



LEGAL ASSISTANCE CENTRE
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Pro Bono

INFORMATION ABOUT NAMIBIA'S LAW ON ...

PRESCRIPTION

ProBono is a monthly column by the Legal Assistance Centre designed to inform the public about Namibian law on various topics. You can request information on a specific legal topic by sending an SMS to 081-600-0098. Note that we will not be able to give advice on specific cases in this column, only general legal information.

Have you ever been told that you cannot sue someone for damages because your claim has prescribed? Did you know that if you can become the legitimate owner of something in your possession if no one else claims it after a long period of time has passed?

Prescription refers to the time limit after for bringing a legal action. Today we want to explain how prescription works and which laws govern it in Namibia.

Prescription in Namibia is still generally governed by a 1969 law called the Prescription Act. This law sets time limits for legal actions in order to provide legal certainty. The victim of a wrongful act must take steps to enforce his or her rights within a reasonable time period to give the alleged culprit some form of legal certainty about his or her obligations. A time period for bringing legal actions also ensures that the case goes forward while the evidence is still fresh.

In terms of the law on prescription, the victim of a wrongful act who does *not* institute a legal claim within the specified time period is presumed to have abandoned the claim.

So what is this specified time period? According to the Act, it could be 30 years, 15 years, 6 years or even 3 years – depending on the type of claim. It is not possible in this small column to cover every situation, so we will discuss the most common ones: a debt (when someone owes you money) or a damages claim (for example, when someone caused your house wall to fall over). In these instances the victim of the harm has three years from the date when the debt became due or the date when the damage occurred to institute a claim against the culprit. (Note that the longer 30-year period applies to debts owed to banks in terms of mortgage bonds, to taxes owed to the government and to money owed to someone in terms of a court ruling.)

So when does this prescription period begin to run? It starts as soon as the debt is due, or from the time that the victim becomes aware of the situation.

However, prescription can also be delayed or interrupted. The most common form of delay is when the victim is a minor. In such a case, the prescription period begins to run only when the victim reaches the age of majority, which is currently age 21. The victim will have 3 years from his or her 21st birthday in which to institute the claim.

Other circumstances which can justify delays in the running of the time period include when the culprit is outside Namibia, when the victim and the culprit are married to each other or when the victim or the culprit is deceased and no executor has been appointed to administer the deceased's estate. Where the delay stems from the relationship between the victim and the culprit, the prescription period will generally start running as soon as the relationship ends, but the victim will usually have only one year after that point within which to institute a legal claim.

Prescription can also be interrupted. How? As one example, suppose that someone who allegedly owes money institutes legal proceedings challenging the existence of the debt. The prescription period would be interrupted until the court ruled that the money was indeed owed. The running of time period would continue, counting from the date the debt initially arose, once the challenge to the debt was resolved.

The rules in the Prescription Act do not apply where they are inconsistent with another Act of Parliament. In Namibia we currently have three pieces of legislation which set different prescription periods for certain circumstances: the Police Act 19 of 1990, the Correctional Service Act 9 of 2012 and the Limitation of Legal Proceedings Act 94 of 1970.

According to the Police Act, if you have a claim against the police, you have only 12 months in which to institute legal action. You are also required to give the government notice of your intention to bring a lawsuit one month in advance - meaning that you would have only 11 months after the event to notify the government that you are bringing a lawsuit.

According to the Correctional Service Act, a person who wants to sue the government for something relating to that law (such as something which happens in a correctional facility) is generally required to do so within six months of the event, although this period can be extended to a maximum of one year if the victim remains in custody after the event takes place. As in the case of actions against relating to the police, notice of the intention to bring a lawsuit in respect of must be given to the police one month in advance.

The Limitations of Legal Proceedings Act deals with legal actions against local authorities. The time limit for giving notice of the intention to sue is only 90 days from the date of the event which gives rise to the lawsuit, and the lawsuit must be instituted within 24 months from the date of the event. No court case is possible if the required notice was not given in time, unless the relevant local authority agrees to waive the notice requirement.

Many people try and negotiate a settlement between themselves in the case of a dispute, seeking legal assistance only if their attempt to resolve the issue privately fails. It may be that the claim has prescribed by this time, meaning that they will be left with no options for redress. So it is important to keep prescription in mind even if you want to settle matters out of court. A delay can be very costly.