FACT SHEET

COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

The Credit Contracts and Consumer Finance Act

Variation disclosure under a consumer credit contract

This fact sheet explains what disclosure lenders must provide if making changes to a consumer credit contract, and when and how they must provide it.

Generally, a lender must tell the borrower if they are making changes to a consumer credit contract. This is known as variation disclosure.

A lender must also provide variation disclosure to anyone who has agreed to pay back the debt if the borrower doesn't (the guarantor).

There are two types of variation disclosure, these are:

- where both the lender and borrower agree to change the contract
- where the contract gives the lender the right to vary certain parts of the contract, and the lender does so.

When does a lender have to provide variation disclosure?

Both the lender and borrower agree to change the contract

If both the lender and borrower agree to change the contract, the lender must give the borrower and any guarantor details of the change before it takes effect. The only time this does not apply is if, as a result of the change, either:

- the borrower's obligations are reduced (such as an administration fee being waived)
- the borrower has more time to repay the contract
- some or all of a security is released

  or
- the borrower has to make payments at a different place.

If changes are made to a contract because of a hardship application, then the lender must still disclose full details of the change.

The contract gives the lender the right to vary parts of the contract

A lender must give the borrower and any guarantor details of any change allowed under the contract within 5 working days of it taking effect if the change relates to either:

- the amount of fees or charges
- how fees or charges are calculated
- when or how often fees or charges are imposed
- the amount or timing of any payment or how it is calculated

  or
- the interest rate or the way interest is calculated or charged.

A lender does not have to provide disclosure if the change reduces the borrower's obligations, gives them more time to pay or increases their credit limit.

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

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

A lender must give the borrower full details about the change that has been made to the contract.

How does a lender provide variation disclosure?

A lender must provide variation 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.

A lender must provide variation disclosure by either:

- giving a disclosure statement to the borrower (and any guarantor) in person
- posting a disclosure statement to the borrower's (and any guarantor's) last known address

  or
- emailing or faxing a disclosure statement to the borrower (and any guarantor), as long as they have agreed to this.

If a lender is increasing the interest rate, fees or charges a borrower may have to pay under a contract, and this is allowed under the contract, then the lender may instead disclose by:

- displaying information about the changes prominently at their place of business
- advertising the changes at least once 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).

A lender cannot use this method of disclosure, however, if the change in any way affects the repayment amount, frequency, time for payment or method of calculation of any payment under the contract.

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
- 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.

Contact us with information about possible breaches of the laws we enforce:
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