

THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT DISCLOSURE REQUIREMENTS

Any creditor who enters into a consumer credit contract, consumer lease or buy-back transaction must provide specific information to the debtor about the terms of the contract. This is known as **disclosure**.

Disclosure is a cornerstone of the Credit Contracts and Consumer Finance Act (CCCF Act) because it helps debtors understand from the outset what the transaction will cost, lets them make an informed choice about using credit and select between competing credit offers, and enables them to monitor the performance of their loan transactions.

Important points about the disclosure requirements under the CCCF Act are:

- A written disclosure statement is required. However, a disclosure statement may be more than one document.
- Disclosure can be given in a number of ways including electronically, by post, in person or by public notice.
- Disclosure must be provided to whoever is taking on the debt as well as anyone who has guaranteed their debt.
- The specific content and timings around disclosure can vary depending on the transaction.
- There can be different triggers for extra disclosure.
- Disclosure must be clear, concise and not misleading.
- The consequences of breaching disclosure – including the contract being unenforceable, liability for statutory damages and criminal conviction – are the same irrespective of the nature of the transaction.

If any of the information contained in any disclosure statement is false or inaccurate, a creditor will not have fulfilled their disclosure obligations and will have breached the CCCF Act. They may have also breached

the Fair Trading Act if the statement is false, deceptive or misleading. There are separate penalties for breaching the Fair Trading Act.

EXAMPLE

A finance company providing loans through car dealerships failed to adequately disclose the terms and conditions of its loans as some documents that had been faxed and photocopied were so distorted they were illegible. The company was convicted under the CCCF Act for not meeting disclosure standards, fined and ordered to pay statutory damages to debtors. The company was also convicted of breaching the Fair Trading Act for telling a customer the contracts were enforceable when the failure to disclose had rendered the contracts unenforceable until proper disclosure was made.

TIMING OF DISCLOSURE

If a creditor fails to make initial disclosure or fails to disclose agreed changes to the contract, the contract is unenforceable. The debtor may cancel the contract at any time within **three working days** of the day initial disclosure is made.

For the purposes of establishing whether a contract is enforceable or whether the debtor may cancel the contract, disclosure is treated as being made **four working days** after having been posted or **two working days** after having been sent by fax or email.

For all other purposes disclosure is treated as having been made **on the day** it was posted, faxed or emailed.

ASSUMPTIONS

The regulations set out several assumptions that may be used or applied when disclosing information under CCCF Act; they are that:

- if there is one annual interest rate, it will not vary over the term of the contract and if there is a variable interest rate, the rate applicable to any period is the rate specified when the disclosure statement is prepared;
- the debtor will make the payments due under the contract on time;
- in regard to payments, charges and fees every day is a business day;
- charges and fees will not change nor will new fees or charges be imposed; and
- if the creditor does not know the date of an advance when the disclosure statement is prepared, they may assume the advance will be made on the most likely date.

LENDERS AND BORROWERS

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

- Consumer credit contracts – creditors and debtors.
- Consumer leases – lessors and lessees.
- Buy back transactions – transferees and occupiers.

For the purposes of these fact sheets the terms creditor and debtor are used when referring generally to credit transactions, but the specific terms are used where relevant.

DISCLOSURE TYPES

	CREDIT CONTRACT	CONSUMER CREDIT CONTRACT	CONSUMER LEASE
INITIAL Made when the transaction commences.	x There is no statutory requirement to make disclosure.	✓ Before the contract is made or within five working days .	✓ Before the contract is made or within five working days .
CONTINUING Made during the term of the loan.	x There is no statutory requirement to make disclosure.	✓ At least every six months , or for a revolving credit contract at least every 45 working days (unless each payment is known at the outset and made in accordance with a schedule of payments or a website is maintained with the information and the debtor has consented to disclosure this way.	x There is no statutory requirement to make disclosure.
VARIATION Made when the loan is varied.	x There is no statutory requirement to make disclosure.	✓ Where the changes are agreed between the creditor and debtor, before the changes take effect . Before the changes take effect or within five working days if creditor exercising contractual power to vary.	✓ Before the changes take effect unless liabilities of lessee are reduced in which case no disclosure is required.
REQUEST Made when the debtor requests disclosure.	x There is no statutory requirement to make disclosure.	✓ By the later of 15 working days of the request or 15 working days after payment of any fee for the disclosure is provided.	✓ By the later of 15 working days of the request or 15 working days after payment of any fee for the disclosure is provided.
GUARANTEE Made to guarantors of loans.	x There is no statutory requirement to make disclosure.	✓ Before guarantee is given or within 15 working days . Where changes to contract are agreed between creditor and debtor within five working days of change having effect.	x There is no statutory requirement to make disclosure.

For more detail on disclosure types, see the separate fact sheets: *Disclosure Requirements – Consumer Credit Contracts*; *Disclosure and other Requirements – Consumer Leases*; *Disclosure and other Requirements – Buy Backs*. These fact sheets are available to download at www.comcom.govt.nz/consumer-credit

HOW TO MAKE DISCLOSURE

Disclosure must be made by:

- handing the disclosure statement to the debtor or guarantor; or
- posting the statement to the debtor's or guarantor's last known address; or
- if the debtor or guarantor has consented to electronic disclosure, sending the statement to the information system the debtor or guarantor has specified.

Changes made following the exercise of a contractual power that increase the debtor's obligations or increase the amount of an interest rate or the amount of any fee or charge payable under a consumer credit contract may be done by:

- displaying the information prominently at the creditor's place of business; and
- advertising the information at least once in all the following areas in which the creditor does business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill; and
- posting the information on the creditor's website.

Disclosure can be provided in electronic form, such as by fax or email, if:

- the information remains readily accessible so as to be useable for subsequent reference; and
- the person entitled to the information consents. This consent should be obtained in writing. Note, too, that a person may give their consent subject to conditions about the form of the information or the way the information is processed, produced, sent, received, stored or delivered.

The information must still be expressed clearly and concisely and in a manner that is likely to bring the information to the attention of a reasonable person and that it is not likely to mislead or deceive.

MODEL DISCLOSURE STATEMENTS

The CCCF Act's regulations include model disclosure statements that may be used to provide disclosure at the outset of a contract. While using these model forms is not a requirement of the Act, if they are used properly, disclosure will be treated as having been made clearly and concisely and in a way likely to bring it to the attention of a reasonable person.

In addition, if the model disclosure statements are used, disclosure will be treated as being unlikely to mislead or deceive a reasonable person about a matter material to the contract. If the form is amended in any way not expressly permitted, it will not be deemed to have met the disclosure standards, and whether or not it has actually done so will be assessed on a case by case basis.

Even if the model statements are used, a creditor must still ensure that they contain the information required by the CCCF Act.

There are different model disclosure statements for different types of transactions. They are available to download at www.comcom.govt.nz/consumer-credit

To check for updates to this fact sheet visit:
www.comcom.govt.nz/consumer-credit

This fact sheet is part of a series looking at the Credit Contracts and Consumer Finance Act. Other fact sheets can be downloaded from
www.comcom.govt.nz/consumer-credit

CONTACT

Contact the Commerce Commission with information about possible breaches of the Credit Contracts and Consumer Finance Act.

TELEPHONE

Our Contact Centre during office hours on 0800 943 600

WRITE

To us at Contact Centre, PO Box 2351, Wellington 6140

EMAIL

Us at contact@comcom.govt.nz

This fact sheet is a guideline only, and reflects the Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is traders' responsibility to remain up to date with legislation.

Only the courts can make an authoritative ruling on breaches of the Credit Contracts and Consumer Finance Act.