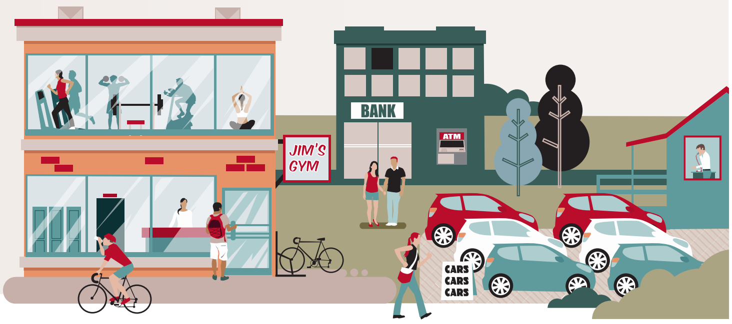
FACT SHEET

COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

The Credit Contracts and Consumer Finance Act

Initial disclosure under a consumer credit contract



This fact sheet explains what disclosure lenders must provide at the start of a consumer credit contract, and how they must provide it.

Any lender entering into a consumer credit contract with a borrower must give them key information about the terms of the contract at the start of the contract. This is known as initial disclosure.

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

When does a lender have to provide initial disclosure?

A lender must provide initial disclosure before the contract is made or within 5 working days of the contract being made.

What information does a lender have to provide for initial disclosure?

A lender must give the borrower (and any guarantor) a written disclosure statement that includes any of the information in the table overleaf that applies to the contract.

Disclosure under a consumer credit contract

A lender must provide disclosure:

- at the start of the contract (**initial** disclosure)
- to the borrower and to anyone who is guaranteeing the borrower's obligations under a contract (**guarantee** disclosure).

A lender may also have to provide disclosure to the borrower and any guarantor:

- during the term of the contract (**continuing** disclosure)
- any time the contract is altered (**variation** disclosure)
- if the borrower (or guarantor) asks for it (**request** disclosure).

You can read more about the different types of disclosure at www.comcom.govt.nz

Key information	Additional details
Lender's full name and address	
Initial unpaid balance The amount the borrower owes on the day the contract takes effect.	The lender must also set out: → any money already given to the borrower, or the cash price of any goods or services the borrower has already received → any charges, including optional services such as insurance or extended warranties → any payments the borrower has already made, including the agreed price of any trade-ins or deposits.
Any subsequent advances Any money or goods and services the lender will be giving the borrower or a third party after initial disclosure.	The lender must describe each advance they will make, including the amount and timing. For a revolving credit contract, where a borrower can draw down money when they choose, subsequent advances will not be known and do not need to be disclosed.
Total advances The sum of all advances the lender will make over the course of the contract.	
Credit limit of the contract The maximum amount the lender is prepared to loan the borrower over the course of the contract.	
Annual interest rate The percentage of the loan balance the lender is charging each year for the use of the money.	The lender must set out the annual interest rate or rates that apply, as a percentage. If there is more than one rate, the lender must describe how and when each rate will apply. If the rate is fixed for the term of the contract or any part of its term, the lender must set out the period the rate is fixed for. If the annual interest rate is calculated according to a base rate, the lender must describe the base rate including: → where and when it is published, or if its not published, how the borrower can find it → the margin (if any) that will be applied to the base rate to work out the annual interest rate → the current annual interest rate.
Method of charging interest How the lender calculates interest charges.	The lender must set out how interest is calculated and how often interest will be charged.
Total interest charges The sum of all interest charges the borrower must pay over the course of the contract.	The lender only needs to provide this if the contract is to be repaid within 7 years.
Interest-free period A period where the lender is not charging the borrower interest on the amount loaned.	The lender must give the length of any interest-free period and state when they will start charging interest.

Key information	Additional details
Credit fees and charges Any charges the borrower must pay under or in connection with the contract.	The lender must: → describe any credit fees or charges that apply to the contract, unless they have already been included in the initial unpaid balance → set out when the borrower must pay the fee or charge, if known → set out either the amount of the fee or charge or how the lender will calculate it.
Payments required What payments the borrower must make under the contract.	The lender must set out: → the amount of each payment or how the lender will calculate each payment → when the first payment is due → how often the borrower must make payments → how many payments the borrower must make, if known → the total amount of all payments over the course of the contract, if known (unless it will take more than 7 years for the borrower to pay if off).
Any full prepayment charge A charge to cover a reasonable estimate of the lender's loss and/or any costs to the lender if the borrower repays their debt early.	If the contract allows a full prepayment charge, the lender must describe how they will calculate it. The lender should state whether they will use the "safe harbour" method in the Credit Contracts and Consumer Finance Act (CCCF Act).
Security interest The right of the lender to take or repossess all or part of any goods or property offered by the borrower if they breach their contract.	The lender must describe any security that has been or may be taken in connection with the contract (such as the amount of a mortgage, goods purchased under the contract or other personal property) and the extent of that interest.
Default interest charges and fees Any fee or higher rate of interest a borrower must pay if they breach their contract.	The lender must describe any default interest charge or default fee that a borrower may have to pay, and how and when these may apply.
Continuing disclosure statements Key information about a borrower's account that a lender must provide regularly during the contract.	The lender must set out how often they will provide continuing disclosure statements to the borrower.
Consent to electronic communications Confirmation that a borrower can contact a lender by email, fax or text.	This only needs to be included if the lender is happy to be contacted by the borrower in this way.
Statement of right to cancel A statement about the borrower's right under the CCCF Act to cancel the contract.	The lender must use the exact wording provided under Schedule 1 of the CCCF Act (unless the contract is a revolving credit contract).

EXAMPLE

A finance company failed to tell borrowers about default fees that they would be charged if they missed payments. This meant it had not provided complete initial disclosure.

The company was prosecuted and fined over $50,000. It agreed to revise all its credit contracts to fully disclose its default fees and refunded some borrowers.

How does a lender provide initial disclosure?

A lender must provide initial disclosure in writing, either in a single document or in 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.

EXAMPLES

A pawnbroker misrepresented the interest rate it charged on payday loans and pawnbroking contracts as 200% when in fact it charged at a rate of 240%. It also failed to meet disclosure standards and incorrectly calculated interest when borrowers repaid their loans before the due date. In a settlement with the Commerce Commission, the pawnbroker agreed to refund interest to affected borrowers and change its loan documents and practices.

A company that provided loans for beds it sold didn't tell borrowers how to cancel their loans. This meant the company breached the disclosure requirements under the Credit Contracts and Consumer Finance Act. The company also gave borrowers incorrect information about their cancellation rights under the Door to Door Sales Act, which meant it had also breached the Fair Trading Act. The company was prosecuted and fined over $69,000.

A lender must provide initial disclosure by either:

- giving a disclosure statement to the borrower (and any guarantor) in person
- posting a disclosure statement to the borrower's (and guarantor's) last known address

  or
- emailing or faxing a disclosure statement to the borrower (and guarantor), as long as they have agreed to this.

Need to know more about disclosure?

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

- Disclosure
- Continuing disclosure under a consumer credit contract
- Guarantee disclosure under a consumer credit contract
- Request disclosure under a consumer credit contract
- Variation disclosure under a consumer credit contract

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:
Phone: 0800 943 600 **Write**: Contact Centre, PO Box 2351, Wellington 6140 **Email**: contact@comcom.govt.nz

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