

THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

OPPRESSIVE CONTRACTS - REOPENING PROVISIONS UNDER THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

The Credit Contracts and Consumer Finance Act 2003 (CCCF Act) allows the court to re-open a credit contract, consumer lease or buy-back transaction, if it considers that the contract, lease or buy-back is oppressive or if it considers that a party to the contract, lease or transaction has:

- exercised or intends to exercise a contractual power in an oppressive manner. In this context, a party exercises a power where it refuses to agree to end a contract early, refuses to vary or waive any contractual term or imposes a condition on that agreement or
- induced another party to enter into the contract, lease or buy-back by oppressive means.

The court must consider the following factors in determining whether or not to re-open a contract on the grounds of oppression:

- all the circumstances surrounding the making of the contract, the exercise of power or the inducement, and, if they are applicable;
- whether the amounts payable by the debtor are oppressive;

- whether the time allowed to remedy any default is oppressive, having regard to the likelihood of loss to the lender;
- whether a refusal to release a security is oppressive in terms of obligations covered by the security and the extent of any security remaining after the release; and
- whether an amount charged on full prepayment is oppressive, bearing in mind the lender's expenses and the likelihood the amount repaid could be re-invested on similar terms.

The courts have considered the meaning of oppression in cases brought under the previous legislation. Some points that can be drawn from decided cases are:

- Where the lender and the debtor are in some respect on an unequal footing (such as English being their second language) oppression may be easier to find.
- The lender's conduct will be relevant. If they have behaved unconscionably or with little regard to procedural fairness the courts are more likely to find oppression.
- Current market practice and standard market practice will be important. If the terms of the contract are outside current market practices the court may be more inclined to find oppression.
- Disadvantageous terms of a contract may be oppressive if a lender knows that the debtor, lessee or occupier cannot look elsewhere for finance and takes advantage of that situation.

In the case of a credit contract or consumer lease, a debtor or lessee has **one year** from the end of a contract or one year from the date the last obligation is due to be performed to take proceedings to re-open an oppressive contract.

In the case of a buy-back transaction of land, the debtor has **three years** from the day the last obligation is due to be performed.

The court can also make reopening orders in any proceedings (whether brought under the CCCF Act or not).

The CCCF Act defines oppressive as: "harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice".

ORDERS FOLLOWING RE-OPENING

The court has wide powers to deal with a re-opened contract. It may:

- order an account be taken;
- vest, or direct the transfer or assignment of property;
- direct any party to pay any money to another;
- extinguish or alter any outstanding obligations;
- set aside or alter any contractual term or security interest;
- direct any party to do or to stop doing anything to any other party; and
- order full payment of the cost to the consumer of bringing the re-opening proceedings.

The court can also make any orders it thinks fit in respect of people who are not parties to the contract or transaction but who have either a beneficial interest in the reopened contract or have shared the profits.

DEFINITIONS

OPPRESSIVE The CCCF Act defines ‘oppressive’ as: “harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice”.

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.

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.