FACT SHEET

The Credit Contracts and Consumer Finance Act

Guarantee disclosure under a consumer credit contract

COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

This fact sheet explains what disclosure lenders must give to someone guaranteeing a consumer credit contract, and when and how they must provide it.

Sometimes a lender will require a guarantee that a debt will be paid back by someone else if the borrower stops paying for some reason. A guarantor is someone who agrees to do this. Under a consumer credit contract, the lender must also give the guarantor key information about the terms of the contract. This is known as guarantee disclosure.

When does a lender have to provide guarantee disclosure?

A lender must provide guarantee disclosure to the guarantor within 15 working days of the guarantee being given.

A lender may have to make further disclosure to the guarantor during the term of the contract in the following situations:

- The lender and the borrower enter into another consumer credit contract to which the guarantee applies. In this case, the guarantor must be given the same initial disclosure as the borrower.
- The contract is varied in a way that increases the borrower's obligations or gives the borrower less time to make any payment due under the contract.
- The guarantor asks for it (this is known as request disclosure). There are some exceptions to when a lender has to provide request disclosure.

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

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

When a guarantee is given, the lender must provide the guarantor with:

- the same initial disclosure given to the borrower

  and
- a copy of all the terms of the guarantee.

If the contract is varied, the lender must give the guarantor full details about any changes made.

If the guarantor asks the lender for information about the contract, and the guarantor is entitled to this information under the Credit Contracts and Consumer Finance Act (CCCF Act), the lender must provide it.

How does a lender provide guarantee disclosure?

A lender must make guarantee 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.

A lender must provide guarantee disclosure by either:

- giving a disclosure statement to the guarantor in person
- posting a disclosure statement to the guarantor's last known address

  or

- emailing or faxing a disclosure statement to the guarantor (as long as the guarantor has agreed to this).

When a lender increases the interest rate, fees or charges a borrower may have to pay under a contract, and this is allowed under the contract, then instead of disclosing in one of the ways set out above, the lender can disclose by:

- displaying information about the changes prominently at their place of business
- advertising the changes at least once 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 cannot use this method of disclosure, however, if the change in any way affects the repayment amount, frequency, time for payment or how any payment is calculated under the contract.

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
- Request 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.

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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