

The Credit Contracts and Consumer Finance Act

Guarantee disclosure under a consumer credit contract



This fact sheet explains what disclosure lenders must give to someone guaranteeing a consumer credit contract, and when and how they must provide it.

Sometimes a lender will require a guarantee that a debt will be paid back by someone else if the borrower stops paying for some reason. A guarantor is someone who agrees to do this. Under a consumer credit contract, the lender must also give the guarantor key information about the terms of the contract.

When does a lender have to provide disclosure to a guarantor?

A lender must provide guarantee disclosure to the guarantor before they give the guarantee. This is called initial disclosure.

A lender may have to make further disclosure to the guarantor during the term of the contract in the following situations:

- If the lender and the borrower enter into another consumer credit contract to which the guarantee applies. In this case, the guarantor must be given the same initial disclosure as the borrower.
- The loan contract is varied in a way that increases the borrower's obligations or gives the borrower less time to make any payment due under the contract. In this case the lender must provide variation disclosure within 5 days of the date the change is agreed to by the borrower and lender or, for unilateral variations, within 5 days of the date the change takes effect.
- The guarantor asks for it (this is known as request disclosure). There are some exceptions to when a lender has to provide request disclosure.¹ The lender must provide the information within 15 working days of the request.

- The loan is transferred or assigned to another lender. The transferring lender has the same disclosure obligations to the guarantor as it does to the borrower. Transfer disclosure is not required if the transfer is merely for securitisation or covered bond arrangements or similar arrangements. The lender must disclose information relating to the transfer within 10 working days of the date on which the transfer takes effect.

From 1 June 2020 mobile traders and high-cost consumer credit lenders will also be required to follow the sections on guarantor disclosure.²

Disclosure under a consumer credit contract

A lender must provide disclosure to a guarantor before the start of the guarantee (**initial** disclosure).

A lender may also have to provide disclosure to the guarantor:

- any time the contract is altered (**variation** disclosure)
- if the guarantor asks for it (**request** disclosure).
- if the loan is transferred to another lender (**transfer** disclosure).

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



1. If the information has been given to the guarantor in the previous three months or the information requested is more than a year after the consumer credit contract has ended, see section 24(4).
2. Sections 16A and 45C.

What information does a lender have to provide to a guarantor for initial disclosure?

When a guarantee is given, the lender must provide the guarantor with:

- the same initial disclosure given to the borrower
and
- a copy of all the terms of the guarantee.

🔗 You can read more in our fact sheet *Initial disclosure for borrowers* at www.comcom.govt.nz

What information does a lender have to provide a guarantor where the loan contract is varied?

If the lender makes a change to a loan, whether unilaterally or agreed with the borrower, which either:

- increases the borrower's obligations, or
- reduces the time for the borrower to make payment under the contract, then

the lender has the same disclosure obligations to the guarantor as it has to the borrower.

From 1 December 2021, if the loan is a high-cost consumer credit contract, the lender must also provide a statement of the rate of charge under the contract.

🔗 You can read more in our guidance *High-cost credit guidelines* at www.comcom.govt.nz

A lender is not required to disclose information about changes to the contract to a particular guarantor if the lender cannot reasonably locate them.

What information can a guarantor ask for?

Guarantors can ask for information about the loan, including the current status of the loan, the change made and the amount required for prepayment.

🔗 You can read more in our fact sheet *Request disclosure* at www.comcom.govt.nz

3. Section 26A(1).

4. Section 35.

5. Section 35(1A).

6. Section 35(1)(c)-(e). Amendments to section 35 apply to the process for the disclosure of information under existing agreements where disclosure is made after commencement, see Schedule 1, 8(3). Commencement is from 20 December 2019; see Credit Contracts Legislation Amendment Act 2019, section 2.

What information does a lender have to give a guarantor when the loan is transferred to another lender?

Key information must be provided to the guarantor when the lender transfers a loan to a new lender, by assignment or operation of the law.³ The transferring lender has the same disclosure obligations to the guarantor as it does to the borrower. This is called **transfer disclosure**.

A lender is not required to disclose information about changes to the contract to a particular guarantor if the lender cannot reasonably locate them.

🔗 You can read more in our guidance *Disclosure for lenders Guidelines* at www.comcom.govt.nz

How does a lender provide guarantee disclosure?

A lender must make guarantee disclosure in writing, either in a single document or in a series of related documents. The information must be clear and concise so that a reasonable person will see it. The overall effect must not be misleading or deceptive.

Disclosure may be given to the guarantor by either:⁴

- giving a written disclosure statement containing the information required by the Act to the borrower or guarantor in person
- posting a disclosure statement to the guarantor's last known place of residence or to an address specified by the guarantor for this purpose, or
- using electronic communications, provided the guarantor 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.⁵ This includes:
 - emailing or texting the guarantor a link to the lender's website, or an electronic communication that otherwise allows the guarantor to access the disclosure statement
 - emailing (or faxing) a disclosure statement to the guarantor, and
 - any other electronic means of communications that may be agreed between the guarantor and the lender notifies the guarantor of how to access the disclosure statement.⁶

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.⁷

However, if the lender has exercised a power under the contract to change the amount of an interest rate, or to change the amount of a fee or charge payable, the lender may instead make disclosure by:⁸

- displaying information about the changes prominently at their place of business
- advertising the changes at least once in the daily newspapers published in all the following areas in which they do business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill, and
- posting information about the changes on their website (if they have one).

From 1 May 2020 high-cost consumer credit lenders are not able to make disclosure by publishing their unilateral changes or by providing the disclosure to their borrowers with the next continuing disclosure statements. Instead, high-cost consumer credit lenders must provide disclosure of unilateral changes within 5 working days of the change taking effect.⁹

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
- Continuing disclosure under a consumer credit contract
- Variation 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.

7. Section 35(2).

8. Section 26(4) and Credit Contracts and Consumer Finance Regulations 2004, regulation 5.

9. Section 26(6). This section came into effect on 1 June 2020 and applies to all pre-existing high-cost consumer credit contracts from commencement.

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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