

The Credit Contracts and Consumer Finance Act

Disclosure overview



This fact sheet provides an overview of what disclosure is and why it is important. It explains what disclosure a lender must give a borrower and when.

Any lender who enters into a consumer credit contract, consumer lease or buy-back transaction must give the borrower key information about the terms of the contract. This is known as disclosure.

Disclosure is an important part of the Credit Contracts and Consumer Finance Act (CCCF Act). It helps borrowers understand what the transaction will cost them and what their obligations are. Disclosure lets borrowers compare competing credit offers, gives them a written record of the key terms of their contract and helps them keep track of their debt.

What information does a lender have to provide?

The CCCF Act sets out the key information a lender must give a borrower under a consumer credit contract, consumer lease or buy-back transaction. This includes information such as what payments are required, how any interest is calculated and any fees or charges that apply.

The disclosure that a lender needs to give a borrower will depend on the specific contract, for example, whether it is a mortgage, a revolving credit facility, a hire purchase agreement or a lease. The disclosure will also depend on the stage of the contract, for example, at the start of the contract or midway through it, and whether the information is available at that time.

The CCCF Act sets out what a lender must disclose under a consumer credit contract, consumer lease or buy-back transaction. This is detailed in the CCCF Act's Schedules, which are at the back of the Act. A lender must give the borrower as much of the information set out in the relevant Schedule as applies to their individual contract.

🔗 You can read more about disclosure under a consumer credit contract, consumer lease or buy-back transaction in our other CCCF Act fact sheets, available at www.comcom.govt.nz. You can also read the *Schedules of the CCCF Act* at www.legislation.govt.nz

Key points about disclosure under the CCCF Act

- A lender must provide certain information to borrowers. This is called disclosure.
- A lender must provide disclosure to whoever is legally responsible for making loan payments, including anyone who has guaranteed the debt.
- Disclosure must be clear, concise and not misleading.
- A lender must provide disclosure in writing.
- A lender can give disclosure in a number of ways, including by email, post, in person or by public notice.
- What a lender must disclose and when can vary depending on the transaction.
- A lender may need to make extra disclosure if the contract is changed, if someone guarantees the loan or if the borrower asks for more information.
- If certain disclosure is not made properly, a lender cannot enforce the contract, may have to pay damages or other compensation to borrowers, and may face criminal conviction.



How does a lender provide disclosure?

A lender must provide disclosure in writing, either in a single document or a series of related documents. The information must be clear and concise so that a reasonable person will see it. The overall effect must not be misleading or deceptive. For example, a lender shouldn't use fine print to disclose additional charges or costs that add to the total cost of the loan.

EXAMPLE

A finance company that provided loans through car dealerships failed to adequately disclose the terms and conditions of its loans. This was because the company had photocopied some of its disclosure statements so much that they were illegible. The company did not meet the disclosure requirements under the CCCF Act and was convicted, fined and ordered to pay damages to borrowers.

The company was also convicted of breaching the Fair Trading Act for telling a borrower the contracts were enforceable when the fact the company hadn't adequately disclosed made the contracts unenforceable.

A lender must provide disclosure by either:

- giving a disclosure statement to the borrower in person
 - posting a disclosure statement to the borrower's last known address
- or*
- emailing or faxing a disclosure statement to the borrower (as long as the borrower has agreed to this and the information remains readily accessible so that it can be referred to again at a later date).

The lender must also provide disclosure to anyone who has agreed to pay back the debt if the borrower doesn't (the guarantor).

🔗 You can read more in our fact sheet *Guarantee disclosure under a consumer credit contract* at www.comcom.govt.nz

If a lender is increasing the interest rate or fees or charges a borrower may have to pay under a contract (and this is allowed under the contract), then instead of providing disclosure directly, a lender may disclose by:

- displaying information about the changes prominently at their place of business
- advertising the changes at least once in the daily newspaper in all the following areas in which they do business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill

and

- posting information about the changes on their website (if they have one).

A lender can't use this method of disclosure, however, if the change in any way affects either:

- the repayment amount the frequency or time for payment
- or*
- how any payment, fee or charge is calculated under the contract.

A lender shouldn't use fine print to disclose additional charges or costs that add to the total cost of the loan.

Model disclosure statements

Schedule 2 of the CCCF Regulations includes model disclosure statements that lenders can use to provide disclosure at the start of a contract. You can view these at www.legislation.govt.nz



When does a lender have to provide disclosure?

Lenders must provide disclosure at various stages of a consumer credit contract, consumer lease or buy-back transaction. There are five different types of disclosure under the CCCF Act.

- **Initial disclosure** must be provided when the contract starts.
- **Continuing disclosure** must be provided during the term of the contract.
- **Variation disclosure** must be provided when the contract is changed.
- **Request disclosure** must be provided when the borrower asks for it.
- **Guarantee disclosure** must be provided to anyone guaranteeing the debt.

Need to know more about disclosure?

We have a series of fact sheets on disclosure available at www.comcom.govt.nz, including:

- Initial disclosure under a consumer credit contract
- Continuing disclosure under a consumer credit contract
- Variation disclosure under a consumer credit contract
- Guarantee disclosure under a consumer credit contract
- Request disclosure under a consumer credit contract
- Consumer leases
- Buy-back transactions

The table below shows what types of disclosure a lender must provide depending on the transaction.

	Initial	Continuing	Variation	Request	Guarantee
A lender must give disclosure under a...	...when the contract starts	...during the term of the contract	...when the contract is changed	...when the borrower asks for disclosure	...to guarantors
...consumer credit contract...	✓	✓	✓	✓	✓
...consumer lease...	✓		✓	✓	
...buy-back transaction...	✓		✓	✓	



Exactly what a lender must disclose to a borrower and when they must do so will depend on the disclosure type and the specific contract.

Where the lender has not given the required initial disclosure, a borrower can cancel the contract up until the time correct disclosure is made.

🔗 You can read more in our quick guide *Cancelling a contract: when and how* at www.comcom.govt.nz

EXAMPLE

Moana gets a \$5,000 loan from Mainstream Lenders. Mainstream gives Moana some information about the loan, but doesn't include information about the interest rate and credit fees. Moana shops around and finds out that she could get a cheaper loan at Lucky Loans. Moana pays back what she owes and cancels her Mainstream loan to take out the Lucky loan instead. Moana can do this because Mainstream Lenders still haven't provided Moana with disclosure about the interest rate and fees.

When working out when a borrower can cancel or when a lender can enforce a contract, disclosure is treated as having been made either:

- four working days after it's been sent by post
- or
- two working days after it's been sent by fax or email.

Otherwise, disclosure is treated as being made on the day the lender sends it to the borrower.

Lenders and borrowers

The CCCF Act uses a number of different terms to describe lenders and borrowers, depending on the transaction:

- consumer credit contracts – creditors and debtors
- consumer leases – lessors and lessees
- buy-back transactions – transferees and occupiers.

In these fact sheets we use the terms **lender** and **borrower** to talk generally about credit transactions, but use the specific terms for consumer leases and buy-back transactions where it makes things clearer.

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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Contact us with information about possible breaches of the laws we enforce:

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