which is nil; to further regulate the disclosure of certain information; to grant a power to delegate; to add a Schedule providing for the recovery of certain fees and premiums in respect of housing loans; and to empower the Registrar to levy penalties in certain circumstances; and to provide for matters connected therewith.

*(Afrikaans English text signed by the State President.)*  
*(Assented to 21 June 1990.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 73 of 1968, as amended by section 1 of Act 76 of 1970, section 1 of Act 62 of 1974, section 1 of Act 90 of 1980, section 1 of Act 42 of 1986, 5 section 1 of Act 62 of 1987 and section 1 of Act 100 of 1988

1. Section 1 of the Usury Act, 1968 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion of the following definition before the definition of “instrument of debt”:
- 10 “housing loan” means a money lending transaction—
- (a) where the moneylender is registered as a bank in terms of the Banks Act, 1965 (Act No. 23 of 1965), or as a mutual building society in terms of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), or as a building society in terms of the Building Societies Act, 1986 (Act No. 5 82 of 1986), or any other person or body approved by the Minister by notice in the *Gazette*;
- (b) concluded in terms of a written agreement between the borrower and the moneylender;
- (c) where the loan is secured wholly by a first mortgage bond, or a mortgage bond ranking *pari passu* with a first mortgage bond, over 15 immovable property; and
- (d) where such property is used or is intended to be used primarily for residential purposes, or where such property is owned by an ecclesiastical, charitable or educational institution of a public nature which is 20 prohibited by its constitution or any law from distributing any of its income to its members;” and

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(b) by the deletion of the word "or" after subparagraph (gg) of paragraph (a) (iii) of the definition of "principal debt" and the addition to the said paragraph of the following subparagraph:

5 "(hh) where the money loan referred to in subparagraph (aa) is a housing loan, the fees and premiums mentioned in paragraph 2 of the Schedule, except an administration fee, to the extent and on the conditions mentioned in the Schedule; or".

Substitution of section 4 of Act 73 of 1968, as substituted by section 6 of Act 90 of 1980 and section 5 of Act 42 of 1986

10 2. (1) The following section is hereby substituted for section 4 of the principal Act:

**"Limitation of sum recoverable on default or deferment of payment**

15 4. (1) If a borrower or credit receiver or lessee fails to pay any amount which is owing by him to a moneylender or creditor grantor or lessor in connection with a money lending transaction or a credit transaction or a leasing transaction, upon the date when such amount is payable, or if a borrower or credit receiver or lessee enters into an agreement with a moneylender or credit grantor or lessor to defer the payment of an amount which is owing by him as aforesaid to the moneylender or credit grantor or lessor, the moneylender or credit grantor or lessor shall thereupon be entitled to recover from the borrower or credit receiver or lessee an additional amount in respect of finance charges, which shall be calculated by reference to—

20 (a) the total amount which is payable but is unpaid;  
 25 (b) the **[period]** term during which the default continues or the **[period]** term for which payment is deferred as aforesaid, as the case may be; and

(c) the annual finance charge rate at which finance charges on the outstanding balance of the principal debt are, in terms of the instrument of debt, calculated during such **[period]** term.

30 (2) For the purposes of the calculation contemplated in subsection (1), the total amount referred to in subsection (1) (a) shall include additional amounts in respect of finance charges, if they are in terms of subsection (3) deemed to be unpaid.

35 (3) Additional amounts of finance charges calculated in accordance with the provisions of subsection (1) shall be deemed to be unpaid—

(a) in the case where a borrower or credit receiver or lessee is not required to effect regular payments, if the borrower or credit receiver or lessee fails to pay an additional amount of finance charges which is recoverable from him in terms of subsection (1), on a determined or determinable date specified in the instrument of debt, or, if no instrument of debt has been executed, on the date agreed upon by the parties or on a date determined by trade usage, as the case may be: Provided that such an agreement (excluding any trade usage) relating to a date shall, for the purposes of the Conventional Penalties Act, 1962 (Act No. 15 of 1962), be regarded as a penalty stipulation; or

40 (b) in the case where a borrower or credit receiver or lessee is required to effect regular payments, if the borrower or credit receiver or lessee fails to pay at the end of a period an additional amount of finance charges recoverable from him in terms of subsection (1)."

50 (2) Any amount recovered by a moneylender or credit grantor or lessor from a borrower or credit receiver or lessee, as the case may be, before the commencement of this Act and which could be recovered under section 4 of the principal Act as substituted by subsection (1), shall be deemed to have been recovered under section 55 4 so substituted.

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Amendment of section 5 of Act 73 of 1968, as substituted by section 8 of Act 90 of 1980 and amended by section 6 of Act 42 of 1986, section 4 of Act 62 of 1987 and section 3 of Act 91 of 1989

3. Section 5 of the principal Act is hereby amended by the addition of the following paragraph to subsection (1):

“(k) in the case of a housing loan, administration fees to the extent and on the conditions mentioned in the Schedule.”.

Amendment of section 6K of Act 73 of 1968, as inserted by section 10 of Act 90 of 1980 and amended by section 7 of Act 42 of 1986 and section 5 of Act 62 of 1987

4. Section 6K of the principal Act is hereby amended by the deletion of subsection (3A).

Amendment of section 10 of Act 73 of 1968, as substituted by section 13 of Act 90 of 1980 and amended by section 7 of Act 100 of 1988 and section 5 of Act 91 of 1989

5. Section 10 of the principal Act is hereby amended by the addition of the following paragraphs to subsection (2):

“(g) the outstanding balance of the principal debt; and  
(h) the total amount referred to in section 4 (1) (a):”.

Insertion of section 12 in Act 73 of 1968

6. The following section is hereby inserted in the principal Act after section 11A:

“Delegation and assignment of powers and duties

12. The Registrar may, subject to such conditions as he may determine, delegate or assign any power or duty conferred upon or assigned to him under this Act to any officer or employee in the public service, but such delegation or assignment shall not prevent the Registrar from exercising or performing the relevant power or duty himself.”.

Insertion of section 16A in Act 73 of 1968

7. The following section is hereby inserted in the principal Act after section 16:

“Regulations in respect of housing loan

16A. The Minister may, on the recommendation of the Registrar, by regulation amend any amount mentioned in the Schedule.”.

Insertion of section 17A in Act 73 of 1968

8. The following section is hereby inserted in the principal Act after section 17:

“Penalty for failure to furnish information to Registrar

17A. If any moneylender, credit grantor or lessor fails to furnish the Registrar with any information required of him in terms of section 14 within the period prescribed by or allowed in terms of that section, the Registrar may in his discretion, irrespective of any criminal action that may have been taken or may be taken against such moneylender or credit grantor or lessor under this Act, impose upon him such penalty as the Registrar may deem fit, but not exceeding R50 for every day during which the default continues, and if such moneylender or credit grantor or lessor fails to pay such penalty or any portion thereof forthwith the

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Registrar may by action in any competent court recover from him such penalty or such portion or waive such penalty or any portion thereof if he considers it appropriate to do so.”.

## Addition of Schedule to Act 73 of 1968

5 9. The principal Act is hereby amended by the addition of the following Schedule:

## “Schedule

## 1. In this Schedule—

‘administration fee’ means an amount payable by the borrower to the money-  
lender—

- 10 (a) where such amount is in terms of an agreement in writing between the moneylender and the borrower recoverable from the borrower;  
(b) as valuable consideration for the moneylender’s administering the borrower’s account; and  
15 (c) where the total amount payable per month does not exceed the amount mentioned in paragraph 3 (b) (i);

‘initiation fee’ means a single fee not greater than the amount mentioned in paragraph 3 (b) (ii) payable by the borrower to the moneylender—

- (a) in terms of an agreement in writing between the moneylender and the  
20 borrower;  
(b) as valuable consideration for services rendered in connection with the registration of the mortgage bond in question; and  
(c) at the conclusion of the money lending transaction in question;

‘loan guarantee policy’ means a guarantee policy as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), by virtue of which a moneylender  
25 is insured against any financial loss which could be suffered by him in connection with a housing loan secured by a mortgage bond over immovable property, where the loss is suffered by the moneylender pursuant to the moneylender’s being unable at a sale of such property—

- 30 (a) in execution, whether such sale is held at the instance of the moneylender or any other person; or  
(b) by public auction held by virtue of the insolvency of the borrower, to recover any amount owed to him by the borrower in connection with the housing loan;

‘loan guarantee premium’ means a premium actually paid or to be paid by a  
35 moneylender in respect of a loan guarantee policy to an insurer registered in terms of the Insurance Act, 1943, including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, where such amount is—

- 40 (a) in terms of an agreement in writing between the moneylender and the borrower recoverable from the borrower;  
(b) payable to the insurer for insurance cover not exceeding five years at a time;  
(c) actually paid or to be paid by the moneylender to the insurer upon or  
45 within 60 days after the date on which—  
(i) in the case of the initial premium, the relevant mortgage bond is registered in the Deeds Registry; or  
(ii) in the case of any subsequent premium, a term referred to in paragraph (b) has lapsed; and

‘security variation fee’ means a fee payable by the borrower to a moneylender—

- 50 (a) in terms of an agreement in writing between the moneylender and the borrower;  
(b) as valuable consideration for the moneylender’s consenting to any request by the borrower in respect of—  
55 (i) a variation of the terms of the mortgage bond in question;  
(ii) a delegation of the obligations of the borrower in terms of the moneylending transaction in question; or  
(iii) a variation or substitution of a deed of suretyship or other collateral security in connection with the money lending transaction in question; and

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- (c) where the amount in respect of each such request does not exceed the amount mentioned in paragraph 3 (b) (iii).
2. Subject to the conditions mentioned in paragraph 3, the following amounts may in respect of a housing loan be recovered, by obtaining judgment or otherwise, from a borrower:
- 5 (a) An initiation fee;
- (b) administration fees;
- (c) security variation fees; and
- (d) loan guarantee premiums.
- 10 3. The provisions of paragraph 2 shall apply on condition that—
- (a) the amounts contemplated in paragraph 2 be set out separately and distinctly in every instrument of debt in accordance with the manner contemplated in section 3 (1);
- (b) the amount of—
- 15 (i) administration fees shall not exceed R5,00 per month;
- (ii) an initiation fee shall not exceed R175,00;
- (iii) a security variation fee shall not exceed R100,00 per request; and
- (c) a moneylender in connection with a housing loan shall not stipulate for, demand or receive finance charges at an annual finance charge rate greater than three percentage points below the annual finance charge rate concerned
- 20 determined by the Registrar in respect of money lending transactions generally under section 2 (1) of this Act.”.

**Short title**

10. This Act shall be called the Usury Amendment Act, 1990.