BAD DEBT WRITE OFF POLICY

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1. DEFINITIONS

1.1 For this policy the following definitions are applicable:

“Accounting Officer” means the Municipal Manager appointed;

“Act” means the Prescription Act, 1969 (Act No. 68 of 1969);

“Council” means the council of the Swellendam Municipality;

“Debt” means an amount owing to the Swellendam Municipality;

“Debtor” means a person who owes the Municipality money for services rendered;

“First time” means from the 2013 / 2014 financial year and onwards;

‘’Municipality” means the Swellendam Municipality;

“POPIA” means Protection of Personal Information Act Implementation Plan.

2. PURPOSE OF POLICY

2.1 Section 96 of the Local Government: Municipal Systems Act, 32 0f 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 It is recognized, however, that circumstances may arise which make the recovery of certain debts impossible, impractical, or financially unfeasible and that such debts may have to be written off.

2.3 The purpose of this policy is to provide a framework for:

(a) limiting the circumstances contemplated in 2.2;

(b) determining, when such circumstances have arisen, whether to write off any debts; and

(c) the procedures for writing off such debts.

3. 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:

3.1 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.

3.2 ESTATE NOTICES MONITORING

Estate notices in the Government Gazette must be checked regularly (on a two-monthly basis) to enable the municipality to institute claims against insolvent and deceased estates of persons owing money to the Municipality.

3.3 TRACING OF DEBTORS

The tracing of debtors will be subject to POPIA if the debtor's address is not known. All reasonable steps must be taken to trace the debtor. The tracing of debtors will be done subject to a reasonable effort to trace the debtor which 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 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 Accounting Officer 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.

3.4 PREVENTION OF PRESCRIPTION OF DEBT

Prevention

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

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: -

(a) By the service on the debtor of any process whereby the creditor claims payment of the debt (Section 15 of the act). “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;

(b) the debtor acknowledges liability, whether expressly or tacitly (Section 14); payment of a portion of the debt can constitute a tacit acknowledgment of liability.

The completion of the prescription may also be delayed in certain circumstances (Section 13 of the act).

In terms of Section 11 of the Prescription Act, 1969 (Act 68 of 1969), the periods of prescription of debts are as follows:

(a) Thirty years in respect of -
(b) any debt secured by a mortgage bond;
(c) any judgment debt;
(d) any debt in respect of any taxation imposed or levied by or under any law; and

(e) 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;

(f) 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 (a) above;

(g) Six years in respect of a debt arising from a bill of exchange or other negotiable instrument or a notaries contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b) above;

(h) Three years in respect of all other debts, save where an Act of Parliament provides otherwise.

3.5 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.

4. WRITE OFF DEBTS OWING TO THE MUNICIPALITY

4.1 GENERAL CONDITIONS

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

(a) When debts have prescribed, as contemplated in paragraph 3.4 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 Accounting Officer 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.

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.

4.2 SPECIFIC CONDITIONS

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

(a) Debt associated with ownership of property (Rates accounts)

Debt raised by Council for the services rendered to registered owners of the property/land, i.e., Assessment rates, refuse removal, Sewerage, Availability fees for Electricity and Water, will not be written-off except when the property is disposed of in the liquidation process and the proceeds do not cover the outstanding debt, the balance can then be written-off as irrecoverable.

(b) Debt associated with ownership of property in the absence of a registered estate

On the death of the owner, where no last will or testament exist, no estate has been registered and/or findings of an investigation indicate that the estate is insolvent, all outstanding rates and service charges on the property, up to the date of the death of the owner, should be written off. The write-off in instances like this is subject to the following conditions being complied with:

(i) a certified copy of the death certificate of the owner be obtained;
(ii) a sworn affidavit regarding the insolvency is obtained.

Should the new owner not qualify to be registered as an Indigent, in terms of the Council's Indigent Policy, the outstanding rates and service charges for the period from the death of the previous owner till the date of the new service application remain payable by the new owner and cannot be written off.

Should the new owner qualify to be registered as an Indigent, in terms of the Council's Indigent Policy, the outstanding rates and service charges for the period from the death of the previous owner till the date of the new service application can be written off.

(c) Metered Services Debt

Debt owed to Council due to consumed metered services, i.e. Water and Electricity consumption will be regarded as irrecoverable in the following instances:

(i) If the debt has prescribed;
(ii) In circumstances contemplated in 4.1 (a) to (f) above.

(d) Sundry Debt

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

(i) If the debt has prescribed;
(ii) In circumstances contemplated in 4.1 (a) to (f) above.

(e) Indigent Household Debt

Debt owed to Council by an Indigent Household, when registering for the first time in terms of the official Indigent Policy, shall be written off as a once-off concession, subject to a thorough audit investigation and certification to the effect that the household is a bona fide indigent as stipulated in the Indigent Policy.

Debt owed by the deceased estate of the breadwinner of a registered indigent household shall be written off up to the date of the death of the owner.

The write-off in instances like this is subject to the following conditions being complied with:

(i) a certified copy of the death certificate of the owner be obtained;
(ii) a sworn affidavit regarding the indigence is obtained.

Should the new owner not qualify to be registered as an Indigent, in terms of the Council's Indigent Policy, the outstanding rates and service charges for the period from the death of the previous owner till the date of the new service application remain payable by the new owner and cannot be written off.

Should the new owner qualify to be registered as an Indigent, in terms of the Council's Indigent Policy, the outstanding rates and service charges for the period from the death of the previous owner till the date of the new service application can be written off in instances where the next of kin/new owner present proof that the property transfer fees have been paid and the service contract is signed in his/her name.

(f) Special cases

The allocation of RDP houses by the Directorate Housing and Development has in some instances resulted in debt raised for the property in the name of the person allocated the house, but who never took occupation due to one of the following reasons:

(i) Occupation took up by illegal occupants;
(ii) Failure to inform the rightful owner about the allocation;
(iii) Alteration of allocation not effected in Council records.

In the above-mentioned cases, there will never be a need to implement the Credit Control and Debt Collection Policy; therefore, a write-off should take place immediately when the directorate involved in the allocation of property issues a memorandum that confirms the above. Furthermore, the write-off should be affected and later reported to Council for ratification purposes.

(g) Nula Bona and non-registered estates

On the death of the owner, where no estate has been registered the outstanding rates and service charges on the property, will be written off on a Rand for Rand basis to a maximun of 50%. The write-off in instances like this is subject to the following conditions being complied with:

(i) A person/occupant/immediate family member must be identified who will be responsible for the account whilst the estate is finalized.
(ii) On the death of the owner, the person/occupant/immediate family member responsible for the account may registered for indigent support subject to the requirements of the indigent policy.
(iii) The estate must be registered in the court by the responsible person and council may assist with councils legal advisor's.
(iv) The person or occupant or immediate family member responsible for the account and estate must settle the remaining amount or acceptable arrangements must be made.
(v) Should the responsible person fail to adhere to the arrangements the debt will be reversed into the account.
(vi) The 50% write off will only occur if the conditions are met.
(vii) False information and non-compliance will lead to full recovery of the outstanding amount and total disconnection of services.

4.3 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 Accounting Officer must present to the Council a report listing the following:

(a) For noting – details of the debts that were 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, it if is satisfied with the reasons provided.

5 DELEGATED AUTHORITY

The Chief Finance Officer is given delegated authority to write-off debt under the following circumstances:

(a) the debt amounts to three thousand rands (R 3 000.00) or less; and

(b) all reasonable steps have been taken to recover the debt as stipulated under paragraph 3 above; and

(c) the debt is considered to be irrecoverable in terms of any one of the conditions stipulated in paragraph 4 above;

(d) to write off interest where applicable arrangements have been made.

In such cases, the reason for each write-off be listed in the report against each item, and audit trails for each write-off must be kept for control purposes.

The Municipal Manager is given authority to write-off debt on a clearance certificate if the debt cannot be recovered through the issuing of the certificate.

6 CREDIT BUREAU LISTING

Debtors whose debts are written off due to any of the following reasons must be listed with the Credit Bureaus:
(a) Untraceable;
(b) Prescription;
(c) Insolvent;
(d) Emigration.

7 BAD DEBTS RECOVERED

The approval of the 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 the debt is recovered it will be recorded in the financial records of Council as recovered.

8 SHORT TITLE

This policy is called the Bad Debt Write-Off Policy of the Swellendam Municipality.