

## THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

# DISCLOSURE AND OTHER REQUIREMENTS – BUY-BACK TRANSACTIONS OF LAND

### DISCLOSURE REQUIREMENTS

Any buy-back transferee who enters into a buy-back transaction of land must ensure disclosure of specific information where such information applies to the transaction. There are three situations in which disclosure will be required:

- before the occupier enters the transaction (initial disclosure);
- if the transaction is varied at any time (variation disclosure); and
- if the occupier asks for it (request disclosure).

The Credit Contracts and Consumer Finance Act (CCCF Act) sets out the information that must be provided, and how and when it must be provided.

As well as providing disclosure, the transferee must ensure that every occupier has received independent legal advice before entering into any part of the transaction. More information on disclosure is available on the separate fact sheet, *Disclosure Obligations under the Credit Contracts and Consumer Finance Act*, available to download at [www.comcom.govt.nz/consumer-credit](http://www.comcom.govt.nz/consumer-credit)

### INITIAL DISCLOSURE

The occupier must be provided with initial disclosure and a complete copy of all the buyback transaction's terms **before** they enter into any arrangement or contract that forms part of the buy-back transaction.

Schedule 3 of the CCCF Act sets out the key information that must be provided to the occupier where applicable.

Initial disclosure must include:

- **The transferee's full name and address**
- **Amounts paid to the occupier or paid for their benefit**  
This includes:
  - the amount, timing and details of money to be paid to the occupier or to third parties they nominate;
  - full details of the discharge, payment or consolidation of any pre-existing financial obligations the occupier has; and
  - the total of all amounts if it can be worked out.
- **Right to occupy**  
Particulars of the right to occupy the land, including:
  - when the right to occupy begins;
  - the date of the agreement conferring right to occupy;
  - the transferee's address for service;
  - the amount of any bond;
  - any rent payable;
  - the frequency and amount of rental payments;
  - the place or bank account number where any rent is to be paid;
  - a statement (if applicable) that the occupier must pay any solicitor or real estate agent fees or charges related to the right to occupy;
  - a statement (if applicable) that the occupier must pay for any metered water;
  - a list of any goods provided by the transferee; and
  - if the right to occupy is for a fixed term, the date it will cease.
- **Right or understanding to repurchase land**  
The terms of the right to repurchase the land, including the purchase price or the method of calculating it.

As well as providing disclosure, the transferee must ensure that every occupier has received independent legal advice before entering into any part of the transaction.

→ **Fees and charges**

Any charges that are or may become payable must be described, including the amounts (or if the amount is not ascertainable, the method of calculation) of each charge and when it is payable.

→ **Payments required**

Where there is more than one payment:

- how much the occupier must pay (or where this is not ascertainable, the method of calculation);
- the number of payments to be made (if ascertainable);
- the total amount of the payments (if ascertainable); and
- when the first payment is due and how often the remaining payments should be made.

→ **Buy-back default fees**

Any potential default fees, including a description of how and when each would become payable.

→ **Consent to electronic communications**

If the transferee agrees to electronic communications, a statement recording that consent.

→ **Other items**

Any other information or warnings prescribed by the regulations to be information concerning a buy-back must be disclosed.

**VARIATION DISCLOSURE**

Any agreed changes to a buy-back transaction must be disclosed **before** the change takes effect **unless the variation only reduces the occupier's obligations**.

A transferee may also have additional obligations under general law to advise the occupier of any variation to the arrangements, or any exercise of a power. The CCCF Act does not affect these obligations.

**REQUEST DISCLOSURE**

An occupier is entitled to request in writing information about the buy-back transaction. Request disclosure may cover any or all of the following information about a buy-back transaction:

- the amount, timing and number of payments to be made;
- full particulars of any changes made to the transaction since it was made;
- a copy of any disclosure statement that was or should have been provided before the date the request was made.

Request disclosure must be provided within **15 working days** of receiving the request or, if a reasonable fee for disclosure is charged by the creditor, **15 working days** from receiving that fee. If a transferee is going to charge a fee for this service it must be disclosed at the start of the contract.

Request disclosure does not have to be provided if information has already been given to the occupier in the previous three months or if the request is received more than a year after the transaction has ended.

**FAILURE TO MAKE DISCLOSURE**

Failure to make adequate disclosure to an occupier under a buy-back transaction is an offence under the CCCF Act. The occupier is also entitled to recover statutory damages. The contract will be unenforceable until disclosure is made and any attempts to enforce the contract risk breaching the Fair Trading Act.

A transferee cannot transfer the property to anyone else without leave from the High Court if they know or have reason to believe the occupier did not receive initial disclosure or independent legal advice. Where a transferee transfers property in breach of this provision it is an offence which is liable on conviction to imprisonment for a maximum of one year or a maximum fine of \$200,000 or both.

Failure to make variation disclosure will make the change to the transaction or any altered security interest unenforceable.

**INDEPENDENT LEGAL ADVICE**

A transferee must ensure the occupier in a buy-back transaction has had independent legal advice **before** they agree to any part of the transaction. A lawyer must witness the signature of every occupier on any contract or document forming part of a buy-back transaction and must also certify that they have explained to the occupier the implications of each contract or document.

Independent legal advice can only be given by a lawyer who has no interest in or relationship with the transferee or buy-back promoter.

A transferee cannot transfer the property to anyone else without leave from the High Court if they know or have reason to believe the occupier did not receive independent legal advice before agreeing to the transaction. If the property is transferred in this situation, it is an offence under the CCCF Act.

**FEES**

An occupier must not be required to pay unreasonable fees or default fees to any party in relation to a buy-back transaction.

The court may reduce or cancel an unreasonable charge or fee.

If a third party charges a fee to a transferee and the contract gives the transferee the right to pass it on to the occupier, it must be passed on at cost. The transferee must not charge any premium, commission or mark-up on the fee. They must also pass on any discounts or allowances.

**RIGHT TO CAVEAT**

The CCCF Act gives the occupier a caveatable interest in the property, meaning an occupier can lodge a caveat with the Registrar of Land Information New Zealand to prevent their home being sold. Any provision purporting to restrict or prohibit the occupier's right to lodge a caveat has no effect, and is likely to constitute a breach of the Fair Trading Act.

## DISCLOSURE TYPES

	INITIAL Made when the transaction commences.	CONTINUING Made during the term of the loan.	VARIATION Made when the loan is varied.	REQUEST Made when the debtor requests disclosure.	GUARANTEE Made to guarantors of loans.
Buy back transactions	✓ <b>Before</b> the contract is made.	✗ There is no statutory requirement to make disclosure.	✓ <b>Before</b> the changes take effect unless obligations of occupier are reduced in which case no disclosure is required.	✓ By the later of <b>15 working days</b> of the request or <b>15 working days</b> after payment of any fee for the disclosure is provided.	✗ There is no statutory requirement to make disclosure.

## DEFINITIONS

### BUY-BACK TRANSACTION

A transaction where a homeowner (occupier) transfers their home to a buy-back operator who usually, in return, pays their debts or gives them money, and the parties agree that the occupier can continue living on the property and, some time in the future, buy it back. For a more detailed definition, see the separate fact sheet, *Transactions covered by the Credit Contracts and Consumer Finance Act*, available to download at [www.comcom.govt.nz/consumer-credit](http://www.comcom.govt.nz/consumer-credit)

**TRANSFEREE** Someone (a person or a business) to whom another party (the occupier) transfers ownership of their principal place of residence.

**OCCUPIER** Someone who transfers their home to a third party (but continues to occupy the property and usually pays rent) on the understanding that they may later buy it back.

**BUY-BACK PROMOTER** Someone who introduces the parties to a buy-back transactions (ie, the operator and the occupier) and receives a fee in connection with the buy-back transaction.

To check for updates to this fact sheet visit:  
[www.comcom.govt.nz/consumer-credit](http://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](http://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](mailto: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.