

NOVEMBER 2021

During the loan



Contents



1.	What can you expect from your lender?	2
2.	Can your lender make changes to your loan after you sign up?	4
	Changes that you agree to	4
	Changes that the lender makes	5
	Transferring your loan to another lender	6
3.	Struggling to pay back your loan?	7
4.	Can you switch to another lender?	11
5.	Repaying your loan early	11
6.	Where to go for further advice and information	11
	Want to know more?	12

This guide is the second of a series of three which explain what you need to know if you are borrowing money. These guides give you practical guidance about your rights and what you need to be aware of:

- before signing up to a loan
- during your loan, and
- if you have problems with your loan.

The Credit Contracts and Consumer Finance Act 2003 (**CCCF Act**) is a law that helps protect you when you are borrowing money for personal or domestic reasons. The CCCF Act sets out rules that your lender must follow when lending you money. These rules mean:

- your lender must act carefully and responsibly at all times, and treat you reasonably and with respect
- you are entitled to receive clear, concise and accurate information about your loan at regular intervals
- your lender must help you to make informed decisions about your loan, including when any changes are made
- if your lender makes changes to your loan or transfers it to another lender, your lender must tell you about these changes within certain timeframes.

1. What can you expect from your lender?

You can expect your lender to meet a set of “**lender responsibilities**” to you throughout your loan. This means that your lender must act carefully and responsibly at all times, and treat you reasonably and with respect. During a loan, the most important lender responsibilities are that the lender must:

- treat you **reasonably** and with **respect** in all their dealings with you
- ensure that any information they give you during the course of your loan is **clear, concise** and **accurate**
- help you to make informed decisions about your loan, including when any changes are made
- ensure the loan agreement is **not oppressive** and that they do not treat you oppressively.

You can also expect your lender to:

- provide regular information to you about your loan, such as how much you owe and how much you have paid off
- provide information about any changes made to your loan
- make sure that they provide you with information in a way that you can understand
- behave fairly and reasonably if things go wrong (for more, see our third guide in this series: *Problems with your loan* at www.comcom.govt.nz).

If your lender has not done any of these things, there may be some consequences for your loan. For example, if your lender has not told you about changes to your contract, they might not be able to charge you interest and fees on your loan until they have done so. Talk to a budget adviser or contact a Community Law Centre or Community Advice Centre to find out what your rights are.

Regular information about your loan

You should get a regular statement about your loan from your lender - at least once every six months. If you have a credit card or an arranged overdraft with your bank, then you should get a statement at least once every 45 days. In order to get this information you do need to make sure that the lender has your current contact details.

The purpose of your statement is to give you up-to-date information about what you still owe, the interest you are being charged and what payments you have made. Check it to see if your payments are showing up correctly and that you have not been charged any unexpected fees or other costs.

The statement should be for a specified period and should include clear information about:

- your opening and closing balances
- each payment you have made
- any amounts you have borrowed from the lender and added to your loan
- any interest and fees charged by the lender
- the amount and timing of your next payment
- the annual interest rate.

If it is a credit card statement, it should also include a statement about the minimum repayment required. There are some situations where your lender does not have to provide these statements to you, such as when you have agreed to access your statements online. If you have done this, then you need to remember to check them on a regular basis to make sure you receive the information provided by your lender.

If it has been more than 6 months since you had a loan statement, or if you have received a loan statement but it does not include this information, you may be entitled to receive the amount you paid in fees and interest during this period or statutory damages (that is a minimum payment to you of \$200). You should talk to a budget adviser, or contact a Community Law Centre or Community Advice Centre to see what your rights are. You or your adviser can also complain to the Commerce Commission if you think your lender has failed to give you correct and full disclosure of your loan payments. For more details on how to make a complaint, please see the information at the end of this fact sheet.



In most cases your lender must regularly provide you with loan statements: at least every six months – and for credit cards, at least every 45 days.

You can contact your lender at any time while you have a loan with them – your lender should have their contact details and business hours available either in-store or on their website and they should have provided this information to you when you entered into your loan. Go back and check your initial disclosure document that you signed when you entered the loan.

You can also request up-to-date information about your loan at any time during the loan period (for example, what you have paid and how much you have left to pay and copies of any documents you might have lost such as your loan contract or previous statements). Your lender should promptly respond to any requests you make for information. Your lender might be able to charge you a fee for this extra information – it depends on what the contract says. Any fee your lender charges must be reasonable.

2. Can your lender make changes to your loan after you sign up?

Yes, the loan terms can be changed, and in some cases they can be changed without any discussion with you. But the lender has to act responsibly and ethically if your loan is changed and the change has to be clear and easy to understand. Any changes that your lender makes must not have an oppressive or unreasonably harsh effect on you.



Changes that you agree to

A lender can ask you to agree to changes, and you can ask your lender to change the contract. If you agree with each other, these changes can be put into effect. Make sure that you ask a lot of questions if the lender proposes a change, so that you understand the change and how it will affect you.

The lender must give you clear written information about the changes – usually before they take effect. See the table below for the timeframes the lender has to tell you about agreed changes.

Agreed changes	When you will get information about the change
Most changes (except for those listed below)	Before the change starts
Changes that make your loan easier (eg, reduced payment amounts)	With your next regular statement
Changing your credit limit on the amount you can borrow (eg, credit card)	Within 5 days OR with your next regular statement
Releasing a security interest (that is, taking an item off the list of items that your lender can repossess if you fail to make your loan repayments)	With your next regular statement
Increasing time to pay	With your next regular statement

Some changes will mean that you have to pay more under the loan, for example, if you and your lender agree to:

- extend the time you have to pay off your loan, or
- increase your credit limit.

Before making these types of changes, your lender must meet their lender responsibilities by:

- helping you understand the changes and make an informed decision about whether you should agree to the change
- assessing whether you will still be able to make payments without suffering substantial hardship, after any proposed changes are made
- making sure the loan still meets your needs, after any proposed changes are made.

Changes that the lender makes

Your loan contract might say that your lender can make changes without your agreement, for example to increase the interest rate or fees. In that case, you have given permission in advance for the lender to make changes.



Be aware your loan contract might allow your lender to change interest and fees without telling you first.

Even though your lender might be able to make changes without your agreement, they still need to comply with their lender responsibilities and tell you— usually within five working days of the change taking effect. The timeframes that apply depend on what the change is:

Changes made by lender	When you will get information about the change
Increasing an interest rate or a change to how interest is calculated	5 working days after change starts
Changing the amount, timing or how your payments are calculated	5 working days after change starts
Changing fees/ charges or how calculated and when charged	5 working days after change starts
Changing the credit limit (amount able to be borrowed)	5 working days after change starts
Transferring the loan to a new lender	10 working days after transfer
A change that means you have to pay less	5 working days or with your next regular statement – the lender can decide
Increasing the time to make payment	5 working days or with your next regular statement – the lender can decide

We recommend that you read your statements carefully, and watch the amount of any direct debits coming out of your account, in case any changes have been made that you were not expecting. You can then query those with your lender (directly or through a budget adviser). In extreme cases you could take advice on whether your lender's changes are oppressive.



Your lender must treat you reasonably and with respect when making any changes to your loan. They should explain any changes clearly and accurately.

Transferring your loan to another lender

Sometimes a lender may sell its business or loans to another lender. If your lender transfers your loan to another lender, the transfer must not affect the other terms of your loan. This means that the new lender cannot change the terms of the loan unless you agree or your loan contract says that they can.

Within 10 days of transfer, you must be given:

- contact details of the new lender
- the new lender's registration details
- the new lender's dispute resolution scheme (unless the new lender is not required to be in such a scheme)
- the date of the transfer
- what the transfer means for you (for example, where to pay the new lender).



3. Struggling to pay back your loan?

If you are struggling to pay your debts, talk to your lender as soon as possible or to a budget adviser – who can talk to your lender for you – ideally **before** you get behind on your payments.

Your lender may be prepared to assist you by extending the time for payments, taking smaller repayments for a short period, or other measures.¹

Or you may be eligible to make what is called a 'hardship application', which requires your lender to carefully consider altering the loan terms to provide temporary hardship relief. However, criteria apply to making hardship applications, and these include being prompt about submitting an application.

For more information on hardship applications, and other options if you are having problems with your loan, see our *Problems with your loan* guide at www.comcom.govt.nz.

1. From 1 December 2021, your lender is also required to provide information about financial mentoring services if you miss a payment or exceed your credit limit under your loan.

4. Can I switch to a new lender?

Yes, you can switch to a new lender after you have signed up to a loan. For example, you may want to switch if you find a lender with lower interest or fees.

But check the terms of your loan. Some loans will let your lender charge fees if you want to switch early, for example fees for the money your lender had expected to earn from your interest payments. While a new lender may lend you extra for these fees, it is still a cost of borrowing that you can avoid by staying with your current loan. A new lender is also likely to charge you fees for setting up a new loan.

So before you switch lenders, be sure to compare the overall cost and terms of your current loan with the new loan, and work out whether you will be better off if you switch. Once you add in the costs of switching lenders, it may not be worth it. Go to the Sorted website at www.sorted.org.nz, to work out the best deal for you.



All loan fees charged must be reasonable, and must not be oppressive, so you should take advice if you think that they may be.

5. Repaying your loan early

If you are in a position to pay back some or all of your loan early, you are always able to do so.

You will save on the interest payments you would otherwise have paid, but there might be extra fees to pay if you want to pay back the loan early. 'Prepayment fees' or 'break fees' may be charged by your lender when you pay back all or some of your loan early. These fees are often charged because your lender will be missing out on the interest you would have paid on the original loan.

Your lender is obliged to disclose these kinds of fees to you before you take out the loan and to ensure that these fees are reasonable. Ask the lender or a budget adviser if you have any questions about repaying your loan early and whether you will have to pay extra fees.

6. Where to go for further advice and information

You can contact your local Citizens Advice Bureau at www.cab.org.nz or 0800 367 222, Community Law Centre at www.communitylaw.org.nz, or Budget Advice Services at 0508 283 438.

You or your adviser can also complain to the Commerce Commission if you think your lender has breached their obligations in any way. We are not able to take action on every complaint we receive but we can investigate and take enforcement action in appropriate cases. You can make a complaint through our [complaint form](http://www.comcom.govt.nz/make-a-complaint) at www.comcom.govt.nz/make-a-complaint or by calling us on 0800 943 600.

Want to know more?

Check out our fact sheets on the CCCF Act at www.comcom.govt.nz/consumer-credit-fact-sheets/.

Further guidance on lenders' responsibilities to borrowers can be found in the *Responsible Lending Code* www.consumeraffairs.govt.nz.

ISBN 978-1-869455-05-7

This is a guideline only and reflects the Commission's view. 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.

You can subscribe for information updates at www.comcom.govt.nz/subscribe

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

Phone: 0800 943 600

Write: Enquiries Team, PO Box 2351, Wellington 6140

Email: contact@comcom.govt.nz

www.comcom.govt.nz

