

**THE IMPACT OF THE *NATIONAL CREDIT ACT 34 OF 2005* ON THE  
ENFORCEMENT OF A MORTGAGE BOND: *SEBOLA V STANDARD BANK OF  
SOUTH AFRICA LTD 2012 5 SA 142 (CC)***

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**SUMMARY**

When a mortgagor is in default and the mortgagee wants to enforce the debt the *National Credit Act* (hereafter the NCA) may apply. A credit agreement may be enforced in court by a credit provider against a defaulting debtor only once the requirements of sections 129 and 130 of the NCA have been adhered to. If a mortgagor (who is a protected consumer in terms of the NCA) is in default, the mortgagee must deliver a section 129(1) notice to the consumer, thereby drawing the default to the attention of the consumer. For a number of years there has been uncertainty about the interpretation of section 129(1) and how it affects the execution procedure in the case of a mortgage bond over immovable property. The recent Constitutional Court judgment of *Sebola v Standard Bank* 2012 5 SA 142 (CC) overturns, to my mind, the more reasonable approach to such notices in *Rossouw v Firstrand Bank Ltd* (2010 6 SA 439 (SCA)). It was held in *Sebola* that before instituting action against a defaulting consumer, a credit provider must provide proof to the court that a section 129(1) notice of default (i) has been despatched to the consumer's chosen address and (ii) that the notice reached the appropriate post office for delivery to the consumer, thereby coming to the attention of the consumer. In practical terms the credit provider must obtain a post-dispatch "track and trace" print-out from the website of the South African Post Office. There is now a much heavier burden on a bank to ensure that proper proof is provided that the notice was sent and delivered to the correct address. Consequently it places another hurdle in the path of a mortgagee who wishes to foreclose.

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**KEYWORDS:** Consumer in default; Debt enforcement; Delivery; Notice of default; Notice requirements; Track and trace print-out