

THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT OVERVIEW

The Credit Contracts and Consumer Finance Act (CCCF Act) regulates consumer lending, consumer leases and buy-back transactions. It was introduced in 2003 to better protect the interests of consumers and enable them to make informed choices about using credit.

WHAT THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT DOES

The CCCF Act:

- imposes obligations on creditors extending credit finance to debtors
- provides minimum standards for consumer credit contracts in relation to disclosure;
- maintains debtors' right to cancel contracts;
- grants all debtors the right to repay credit contracts early;
- prohibits unreasonable credit fees;
- enables debtors to apply for a variation to their consumer credit contract where they are struggling to meet their obligations because of unforeseen hardship;
- provides relief against oppressive credit contracts (not just consumer credit contracts);

- regulates buy-backs transactions of land in respect of fees and prevents buy-back transferees from enforcing contracts if they have not complied with the CCCF Act's requirements regarding disclosure and legal advice; and
- sets up a regime of statutory damages that applies automatically if particular provisions of the CCCF Act have been breached, makes breaching certain provisions of the Act a criminal offence punishable by fines and, in some cases, by imprisonment and gives the Court the power to make wide-reaching remedial orders.

HISTORY AND APPLICATION OF THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

The CCCF Act was passed on 13 October 2003 and its regulations followed in August 2004 and October 2004.

The parts of the CCCF Act that deal with buy-back transactions of land came into force in October 2003. The remaining provisions of the CCCF Act took effect from 1 April 2005.

The CCCF Act repeals the Credit Contracts Act 1981 and the Hire Purchase Act 1981. Both these Acts continue to apply to credit contracts and hire purchase arrangements entered before 1 April 2005, unless creditors have opted to have the transaction covered by the new Act (provided it does not increase the debtor's obligations).

If a creditor opts to have the new CCCF Act apply, they must tell the debtor within five working days that they have made this election and that the CCCF Act will apply to the contract.

THE COMMERCE COMMISSION'S ROLE

The Commerce Commission is responsible for enforcing the CCCF Act. The Commission's role under the CCCF Act includes:

- monitoring trade practices in credit, consumer lease and buy-back transaction markets;
- prosecuting those who breach the CCCF Act;
- taking civil proceedings under the CCCF Act; and
- making available information to the public in order to promote compliance with the CCCF Act.

The CCCF Act does not impose a duty on the Commerce Commission to act for individual debtors. Consumers can take private legal action in relation to breaches of the CCCF Act.

The CCCF Act was introduced in 2003 to better protect the interests of consumers and enable them to make informed choices about using credit.

WHO THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT APPLIES TO

The CCCF Act applies to creditors, lessors, transferees and buy-back promoters. More specifically, this means people who:

- extend credit (creditors);
- provide leases of goods (lessors); and
- operate or promote buy-back schemes (transferees/promoters).

The CCCF Act may also impose some obligations on other people involved in credit transactions such as:

- finance brokers;
- paid advisers;
- dealers;
- agents;
- debt collectors;
- retailers; and
- insurance companies.

There are serious penalties for breaching the CCCF Act, so anyone involved in providing any kind of credit, lease of goods or buy-back transaction should ensure they know which category (if any) their arrangement falls into and what they need to do to comply with the CCCF Act.

Likewise, people who:

- borrow money (debtors);
- lease goods (lessees);
- transfer their property into a buy-back property scheme (occupiers); and
- guarantee a debtor's obligations under a contract (guarantor)

have rights under the CCCF Act of which they should be aware. In some cases creditors have an obligation to make debtors aware of their rights eg, cancellation right.

HOW THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT APPLIES

The focus of the legislation is on consumer credit transactions, which are:

- consumer credit contracts – including mortgages, hire purchase agreements, credit card debts, arranged overdrafts, personal and cash loans and pawn-broking pledges;
- consumer leases – long-term leases of twelve months or more containing an option to purchase goods; and
- buy-back transactions of land – where a homeowner (occupier) transfers their home to a transferee who, 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.

The CCCF Act applies to all credit arrangements regardless of the amount of credit provided.

A transaction will usually fall into one of the above categories – and, therefore, under the CCCF Act – if:

- the creditor makes a practice of providing credit, or the debtor and the creditor are introduced by a paid adviser;
- the debtor is an individual (ie, not a company nor organisation) and they are not acting as a trustee of a family trust; and
- the debtor has entered into the transaction primarily for personal, domestic or household purposes (or, in the case of buy-backs, for an investment).

There are provisions in the CCCF Act relating to oppressive contracts and terms and these sections relate to all credit contracts not just those that are consumer contracts.

RULES AFFECTING CONSUMER CREDIT CONTRACTS

The CCCF Act sets out specific rules in relation to consumer credit contracts, consumer leases and buy-back transactions. These rules are important as they help consumers understand from the outset what the transaction entails, and lets them make an informed choice. The rules relate to:

DISCLOSURE

Debtors must be provided with specific information about the terms of the transaction in a disclosure statement at specific times during the contract.

INTEREST

For consumer credit contracts, annual interest rates (including any default interest rates) and the method for calculating the interest charges must be fully and clearly disclosed at the beginning of the contract. Interest can not be charged in advance.

FEES

A description of all fees charged must be disclosed at the outset of the transaction and must be reasonable. There are special rules for establishment fees, third-party fees, and early repayment fees in relation to a consumer credit contract. Termination fees can be charged for the early termination of a consumer lease if the contract allows it but these fees must also be reasonable. If ascertainable the amount of the fee must be disclosed, or the method of calculation.

PAYMENTS

Payments must be credited as soon as possible unless the contract specifies a schedule of payments. Any extra or early part prepayment must also be accepted unless the consumer credit contract specifically states otherwise.

FULL PREPAYMENT

Debtors have the right to fully repay a consumer credit contract. However, if the contract provides for it, a creditor may charge the administration costs associated with the prepayment as well as a fee that is a reasonable estimate of the loss the creditor suffers as a result of the prepayment.

CREDIT-RELATED INSURANCE, REPAYMENT WAIVERS AND EXTENDED WARRANTIES

Debtors must not be unreasonably required to get credit-related insurance, repayment waivers or extended warranties. The terms of any credit-related insurance must be disclosed and any commission must be reasonable.

CANCELLATION

Debtors have the right to cancel a credit contract up to three days after disclosure has been made. If the debtor has purchased goods on credit the debtor may cancel the credit part of the transaction but must pay the cash price of the goods in full.

INDEPENDENT LEGAL ADVICE

Buy-back operators must ensure an occupier gets independent legal advice before entering into a contract, and cannot charge unreasonable fees for the transaction.

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.