

The Credit Contracts and Consumer Finance Act

Continuing disclosure under a consumer credit contract



This fact sheet explains what disclosure lenders must provide periodically throughout the life of a consumer credit contract, including when and how they must provide it.

A lender under a consumer credit contract¹ must provide the borrower with regular statements containing certain information about their contract regularly during the contract. This is known as continuing disclosure.

When does a lender have to provide continuing disclosure?

For a consumer credit contract, a lender must provide continuing disclosure at least every 6 months.

However, if the contract is a revolving consumer credit contract the continuing disclosure statement must be given at least every 45 working days.

A revolving consumer credit contract is a credit contract that anticipates multiple loan advances, to be made when requested by the borrower under the contract; and does not limit the total amount to be advanced to the borrower under the contract (for example, a credit card agreement, or an arranged overdraft on a cheque account).

In either case, the lender and borrower may agree that the statements be provided more frequently.

Exceptions to the continuing disclosure requirements

There are certain situations where a lender does not have to provide a continuing disclosure statement to the borrower.

These are:

- where the borrower does not have to pay any interest charges or fees under the contract (for example, in a “free credit” deal), or

- where the creditor maintains a website that includes all the information that would otherwise be found in a continuing disclosure statement relating to any reasonable period specified by the borrower, provided that the borrower has consented to accessing the website instead of receiving statements.

Disclosure under a consumer credit contract

A lender must provide disclosure:

- at the start of the contract (**initial** disclosure)
- to the borrower and to anyone who is guaranteeing the borrower's obligations under a contract (**guarantee** disclosure).

A lender may also have to provide disclosure to the borrower and any guarantor:

- during the term of the contract (**continuing** disclosure)
- any time the contract is altered (**variation** disclosure)
- if the borrower (or guarantor) asks for it (**request** disclosure).



You can read more about the different types of disclosure at www.comcom.govt.nz

1. From 1 June 2020 credit sale contracts entered into by mobile traders will also be treated as consumer credit contracts. A mobile trader is someone who, in person and not at fixed premises, offers or agrees to supply consumer goods to an individual, either under a credit sale or where the goods are partly or fully financed by an associated company under a consumer credit contract. See section 16A of the CCCF Act.

A lender does not have to provide continuing disclosure to a borrower for any given period in which the borrower:

- cannot reasonably be located
- has not made any debits or credits during the period covered by the disclosure statement and the unpaid balance is nil or has been written off
- has breached the contract and the lender has commenced enforcement proceedings, or
- has been declared bankrupt or has died, and the Official Assignee or the executors or trustees of the borrower's estate have not requested continuing disclosure.

If the lender has not provided a disclosure statement during a particular period for one of these reasons and the situation changes so that the exemption no longer applies, the lender must include all the information that would have been disclosed for that period in the next continuing disclosure statement. For example, the borrower may have changed their address without notifying the lender and the lender had stopped sending continuing disclosure statements. As soon as the lender learns of the borrower's new address, the lender must provide a disclosure statement covering the whole period since the last one.

The opening unpaid balance of each continuing disclosure statement must not exceed the closing balance of the last one. This means that there should never be any period of time during the loan which is not covered by a continuing disclosure statement unless one of the exceptions continues to apply.



What information does a lender have to provide for continuing disclosure?

If it is relevant to the credit contract, a lender must include the following information in each continuing disclosure statement:

- the opening and closing dates of the period covered by the statement
- the opening and closing unpaid balances
- the date, amount and description of each advance during the statement period
- the date and amount of each interest charge, and fee or other charge debited during the statement period
- the date and amount of each payment made by the borrower during the statement period
- the amount and timing of the next payment that must be made
- the annual interest rate or rates applying during the statement period (expressed as a percentage).

Continuing disclosure statements for credit cards are also required to include a **minimum repayment warning**. A credit card is a revolving credit contract and includes conventional credit cards and "store cards" issued by businesses to their customers to enable them to buy goods or services from the business on credit.

The minimum repayment warning prescribed in regulations is as follows:

"If you only make the minimum payment each month [or other payment period] you will pay more interest and it will take you longer to pay off your balance. Visit www.sorted.org.nz/creditcards to calculate how you can pay off your credit card balance faster and pay less in interest"

The format, font and font size of the minimum repayment warning must be easily readable. The warning must be presented reasonably close to the amount stated as the minimum payment for each payment period.

No minimum repayment warning is needed where:

- the closing unpaid balance of the credit card is under \$100
- an interest free period applies to the closing unpaid balance, or
- the lender and borrower have arranged a different payment amount to that which would otherwise be required.

How does a lender make continuing disclosure?

A lender must provide continuing disclosure in writing, either in a single document or in a series of related documents. The information must be clear and concise, and presented in a way that it will be brought to the attention of a reasonable person. The overall effect must not be likely to be misleading or deceptive.

A lender must provide continuing disclosure by:

- giving a disclosure statement to the borrower or guarantor in person
- posting a disclosure statement to the borrower's last known place of residence or to an address specified by the borrower for this purpose;
- or
- using electronic communications, provided the borrower has agreed to this, and that the information remains readily and reasonably accessible, stored in a permanent and legible form so that it can be referred to again throughout the life of the contract. This includes:
 - emailing or texting the borrower a link to the lender's website, or an electronic communication that otherwise allows the borrower to access the disclosure statement;
 - emailing (or faxing) a disclosure statement to the borrower; and
 - any other electronic means of communications that may be agreed between the borrower and the lender notifies the borrower of how to access the disclosure statement.

If a place of residence, or electronic information system (like an email address or fax machine) are the same for two or more persons, a disclosure statement sent to that residence or stored in that system is to be treated as disclosure to all people living at the residence or using those systems.

Need to know more about disclosure?

We have a series of fact sheets on disclosure available at www.comcom.govt.nz, including:

- Initial disclosure under a consumer credit contract
- Variation disclosure under a consumer credit contract
- Guarantee disclosure under a consumer credit contract
- Request disclosure under a consumer credit contract

Lenders and borrowers

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

- consumer credit contracts – creditors and debtors
- consumer leases – lessors and lessees
- buy-back transactions – transferees and occupiers.

In these fact sheets we use the terms **lender** and **borrower** to talk generally about credit transactions, but use the specific terms for consumer leases and buy-back transactions where it makes things clearer.

This fact sheet provides guidance only. 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.

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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

