

PRESCRIPTION

Prescription in South African law is regulated by the Prescription Act 68 of 1969 and it refers to the passing of time from the date that a claim arises to the present date. One of the very first things that your attorney considers in your matter is “when did the cause of action arise?”. The date when a claim arises is crucial as it dictates whether the claim has prescribed or not.

If the passing of time has been more than 3 years for any claim arising out of a contract or delict, it has the impact of extinguishing the claim, which means that it has lapsed or expired and is no longer valid and enforceable.

5 Informative Facts

1. Prescription only runs when a debt is due

A debt is considered due when the creditor becomes aware of the debt, aware of the identity of the debtor or could have ascertained the identity of the debtor by exercising reasonable care.

2. Completion of prescription can be delayed in terms of status

Prescription based on status can be delayed in the following instances:

- The creditor is a minor (under the age of 18 years);
- The creditor has been declared insane;
- The creditor and debtor are partners and the debt is a debt which arose out of the partnership relationship;
- The creditor is a juristic person and the debtor is a member of the governing body of such juristic person;
- The creditor is a person under curatorship; and
- The creditor is prevented by superior force including any law or any order of court.

If, the prescription period of three years will be completed before or on, or within one year after, the day on which the relevant impediment has ceased to exist, then the period of prescription shall not be completed before a year has elapsed after the day. The creditor will thus have one year after the impediment has ceased to institute a claim if the claim would have prescribed in less than a year after the impediment has ceased.

3. Completion of prescription can be delayed in terms of circumstance

Prescription based on circumstances can be delayed in the following instances:

- The debtor is outside the Republic;
- The debt is the object of a dispute subjected to arbitration;
- The debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation or against an applicant under the Agricultural Credit Act, 1966; and
- The creditor or the debtor is deceased and an executor of the estate in question has not yet been appointed.

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4. Prescription can be interrupted

The running of prescription is interrupted by successful service of a process, for instance a summons on the debtor or an express or tacit acknowledgement of liability by the debtor, for instance payment of an amount or the signing of an acknowledgement of debt.

5. Prescription that was interrupted can lapse

If the creditor does not bring the matter to a successful final judgment; the matter is abandoned; or a judgment is set aside by the court, then the interruption of prescription shall lapse and be deemed not to have interrupted prescription.