

What this booklet can help you with



This booklet explains your rights when you are borrowing money for personal, domestic or household use.

The information is relevant when you use credit cards, store cards, buy goods or services on credit or get cash loans.

This booklet explains your rights under the Credit Contracts and Consumer Finance Act 2003. It does not cover consumer leases or buy back transactions.

For further information on these see
www.consumerprotection.govt.nz

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Key terms

– the important words used in this booklet

Creditor/lender – The finance company that you have borrowed money from and owe money to. When you buy on credit from a store, usually the store is not the creditor, usually a separate company provides the credit. Both terms are used in this booklet.

Debtor/borrower – When you borrow money or buy goods on credit you become a debtor. This means that you owe the creditor money. Both terms are used in this booklet.

Guarantor – A person, such as a friend or family member, who agrees to 'guarantee' the credit – that is, take responsibility for paying off your loan or goods if you can't.

Credit contract – An agreement between you and the creditor about how much money you are going to borrow and how you are going to pay it back including interest and fees. The contract also explains what will happen if you stop paying the money back. Credit contract, contract and agreement are used in this booklet.

Security – Property that you have agreed the creditor can take away from you if you breach the terms of the contract. Any item used as security must be included in the contract, see page 24 for more information.

Disclosure – Written information that the creditor must provide. It includes the key information and a copy of the credit contract. Often these are provided together.

Lender Responsibility Principles – responsibilities that creditors or lenders have before, during and after you borrow money or use credit, see page 47 for further information.

Before lending

– what the creditors have to do before lending

Publication of standard form contract terms

Standard form contract terms are terms printed or prepared by the lender and used to conclude their agreements with consumers. This includes repayment waivers and extended warranties. Lenders who use standard form contracts terms in their agreements must make sure those terms are publicly available. This includes displaying a copy of the terms on their internet site as well as displaying a notice, prominently and clearly, in their business premises that a copy of the terms is available on request and free of charge.

Publication of costs of borrowing

Lenders must make sure that information about all the costs of borrowing in their credit contracts is publicly available. This includes displaying on their internet site the lender's credit fees, default fees, annual rate of interest and default interest rate charges for every type of credit contract they offer. Lenders must display, prominently and clearly, a notice in their business premises, that a copy of information about these charges is available on request and free of charge.



Disclosure

– what the creditor should tell you about your contract

Before you borrow money

Lenders must make reasonable enquiries before entering into a loan to be satisfied that the credit provided will meet your needs and objectives and that you will be able to repay the loan without suffering substantial hardship. Lenders must help you make informed decisions. Lenders must also help you decide whether to enter into the agreement and to be reasonably aware of what the agreement means.

See page 47 for further information on the Lender Responsibility Principles.

What the key information must tell you

The creditor must give you a copy of the key information in writing and which includes:

- › the full name and address of the person or company that you are borrowing from
- › what goods you are buying and/or how much money you are borrowing (this will be called 'the total of all advances made')
- › how much it will cost to borrow, including interest; each fee and charge must be set out and explained clearly
- › how many payments you have to make
- › how much each payment will be
- › how you must make these payments
- › when and how you can cancel the contract
- › what will happen if you fail to pay, including penalty fees and charges and any goods you list as security (for example, your house or your possessions)
- › a statement of your right to cancel the credit contract
- › how the lender will estimate their loss if you pay off the amount in full before it is due

- › a description of any security interest the lender will or may take under the agreement
- › information about the dispute resolution scheme the lender belongs to
- › the lender's registration number under the register of financial service providers
- › your right to apply for hardship due to unforeseen circumstances.

The information must be clear, not too wordy and the way it is written should bring the information to your attention. It should not be misleading or deceptive.

Getting the key information about the contract

The creditor must give or send you a copy of this information and any other terms and conditions before you take out the loan.

Every debtor and guarantor under the contract should get a copy of the contract and an update if there are any changes.

What if I don't get all the information?

If any of this key information is missing, unclear or wrong:

- › You may be able to cancel the contract.
You may not have to pay the full amount you borrowed (for example, all of the fees and charges)
- › The contract is unenforceable. This means the creditor cannot force you to meet the contract's conditions until they give you the right information. For example, they cannot try and recover any money, or repossess the property you listed as security.
- › A creditor will not be able to enforce the contract in Court e.g. if they have applied for a judgment debt and you have not been given correct disclosure, you can use this as a defence.
- › The creditors will have committed an offence.

You can ask for information at any time

You can ask for important information about the loan, including the balance owed, the number of payments to make and another copy of your contract. The creditor must supply the information you ask for within 15 working days, but not if the creditor has already sent the information in the last three months. You may have to pay a small fee. If the creditor doesn't provide the information when they have to, you may not have to pay some of the interest and fees.

You should get an update if the terms of the loan are changed

If you and the creditor agree to change the terms of your loan, especially the amount or number of payments, you must be given updated written information setting out these changes. This is called variation disclosure.

What if the creditor does something wrong?

If the creditor doesn't provide you with the information when they have to, the law says they can be penalised. This is called statutory damages and it means you may be able to get money back from the creditor. The chart on page 44 explains how you can work out the amount of statutory damages you may be entitled to.

Cancellation

– when and how to cancel



After you receive the disclosure document

After you receive all of the important information including notification of your right to cancel and a copy of the contract, you have a short cooling-off period – during which you can cancel in writing.

The length of this cooling-off period differs according to how the information was given to you. If the paperwork was:

- › handed to you directly – you have five working days
- › sent to you electronically (email, fax etc) – you have seven working days from when it was sent
- › mailed to you – you have nine working days from the date it was posted.

Saturdays, Sundays and public holidays are not working days.

If the creditor hasn't provided disclosure correctly

If you haven't received all of the key information (including your right to cancel) and a copy of the contract, or if the information is incorrect, then you may cancel the credit contract in writing at any time.

What about the goods or services I bought on credit?

- › If you have taken the goods home and received a statement about your right to cancel, or already received a service bought on credit, then you will have to pay the cash price of the goods or services. You have 15 working days to pay the cash price from when you tell the creditor you are cancelling the credit contract
- › If you have taken the goods home, but you haven't received a statement about your right to cancel then you can cancel the credit contract and return the goods. You may have to pay for any damage to the goods. After you cancel the credit contract you have five working days to return any money paid

- › If you don't have the goods or you haven't received the service, you can cancel the credit contract and you won't have to pay for the goods or service. After you cancel you have 5 working days to return any money paid
- › You may have to pay cancellation fees, but these should be reasonable. You may also have to pay interest for the time that you had the credit.

How do I cancel my credit contract?

You must cancel the credit contract in writing. You need to make sure the creditor receives your cancellation on time and that you have proof it was sent. If cancelling by post, one way to do this is by registered mail.

Write to the manager and include the date that you are writing. Include any reference numbers that the creditor has given you and sign your name at the bottom of the letter.



Hardship

– when you are having trouble making repayments

If you are struggling to meet your payments, tell the creditor about your situation as soon as possible. Creditors want to be repaid and are usually willing to help you meet your obligations.

If you don't contact the creditor and end up missing payments, you may be charged penalty interest and default fees. If you bought goods on credit which are being used as security under the agreement, those goods may be repossessed if you breach the agreement. If your goods are repossessed, you will have to pay repossession fees and are likely to end up owing the creditor money even after the items are sold.

You can get free help from a local budget advice service. A budget advisor can help you to make a realistic budget that may allow you to meet your loan repayments .

What if I have been made redundant or am ill?

If you are struggling to make payments because you have lost your job or you are ill, check your credit contract to see whether you have payment protection insurance (see page 21).

Making a hardship application

If you have experienced 'unforeseen hardship', you can ask the creditor to change the terms of your credit contract.

Hardship covers things like illness or injury, losing your job or a relationship breakdown.

You can only apply for this if you couldn't have expected the hardship situation you are in at the time you entered the contract (for example you have been made redundant six months after you took out the loan).

However you can't make a hardship application to the lender if you have:

- › been in default for two months or more
- › been in default for two weeks or more after receiving a repossession warning notice or a Property Law Act notice
- › not made four or more consecutive debt repayments on their due dates.

You may only make one hardship application on the same grounds within any four month period, unless the lender:

- › agrees to consider another application or
- › your reasons for applying are very different from the earlier application.

If you catch up on the debt repayments and defaults, you are again entitled to make a hardship application. You are entitled to make a hardship application during a repossession which will halt the repossession process until a decision is made. Lenders may only repossess secured items if they reasonably believe those items are at risk.

What can I apply for?

If you can show that you have suffered unforeseen hardship, then you can ask:

- › to spread the payments over a longer term
 - this will reduce the amount of each payment to a manageable level
- › to postpone your payments for a period of time
 - a payment holiday gives you time to sort out your situation
- › a combination of these two options.

All of these options mean you will pay more in the long term because you are borrowing over a longer period.

After you make a hardship application the lender must deal with it within certain time limits:

- › within five working days of receiving the application the lender must acknowledge receiving it, in writing
- › within ten working days of receiving it the lender must request any further information necessary, in writing
- › within 20 working days of receiving the application the lender must decide whether to agree to the hardship application. The lender must write to you with its decision, give its reasons and advise you on your rights. This includes you applying to court to have the contract changed if the lender does not agree to the hardship application.

Any changes to payments must be agreed, by you and the creditor. A written copy of the new arrangement must be given or sent to you before the new payment arrangement begins. The creditor cannot charge you an application fee. However, the creditor can charge you a fee that reasonably compensates them for any costs they incurred in documenting changes to the contract.

Remember even if your hardship application is declined, the creditor must still act reasonably and ethically whilst you sort out your repayment problems. See page 47 for further information on the Lender Responsibility Principles.

Other options

Should I re-finance the loan?

You may be able re-finance your loan and arrange lower repayments. This option usually means you will end up paying extra fees and interest. Remember that you do not have to refinance with the same creditor. Shop around and carefully compare the different interest rates and fees being charged by banks and other creditors.

You will also need to find out how much it will cost to break your current credit contract.

Can I sell the secured goods to help pay off the debt?

You can't sell secured goods without the creditor's permission. If you do, you will breach your loan agreement and may commit a criminal offence. You can get someone else to take over the contract such as a guarantor or friend if you are up-to-date with your payments. This is called an assignment.

The creditor can only refuse an assignment request if it is unreasonable (for example your friend has a bad credit record).

Voluntary return

What if I want to end the loan and return the goods?

You can let the creditor repossess the goods, or you may return them yourself – this is called 'voluntary return'. A voluntary return means you can avoid paying some of the repossession fees by returning the goods yourself. You may still have to pay for storage and the creditor's costs in preparing the goods for re-sale e.g. repairs, cleaning, valuation, auction fees.

A voluntary return may also reduce the amount of default interest and fees because you don't have to wait for a repossession agent to collect the goods. However you cannot voluntarily return goods if they are, or include, accessions. For example a replacement motor that has been installed in a motorcar.

If you voluntarily return goods after you receive a repossession warning notice you must be given a Post Repossession Notice and the creditor must wait 15 days before they sell the goods. If the creditor does not send the notice, or wait 15 days, you will only have to pay the balance of the advance under your credit contract (the advance is the amount of money you borrowed). You no longer have to pay either the interest, sale costs, or other fees. However after the goods are repossessed you can give permission to, or instruct the creditor to sell them within the 15 days.

Some people think that just because they have taken goods back themselves they will not have to pay anything else. However, that's not necessarily the case. You will still have to pay whatever is left after the creditor sells the goods.

Repossession and voluntary return do not usually result in your debt being fully repaid.

What if I have too much debt and don't think I can repay my loans?

If you think you have overcommitted yourself and are unable to repay your debts in the foreseeable future, you should contact a budget advice service (see page 46) or the Insolvency and Trustee Service immediately to discuss your options.

These options include a Summary Instalment Order, a No Asset Procedure, or Bankruptcy. For an explanation of these processes, visit: **www.insolvency.govt.nz**

Guarantors

– paying for someone else's debt

The risks

Being a guarantor is risky. If you have signed as a guarantor then if the debtor does not pay, the creditor can force you to pay.

If the contract you signed as a guarantor includes your house or car as security, the creditor can sell those assets if you do not pay the debtor's debts. For instance, if the debtor is unable to pay or can't be found.

The guarantor contract

Contracts of guarantee must be in writing and they must be signed. You cannot be held to a guarantee you made over the phone or if someone used your name and forged your signature.

If you have guaranteed a credit contract, you must be given the same key information that is given to the debtor and a copy of the contract of guarantee. Any other changes or notices sent to the debtor should also be sent to you.

As a guarantor you also have specific rights under the Lender Responsibility Principles. When dealing with a guarantor, lenders must:

- › make reasonable enquiries, before a guarantee is given, to be satisfied that you will be able to comply with the guarantee without suffering substantial hardship
- › assist you to reach an informed decision about whether or not to give the guarantee
- › assist you to be reasonably aware of the full implications of giving the guarantee.

The lender must also:

- › treat you reasonably and ethically before and during the period of the guarantee and if the credit contact is breached
- › make sure the guarantee is not oppressive or act in an oppressive way to get you to sign

- › comply with the Fair Trading Act and not mislead or deceive you in any way. See page 47 for further information on the Lender Responsibility Principles
- › comply with the Consumer Guarantees Act so that their services meet all the guarantees.

What happens if the person I'm guaranteeing a loan for misses payments?

If the debtor gets behind in their payments, and the creditor takes steps to repossess, you must be sent a copy of the Repossession Warning Notice.

You can choose to repay the money owing to stop the repossession, or you could ask to take over the contract. If you are unsure what your best option is, see a budget advisor or a community law centre.

If goods are repossessed you must also be sent or given copies of the Post Repossession Notice. See page 27 for more information on the repossession process.

If you are not sent or given copies of the required information after repossession, you will not be liable for the costs of that repossession.

What if changes are made to the credit contract?

You must be sent or given written information about the changes, where:

- › the debtor and the creditor agree to change the contract or
- › the creditor changes certain terms of the contract.

In general terms, a creditor has up to five working days to provide that information.

If the creditor does not send you this information, they will not be able to enforce the guarantee until they do provide it. You can claim statutory damages from the creditor (see page 44).

If the guarantee contract does not allow for changes, then you won't be responsible for the guarantee if the changes are made without your consent.

For example:

Douglas borrows \$1000 from a finance company. His friend Efi agrees to guarantee the loan. When Douglas' mother becomes ill, he borrows another \$500 so he can fly to Auckland to be with her. The finance company does not tell Efi about the change in the amount Douglas now owes. So the finance company can't make Efi pay back the extra \$500 if Douglas doesn't make the payments.

What if I am the guarantor for a close family member or friend?

People often act as guarantor for someone they have a close relationship with, for example a son, grandchild or partner.

If you are in a close relationship with the person you are going guarantor for then you may be able to get out of the guarantee if the creditor did not:

- › explain the risks you were taking and what could happen if the debtor didn't pay
- › encourage you to get independent legal advice
- › provide information to your independent advisor about the transaction and all the financial circumstances of the debtor.

If any of these things did not happen, you can get advice about your options from a community law centre

What if I think I am being treated unfairly by the creditor?

You can ask the Court to reopen a contract which a guarantee is part of and to cancel a guarantee if:

- › the terms of the guarantee are oppressive
- › the creditor used their powers under the guarantee in an oppressive way
- › you were pressured to sign the guarantee
- › you were taken advantage of – for example, you were misled about what you were signing.

See page 41 for more information on oppression.



Minors

– if you are under 18

If you're under 18 years old you can apply to borrow money or buy goods on credit as long as you meet the creditor's conditions, which may include providing a co-borrower or guarantor.

Most contracts are not enforceable against minors. The contract can only be enforced if a Court or Disputes Tribunal says that it is fair and reasonable. When deciding whether a contract is fair and reasonable, the Court will consider:

- › the circumstances around which the contract was made
- › the subject-matter and nature of the contract
- › in the case of a contract relating to property, the nature and the value of the property
- › the age and the means (income or property) of the minor
- › all other relevant circumstances.

What do I do if I signed a credit contract and now wish I hadn't?

If you are under 18 years old the contract can't be enforced unless the creditor takes you to Court and proves that it is fair and reasonable. This applies to all contracts, not just those involving credit.

Write to the manager and include the date that you are writing. Include any reference numbers that the creditor has given you and sign your name at the bottom of the letter.

Fees and charges

– are these reasonable?

Credit contracts usually have extra fees and charges added to the amount you borrowed. These must be reasonable and based on the actual costs of lending you the money. For example reasonable processing costs or documentation costs.

An important court case in 2016/17 clarified that credit fees should only cover costs that are closely related to the particular loan transaction. Fees should not be used to recover general business costs or to generate profits.

If the creditor is charged a fee by a third party, for example a broker, or for a credit check, they must only charge you the actual amount they paid. However a lender cannot charge commission under a credit-related insurance if they required the borrower to get insurance from a particular insurance company. The fees have to be listed with a clear explanation of what they are for. Some examples of types of fees are:

- › referral or brokerage fees
- › establishment, administrative or booking fees
- › Personal Property Securities Register fees
- › credit check fees
- › legal fees
- › dealer's fee.

These fees can add huge amounts to your loan.

What if I think the fees in my credit contract are too high?

Ask the creditor to explain what the fees are for and how they came up with that amount. If you are not happy with their explanation, get advice from a community law centre (see page 46). If you can show a fee is unreasonable, the Disputes Tribunal or Court may reduce or cancel it.

For more information about fees see the Commerce Commission website www.comcom.govt.nz



Interest

– how interest is calculated

There is no limit to the interest rate that creditors can charge. But the interest mustn't be oppressive.

The way that the creditor calculates interest must be explained in your contract.

Interest can't be charged in advance. This means that you only pay interest as it builds up over time. Interest must be calculated from the unpaid balance. This can be done daily, weekly or monthly.

For example:

Liz borrowed \$1,000 and agreed to make monthly repayments. The annual interest rate was 16%. Her interest was calculated using the monthly interest rate and the average unpaid monthly balance:

Average unpaid daily balance = \$1000

Monthly interest rate $16\% \div 12 \text{ months} = 1.333\%$

Interest charges $1.33\% \times 1000 = \$13.33$

This meant the interest owed after the first month of January was \$13.33.

Can they charge me extra interest if I fall behind in my payments?

Yes, this is called default interest. Your credit contract may give the creditor the right to charge a higher interest rate on the amount that you haven't paid.

Default interest charges must not be harsh or oppressive and they must be explained in your contract. Default interest can only be charged whilst you are behind in your payments and charged only on the amount that is currently outstanding. It cannot be charged on the whole amount outstanding under the loan.

Early repayment

– you have the right to pay early

You have the right to pay off the full amount of your credit contract at any time. This is called full pre-payment.

You can also choose to make extra payments before they are due. The creditor has to accept these unless your credit contract specifically says that they don't have to. But the creditor can choose to apply your extra payments when your regular payments are due.

Can the creditor charge a 'break fee' if I repay early?

If it is specifically included in your contract, the creditor can charge you:

- › administrative costs relating to the early repayment, for example, the cost of preparing the paperwork and calculations
- › a reasonable estimate of the creditor's loss from you repaying early.

These costs must be reasonable. You can ask the creditor what costs you'll have to pay if you repay your credit contract early. They have to give you this information if you ask for it, but they may charge you a small fee.

If you have paid for credit-related insurance as part of your credit contract and you pay the contract off early, then the creditor must pay back the un-used part of the insurance premium you've paid. For example if the creditor arranged the insurance. The amount you receive is calculated using a formula under the Credit Contracts and Consumer Finance Regulations. It is based on how early you're repaying the balance – the later you repay, the smaller the rebate is likely to be. This rebate must be deducted from the amount you have to pay to settle the credit contract.

Is it worth repaying early?

Before repaying early, check that it is worth it. Compare the cost of repaying early with what you'll save on interest, insurance and other costs. Ask a budget advisor or the creditor to help you calculate this.

Insurance

– find out if you need insurance

Do I have to get insurance?

It's your responsibility to look after the goods while you're paying them off. If you haven't insured the goods and they are lost, stolen or damaged, you will still have to keep paying for them.

Creditors may require you insure the goods while you repay the loan. You may be asked to take out the following types of insurance:

- › payment protection, or lifestyle protection insurance covers your payments in some instances if you lose your job, become ill or die
- › gap insurance – covers the gap between the unpaid balance of a credit contract and the amount paid out under other insurance if the goods are destroyed
- › extended warranties – covers some types of repairs, for example, mechanical breakdown insurance for a motor vehicle.

The creditor's insurance requirements must be reasonable. So if you already have enough insurance cover, for example household contents insurance, it may not be reasonable for the creditor to include extra insurances in your credit contract.

If you can't use the insurance you do not need to get it. For example if you are not employed then the creditor can't make you get redundancy insurance.

Under the Lender Responsibility Principles, lenders must make reasonable enquiries before you agree to a credit-related insurance contract. They need to be satisfied that the insurance will meet your requirements and also that you will be able to make the payments without suffering substantial hardship.

Check the terms of any credit-related insurance carefully, including the cost, duration and eligibility criteria for claims, before you sign.

Lenders must also help you to make an informed decision about whether to enter into the contract. See page 47 for further information on the Lender Responsibility Principles.

If you don't agree to take out any form of credit-related insurance but you are still charged for it, this may be in breach of the Fair Trading Act. Lenders may not make false or misleading representations about your agreement to acquire products or services. In this case you should ask the lender to cancel the credit-related insurance and you should receive a full refund.

If you have payment protection insurance, your loan repayments may be covered. You should read your policy and contact the insurance company immediately to find out how to make a claim. You may have to provide some proof of your situation (for example, a doctor's certificate or a letter from your employer).

If there is any disagreement about whether you are covered by the insurance policy, you may need to get help from a community law centre, or the financial dispute resolution scheme your insurance company belongs to.

**[www.companiesoffice.govt.nz/fsp/about-the-fspr/
dispute-resolution-schemes](http://www.companiesoffice.govt.nz/fsp/about-the-fspr/dispute-resolution-schemes)**

Check what insurances have been added to your contract. If they weren't necessary, or you can't take advantage of them, you may be entitled to a refund of the premium and the interest charged.

Your credit contract should explain any insurance requirements, including how much of the premium you'll get back if you repay the loan early.

What information must an insurance company give you?

You must be given a copy of the insurance policy before taking out the loan. Read your policy and check what it covers you for, or ask the insurance company the following questions:

- › What does the insurance cover me for?
- › What doesn't the insurance cover me for?
- › If I claim under the policy will it cover my debt to the creditor?
- › Are the benefits to me under the policy more than the cost of the policy itself?
- › What protection does this insurance give me above other insurances I already have? Do I really need it?

What if the creditor made me get insurance that I don't need, or can't ever use?

Contact the bank or lender first. If that doesn't work you can ask the Court to void the insurance and order the creditor to refund the money you paid for the policy and any interest you incurred. The creditor must correct the key information in your contract by taking out the insurance fee and giving you an updated copy. See page 22 for who you can contact if you have a dispute about an insurance policy.

What if I am not given a copy of my insurance policy?

The creditor may have to pay you statutory damages. See page 44 for more information about these damages.

Security

– what can be used as security



The creditor may ask you to list things that you own to be ‘security’ for the money you are borrowing under the credit contract. If you get too far behind in your payments, or if you breach your contract such as put the secured goods at risk, the creditor may take those things from you and sell them to repay your debt.

An unsecured loan is where the creditor does not require you to list your goods for security. This means a creditor cannot take anything you own without a Court order.

If a creditor asks you to provide security, don’t list things that are worth more than the loan. Only agree to include things you are prepared to lose.

For example:

Brian looks at buying a \$12,000 car on finance. He doesn’t have to pay a deposit, but the dealer explains that the finance company needs to include his house as security to approve the loan. Brian realises that this would mean he might lose his home if for some reason he could not pay back the loan.

Brian decides not to do the deal today. He decides to look for a car finance deal that doesn’t put his house at risk.

Secured goods must be listed in the key information in your credit contract. When a creditor has the right to take goods you have listed as security, this means the creditor has a ‘security interest’ in the goods. The key information must be concise and set out a clear explanation of:

- › the nature of the security interest
- › the property that falls under the security interest
- › how far your obligations are secured by the security interest

- › what would happen if you give a security interest over the property to another person who is not the creditor.

Certain essential consumer products cannot be used for security. This includes beds and bedding, cooking equipment, medical equipment, portable heaters, washing machines, refrigerators, travel and identification documents, and bank cards.

However there is an exception where a secured party (eg. a lender) has a Purchase Money Security Interest (PMSI) over an item. For example, where a creditor lends money to a consumer for the purpose of buying a washing machine, the consumer buys a washing machine using those funds, and the creditor registers a financing statement on the Personal Property Securities Register. This is known as 'perfecting' a security interest.

For example, if you borrow money from a finance company to buy a washing machine, then the finance company will have a security interest in the washing machine until it is paid off.

The credit contract must list all secured goods item by item, and any replacement goods. The list must be clear and written so that the goods can be easily identified. If lenders try to take excessive security worth a lot more than you borrowed, they may be acting oppressively.

What about goods I've bought after I took out a loan?

If a lender wants to add specific items you have bought after the date of the loan, you must both agree to change the loan to include those specific items and the lender must provide disclosure about the change.

The Personal Property Securities Act sets out rules that apply when a security interest is taken over consumer goods, for example where a lender takes security over a car that was bought with funds provided under a loan. This includes where a lender has a security interest in 'all present and after acquired property' of a borrower, which is known as an 'ALPAAP' clause under a contract.

Where a contract includes this type of security interest, a lender can only enforce their interest (ie repossess goods bought after the loan was taken out) where:

- › the borrower specifically agreed to add those goods to the loan as security after they bought them or
- › the borrower sold the original goods they listed as security and bought other things with the money or
- › the borrower replaced the original goods they listed as security with other goods or
- › the borrower has bought goods that are now installed in or fixed to goods they listed as security.

For example:

Mike sold a car he listed as security for a loan and used the proceeds to buy a motorcycle and a leather jacket. The motorcycle and leather jacket were acquired by Mike after the original loan. In this situation the lender is able to repossess the motorcycle and leather jacket to get their money back.

If a borrower specifically agrees to add goods as security under a loan they must specifically agree in person or via their agent. Specifically agreeing to add goods as security cannot be done by the lender acting as the borrower's agent or attorney.



Repossession and debt

– the process of taking secured goods

Creditors can only repossess your goods if they have included the right to repossess in a contract signed by you (usually included in your credit contract) and you have missed payments or broken an important term in the contract. A creditor can also repossess goods that are used as security if the goods are at risk.

The Credit Contract and Consumer Finance Act (CCCFA) sets out the steps a creditor must follow when they repossess goods. You are the only person that can give them this right. You do this when you sign a credit contract which has a repossession clause in it.

If the right to repossess goods is not in your contract then the creditor will be breaking the law and your contract if they try to repossess those goods.

In addition when a creditor takes steps to repossess goods they must do so within their obligations under the Lender Responsibility Principles, see page 47.

Who am I dealing with?

The creditor (or their agent) usually carries out your repossession. But sometimes the creditor may give the credit contract back to the trader. This is common with used-car financing. In these cases the creditor may send you the repossession warning notice but from then on you may be dealing with the dealer.

Remember, if the creditor has not provided you with all of the key information in the first place, the contract cannot be enforced against you. This means the creditor cannot take any steps to hold you to the contract. They can't demand payments under the contract, add penalty interest, charge extra fees, repossess or threaten to repossess goods listed as security. They also cannot send your account to a debt collection agency.

Before a creditor can repossess goods

A creditor must make sure the goods are specifically identified in the credit contract. This means the goods are adequately described so that they can be identified.

Goods must be specifically identified:

- › if they were acquired AFTER the credit contract was entered into. If this happened both the creditor and the borrower must have agreed to change the contract to specifically identify the goods in the credit contract and full details of the change must have been disclosed to the borrower where the contract is a consumer credit contract
- › if they were acquired as a replacement for goods under a consumer credit contract.

Repossession Warning Notice

Before a creditor can repossess your goods, they must send you (and any other relevant person) a '**repossession warning**' notice. This notice sets out important information including:

- › your full name and address and the address goods will be repossessed from
- › the full name and address of the creditor
- › the date of the credit contract
- › the nature and amount of the default
- › if the default can be fixed, a statement that you must fix the default within 15 days after you receive the notice, how the default can be fixed and advice that if you don't fix the default the creditor will repossess the goods
- › if the default cannot be fixed, advice that the creditor will repossess the goods in 15 days after you received the notice
- › enough information to enable the goods to be identified
- › a statement that you have the right to voluntarily return the goods
- › the date the repossession warning notice expires

- › information about your right to seek assistance due to unforeseen hardship
- › information about the dispute resolution process, including contact details of the dispute resolution scheme that the creditor belongs to
- › advice to a guarantor, if a notice has been sent to them.

A repossession warning notice only lasts 60 days.

You have 15 days from the day the repossession warning notice was sent to consider your options. These may include paying the payments you missed and stopping the repossession, or voluntarily surrendering the goods. For more advice about your options, you may wish to see a budget advisor. But if the creditor has good reason to believe the goods you have listed as security are at risk and they can prove this, they don't have to send you a notice or wait 15 days before taking your goods.

Goods will be at risk if they have been or will be destroyed, damaged, endangered, disassembled, removed, or concealed, or sold in breach of the terms of your credit contract.

For example:

Teresa buys a car on finance. Six months later the finance company notices she is trying to sell the car on an online auction. The creditor has reasonable grounds for believing their interest in the car is at risk, so they can repossess the car.

Change of address

If you move house, make sure you notify the creditor in writing. With any of these notices the creditor can meet their legal responsibilities by sending it by post to your last known address. If you move house but don't tell the creditor, you cannot later complain that you did not receive the notice.

Voluntary return

You can return the goods yourself – this is called a ‘voluntary return’. See page 12 for further information. If you do this after receiving a repossession warning notice, the creditor must serve you with a post repossession notice.

Repossessions and agents

The creditor or repossession agent can only enter your home (or if in there already, remain there) between 6am and 9pm Monday to Saturday, but not Sundays or public holidays. The agent must have your written consent to come outside those times. If they arrive outside these times without your consent, you can refuse to let them into your home and ask them to leave. If they refuse to leave, you should call the Police.

Do not let anyone enter your home unless they have identified themselves and proved they are authorised by the creditor to repossess your goods. If you have any doubts about them, contact the Police or the lender’s Dispute Resolution Scheme.

Letting the repossession agent into your house

If you are at home

Lenders or their agents must enter premises in a reasonable manner. If you are at home, a repossession agent must produce certain documents:

- › a copy of the repossession warning notice
- › a copy of the credit contract
- › a copy of the lender’s or lender’s agent’s licence or certificate of approval under the Private Security Personnel and Private Investigators Act
- › evidence of an agent’s right to repossess goods on behalf of the lender
- › a written statement that the premises have been entered and the date of entry

- › a written list of the goods to be taken
- › a written statement of your rights after repossession, including your right to make a complaint about the lender or their agent
- › if outside the 'allowed' hours, your written consent for them to enter your house.

If you are at home you can stop the repossession by paying the arrears to the agent. However, you will still have to pay the repossession fees even if the agent doesn't take the goods away. This is because the finance company incurred costs by arranging for the repossession.

If the goods are being seized because they are at risk, you may not be able to stop the repossession by paying arrears to the agent, as this only removes the debt, not the risk.

If you are not at home

If no one is home, the lender or agent must leave, in a prominent place, a notice stating:

- › that the premises have been entered and the date of entry
- › a list of the goods taken
- › copies of the documents referred to above.

The lender or agent must take reasonable steps to ensure your premises are not left obviously open when they leave.

These rules apply only to residential premises.

Who can't repossess consumer goods?

- › A lender who is required to register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 can't repossess consumer goods if they are not registered under that Act.
- › A lender can't allow a repossession agent (or their employee) to repossess goods unless that agent (or employee) is licensed or holds a certificate of approval under the Private Security Personnel and Private Investigators Act 2010.

- › A repossession agent or employee can't repossess consumer goods unless they are licensed or hold a certificate of approval and are authorised to repossess by the lender
- › A lender can't personally repossess consumer goods if they are not licensed or don't hold a certificate of approval – any repossession must be carried out by a repossession agent or employee which is licensed.

Who can't act as a repossession agent?

The following grounds disqualify a person from applying for a licence or certificate of approval, in order to repossess consumer goods. This includes where a person:

- › is under a current court order to be detained in hospital for a mental condition
- › has been convicted of an offence and ordered by a court to be detained in a prison
- › has been convicted of any offence under the Arms Act or the Harassment Act
- › has been convicted of specific offences under the Crimes Act, Fair Trading Act, Credit Contracts and Consumer Finance Act or Misuse of Drugs Act
- › has been convicted of any offence of dishonesty or violence.

You cannot get in the way or use force to stop a lawful repossession. If you do, you are committing an offence.

Repossession agents are professionals and should act that way when they are at your home. Do not tolerate unreasonable behaviour from them. If they make threats, sexual advances, or cause unnecessary damage to your home, call the Police and ask them to leave.

Repossession agents must enter your home in a reasonable manner. Your contract may give them the right to break in and repossess goods when you are not home. However, they must do as little damage as possible and they must not leave your house obviously open.

Lenders who repossess consumer goods also have responsibilities under the Responsible Lending Code. They must act reasonably and ethically during the repossession process which includes:

- › taking all reasonable steps to ensure goods and property are not damaged
- › adequately storing and protecting repossessed goods
- › not exercising the right to enter premises in an unreasonable manner.

After the goods have been repossessed

Creditors must send or give you a post repossession notice within 14 days of repossessing your goods. This notice must have the following information:

- › what you need to do to get the goods back – ie reinstate or settle the contract and what that means
- › full name and address of borrower
- › full name and contact details of lender
- › date of the credit contract
- › date of the repossession
- › list of the goods repossessed
- › that you have 15 days from the date the notice was sent to act
- › the amount of the arrears
- › the repossession and any other costs
- › the estimated value of the goods
- › that the goods will be sold if payment is not received and the consequences of sale
- › that you have the right to introduce a cash buyer (at the estimated value of the goods) if you can't get the goods back yourself
- › that you have the right to settle the contract, ie pay off the total amount owing under the consumer credit contract
- › details of your right to seek relief if you are in unforeseen hardship.

If the creditor doesn't serve you with a post repossession notice they will be responsible for the cost of the repossession and can't recover those costs from you.

What happens if I don't reinstate or settle the contract or find a cash buyer within the 15 days?

The creditor must put the goods up for sale in order to recover the amount that is owed.

However the creditor can't sell the goods until 15 days after the date the post repossession notice was sent. The creditor also can't sell the goods if you've made a written complaint regarding enforcement action the creditor has taken (eg. repossession) until that complaint has been resolved.

A budget advisor can help you figure out what the best option is for you. The creditor can sell your goods privately, at auction or by tender. If the creditor chooses to sell the goods by auction or tender, they must tell you the time and place of the auction or the details of the tender. Both you and the creditor have the right to bid for the goods. You also have the right to have the goods valued before the sale. The creditor must ensure the sale is commercially reasonable and that it gets the best price reasonably possible.

What happens after the goods are sold?

The creditor must give you a 'statement of account' within 7 days of selling the goods. This statement must tell you the:

- › sale amount
- › costs of the sale (for example advertising, auctioneer's fees)
- › how much you owed before the goods sold
- › the amount you still owe the creditor, or if there is an excess, the amount that you will be refunded.

The creditor cannot add any more interest or fees to this final amount.

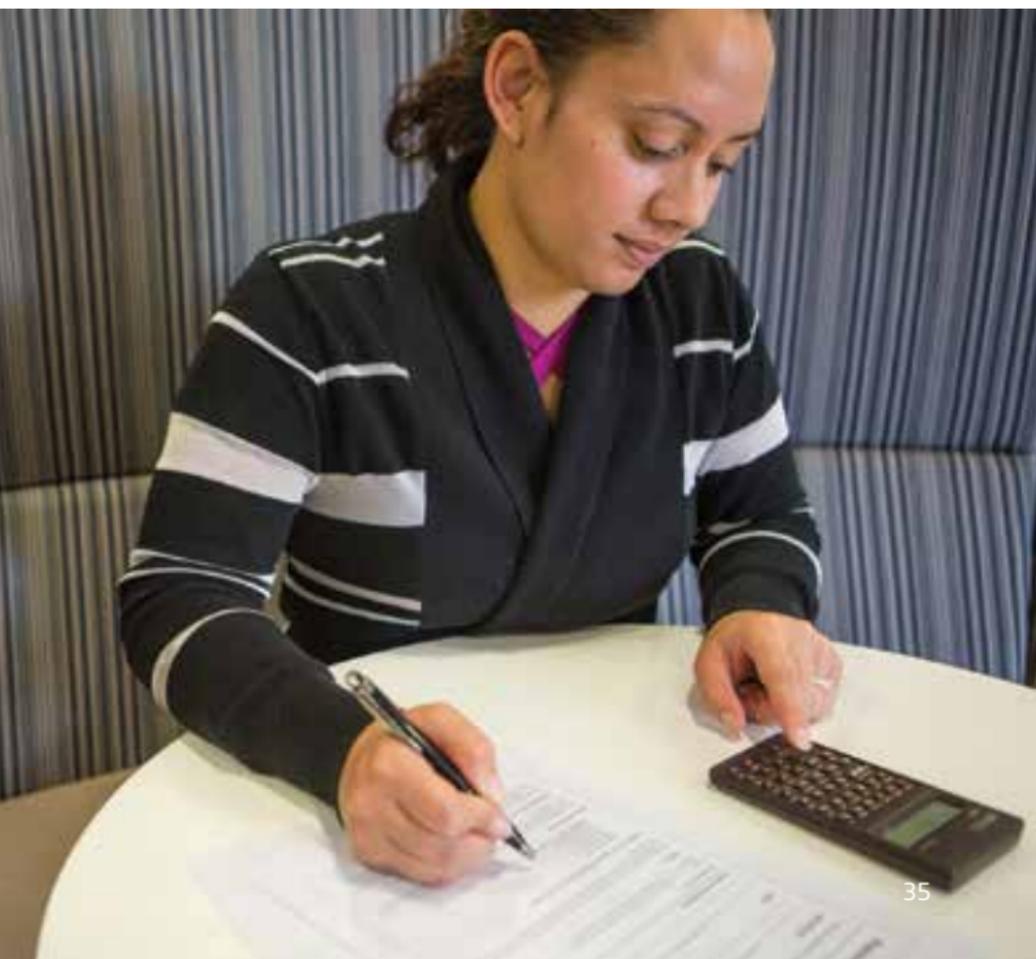
What if I have not received a repossession warning notice and they take the goods?

If the creditor has not proven that the goods were at risk then the property was taken unlawfully. This means the creditor can't charge you repossession costs and must return the goods to you. The creditor will also be liable for statutory damages and commits an offence.

What if they try to take goods that don't belong to me?

Repossession agents can only take goods that belong to you and are listed as security on your credit contract. If they take other items you own, or things that do not belong to you, they are breaking the law.

If this happens to you, call the creditor and ask for the things to be delivered back to you immediately. It is a good idea to follow this request up with a letter. If the creditor sells the goods, you can claim money back from the creditor for the value of the items that were taken. You can contact the dispute resolution scheme that the creditor belongs to, seek help from a community law centre, or file a claim in the Disputes Tribunal.



For example:

Grace lives in a flat with four other people. She takes out a \$1,200 cash loan. She agrees to list her road bike as security for the loan. She gets behind in her payments and the creditor sends a repossession agent around to pick up her bike. No one is home at this time. The repossession agent takes her flatmate's expensive mountain bike instead.

The creditor can only take the specific bike Grace listed as security for her debt. The repossession agent has taken the bike that was not used as security unlawfully. The creditor should return the bike and the flatmate can claim compensation.

If a creditor takes other items you own that were not used as security, or items that do not belong to you, they may be breaking the law by converting the goods. Conversion is taking something that belongs to someone else and treating it as if you own it.

What if I've sold the goods I listed as security under my credit contract?

You will have breached the contract and committed a criminal offence. If you have bought other things with the money, the creditor may take the new goods, even if they were not listed as security under the contract (see page 24).

What if I think the repossession costs are too high?

Repossession costs must be reasonable. You can ask the creditor to explain the charges and you can compare them with how much other repossession agencies charge. If the fees aren't reasonable, you can go to the Disputes Tribunal to try to get the fees reduced.

What if the creditor has not sold the goods after the 15 day (post repossession notice) period has expired?

You are entitled to have the creditor sell the goods by auction. This right starts 30 **working** days after the repossession took place.

I paid the agent the money when he came to my door and he didn't repossess anything, why am I being charged repossession fees?

Repossession fees don't just cover the cost of taking the goods away. They cover staff time involved in passing the file on to a repossession agent, the agent's time finding you and calling you or coming to your house, collecting the money and doing the paperwork when the money is paid to the finance company. But these fees must be reasonable.

What if I don't receive a post repossession notice?

If the creditor doesn't send or give you a post repossession notice then they will be responsible to pay the repossession costs and can't recover these from you.

What if the creditor sells my things too soon?

If the creditor sells the goods before 15 days are up you will only have to pay back the rest of the money you borrowed under your credit contract. You won't have to pay the interest, sale costs, repossession or other fees and you may even be entitled to a refund for any fees and interest you have already paid.

What if I think the creditor sold the goods too cheaply?

The creditor must ensure the sale is commercially reasonable and that it gets the best price reasonably possible and it must be able to prove this. If the creditor can't prove they have made a reasonable effort you can challenge this and ask that the debt be reduced.

What if the sale of the repossessed goods doesn't cover how much I owe?

You will still have to pay back the remaining amount. For example, you owe the creditor \$1000 for a couch you bought on credit and that amount includes repossession costs. The couch sells for \$700 and it cost the creditor \$50 to sell it. So now you owe the creditor \$350. But once the goods have been sold the creditor can't charge any further interest on the \$350 or add on any extra fees or costs. The amount shown on the "account after sale" is all you have to pay.

What if I had four items used as security under a loan but only two were repossessed and sold?

You will be liable to the creditor if the amount gained from the sale of the two items is less than the amount still owing under the loan. However once these two items are sold you will no longer be liable for any interest or other payments still outstanding on the other two items that were used as security.

How much can the creditor charge me to sell the goods?

Creditors should not be making a profit on the sale of repossessed goods. They can only charge you for reasonable costs and expenses related to the sale.

You can ask the creditor for receipts that prove the cost relates to the sale of your goods. If the creditor is charged a commission by an auction house or salesperson, then this can be included in the costs of the sale.

What information does the guarantor get?

If you're a guarantor, the creditor must send you the same repossession warning and post- repossession notices that are sent to the borrower. This is because under your guarantor agreement, you'll have to pay any money the borrower can't or won't pay.

Repossession notices are sent to your last known address, so if you are moving house remember to write to the creditor and let them know. This way you'll have some warning if payments aren't being made by the borrower.

Consumer Guarantees Act

– the creditor’s obligations

The Consumer Guarantees Act 1993 says that goods you buy from a seller must be of acceptable quality, fit for their particular purpose, match their description, sample or demonstration model. If you bought goods on a credit contract, your rights are the same as a cash buyer.

What do I do if the goods I bought on credit are faulty?

Contact the retailer in the first instance. If the goods are faulty, the seller must put this right by providing you with a repair, replacement or a refund depending on how serious the problem is. For more information on your rights when goods are faulty, see our website or our booklet ‘Your Consumer Rights (Goods)’.

What do I do if the service I bought on credit was not what I wanted or agreed to?

Contact the seller and ask them to fix the problem, or if it is serious you can cancel the service. For more information on your rights when a service isn’t what you agreed to see our website or our booklet ‘Your Consumer Rights (Services)’.

Can I stop my loan repayments?

Don’t stop your loan repayments. Your dispute with the seller regarding the goods is separate from your agreement with the creditor. If you stop your payments, you could end up paying penalty interest, or worse, the goods could be repossessed.

Do creditors have obligations under the Consumer Guarantees Act?

Creditors are service providers (providing you with credit). The Consumer Guarantees Act requires them to use reasonable care and skill.

Creditors are also responsible for the quality of goods and services bought on credit

If the seller arranged the loan for you then currently the finance company also has responsibilities for the quality guarantees under the Consumer Guarantees Act. It is usually easier to get a remedy from the seller. However, in some situations you may want to approach the finance company, for example, if the seller has gone out of business.

What if I was given incorrect information?

Sometimes the problem with the goods relates to representations the seller made (ie. what the seller told you about the goods). If these representations mean the goods breach the Consumer Guarantees Act, then the finance company also has responsibilities for sorting the problem out.

Under the Lender Responsibility Principles lenders must comply with all their legal obligations to borrowers. See page 47 for further information.



Oppression

– when the creditor is being extremely unfair

The Credit Contracts and Consumer Finance Act defines oppressive behaviour by creditors as ‘harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice’.

Oppressive behaviour includes the terms of a credit contract, the way you were persuaded to enter into the contract, as well as the way the creditor behaves towards you while enforcing the contract.

For example:

Li Mei got a loan from a finance company. The loan was for \$4,000, which included a \$1,800 brokerage fee (45 percent of the money lent). The fee was paid to a company associated with the creditor. The interest rate was 32.5 percent and there was a penalty rate for late payments of 38.5 percent. The finance company also listed Li Mei’s house as security for the loan.

Li Mei got advice from a community law centre and took the finance company to Court. The Judge decided that Li Mei was on an “unequal footing” with the creditor since Li Mei had a low income and needed the money in a hurry and had little experience with finance contracts. Under these circumstances and because of the very high brokerage fee, the Judge said the interest rate was oppressive. And the finance company was not entitled to an interest in her house.

What can the court look into?

When courts are deciding whether a credit contract is oppressive they can look at various factors including:

- › all the circumstances relating to the contract, such as evidence of real detriment or hardship – it is not enough for a contract to be a little bit unfair or difficult for you

- › whether the creditor has complied with the lender responsibility principles
- › the relative power of the debtor and creditor
- › whether the contract is a consumer credit contract
- › whether the debtor had independent legal advice in relation to the contract
- › what the contract looks like
- › how long the debtor has to remedy any default.

Even if the creditor's actions are standard practice in the industry, it does not mean that the actions are reasonable. The Court must determine what is reasonable independently from the industry. This means that finance companies cannot say 'but everyone else is doing it, so it must be okay'.

What if I think the creditor is acting harshly or extremely unfairly?

You can ask the creditor to stop their behaviour and change the terms that you think are harsh or unfair. If they refuse, you can contact the Financial Dispute Scheme that the creditor belongs to, get some advice from a community law centre or take a claim against them to the Disputes Tribunal or Court.

If the Court finds there has been oppression, it can require the creditor to change the terms of the credit contract, or cancel it all together.

The Disputes Tribunal can also change the terms of a contract or set aside a contract (get you back to the position you were in before you signed the contract). The Disputes Tribunal may do this if it considers that the contract is harsh or very unfair, or the way the creditor behaves towards you while enforcing the contract was harsh or very unfair. The Disputes Tribunal can hear cases where the amount is up to \$15,000. Under the Lender Responsibility Principles lenders cannot be oppressive when dealing with borrowers. See page 47 for further information.

Resolving a problem

– what you can do if the creditor is wrong

What if the creditor does something wrong?

Statutory damages

If the creditor doesn't provide you with the information when they have to, they can be penalised. This is called statutory damages and it means you may be able to get money back from the creditor. The chart on page 44 explains how you can work out the amount of statutory damages you are entitled to.

Look at your contract and find the 'total of all advances made'. This amount must be shown in the key information. If you have a revolving credit contract, such as a store card or a credit card, then use the credit limit at the time of the breach.

Look down the left hand column and find your total or credit limit. The figure in the right hand column is the amount of statutory damages the creditor must pay you or deduct from your debt.

You don't need to prove that you have lost money. You are entitled to these statutory damages even if you didn't suffer any loss.

See pages 3-5 for more information about disclosure and the key information the creditor needs to give you.

Total advance / credit limit	Statutory damages
\$2,000 and under	\$200
\$4,000	\$200
\$10,000	\$500
\$15,000	\$750
\$20,000	\$1,000
\$30,000	\$1,500
\$40,000	\$2,000
\$50,000	\$2,500
\$60,000	\$3,000
\$70,000	\$3,500
\$80,000	\$4,000
\$90,000	\$4,500
\$100,000	\$5,000
\$110,000	\$5,500
\$120,000 or more	\$6,000

Go to the creditor

If you understand what the creditor did wrong you can write them a letter or an email. Explain what was wrong and tell the creditor what you want to do about it, for example, you want to cancel the contract or have your goods returned or have a fee cancelled.

If the creditor doesn't agree, you can make a complaint to the creditor's dispute resolution scheme. Find out more about the financial dispute schemes at:

www.companiesoffice.govt.nz/fsp/about-the-fspr/dispute-resolution-schemes

Alternatively, you can take the case to the Disputes Tribunal. Find out more about the Disputes Tribunal process at **www.disputestribunal.govt.nz/**.

Complaints

You can make a complaint to the Commerce Commission if you think that a creditor has been acting illegally.

Contact the Commerce Commission on **0800 94 3600**, or visit **www.comcom.govt.nz**.

A debt collector says I owe money, but I don't, what can I do?

Write to the debt collector and the creditor to say that you don't agree and explain the reasons why. If they do not accept your explanation, and continue to demand payment you can take a claim to the Disputes Tribunal for non-liability for the debt. For more information see our 'Debt Collection' brochure or our website www.consumerprotection.govt.nz/

Checking your own credit records

The Credit Reporting Privacy Code requires credit reporters (companies that provide credit reports on consumers and businesses) to provide individual consumers with free access to their own credit information on request. If you need the information urgently (within a five working day period), the company can charge you a reasonable fee.

Credit reporters must have an internal complaints process that consumers can use to complain about mistaken debt information. Complainants can go to the Office of the Privacy Commissioner if they are not satisfied with the outcome.

More information on the Credit Reporting Privacy Code is available from the Office of the Privacy Commissioner's website at www.privacy.org.nz



Help and support

– agencies that can help you

Having trouble making payments?

If you are having trouble paying back a loan or a credit contract you can discuss your options with a budget advisor.

Contact details of your local budget advice service are online at www.familybudgeting.org.nz. Or you may be able to call **0508 BUDGETLINE (0508 283438)** to talk with a trained budget advisor.

If you really can't pay

If there is no way that you can pay back your debts then you can apply for a Summary Instalment Order, a No-Asset Procedure, or bankruptcy. Talk to the Insolvency & Trustee Service for more information about these options.

Contact the Insolvency & Trustee Service on **0508 INSOLVENCY** or **0508 467 658**, or visit www.insolvency.govt.nz.

Free legal advice

You can get help from a community law centre to understand your credit contract or to deal with a creditor that is acting illegally.

Contact details of your local community law centre are available online at www.communitylaw.org.nz.

For general consumer advice

Your local Citizens Advice Bureau can help you with general consumer advice and give you advice on how to solve a problem.

Contact details of your local Citizens Advice Bureau are available online at www.cab.org.nz. You can call **0800 FOR CAB 0800 367 222**.

Visit www.consumerprotection.govt.nz for more information about credit contracts, the Credit Contracts and Consumer Finance Act and other consumer issues.

The Lender Responsibility Principles

The Lender Responsibility Principles form an important part of the Credit Contracts and Consumer Finance Act (CCCFA). These principles clearly set out the responsibilities of lenders or creditors, particularly around whether credit can be afforded and whether it is suitable for a borrower's needs. The principles apply to all consumer credit transactions except consumer leases.

In turn the Responsible Lending Code is a guide for lenders on how they can *comply* with the Lender Responsibility Principles. It can be used by lenders to show that they have complied with the principles and have not acted oppressively. A copy of the guide can be found at:

www.consumerprotection.govt.nz/responsible-lending-code

General principles

Every lender must exercise the care, diligence, and skill of a responsible lender:

- › when advertising
- › before agreeing to provide credit or finance or taking guarantees, and
- › in all subsequent dealings with borrowers and guarantors.

Lenders' responsibilities

Lenders must:

- › Make reasonable enquiries before entering into a loan (or taking a guarantee) to be satisfied that:
 - the credit provided will meet the borrower's needs and objectives
 - the borrower or guarantor will be able to make the payments under the loan, or comply with the guarantee, without suffering substantial hardship.

- › Help borrowers and guarantors to make informed decisions
- › Help borrowers decide whether to enter into the agreement, agree to variations or any later decisions and to be reasonably aware of the contract's effect by making sure:
 - advertising is not likely to be misleading, deceptive or confusing to borrowers
 - the contract's terms are expressed in plain language in a clear, concise and intelligible way
 - information is not presented in a way that is likely to be, misleading, deceptive or confusing.
- › Act reasonably and ethically:
 - when breaches of the loan occur or when other problems arise
 - when a borrower suffers unforeseen hardship
 - during repossession including:
 - taking all reasonable steps to ensure goods and property are not damaged
 - adequately storing and protecting repossessed goods
 - not exercising the right to enter premises in an unreasonable manner.
- › **Not** use oppression in dealings with borrowers to ensure:
 - contracts are not oppressive
 - their lending powers are not exercised in an oppressive manner
 - borrowers are not induced into contracts by oppressive means.
- › Comply with all of their other legal obligations to borrowers. This includes:
 - following the rules about disclosure, credit fees, unforeseen hardship applications, and credit repossession in the Credit Contracts and Consumer Finance Act

- not making false or misleading representations or including unfair contract terms as required by the Fair Trading Act
- carrying out their services using reasonable care and skill, as required by the Consumer Guarantees Act.

Responsibilities when selling credit-related insurance

When the insurance is arranged by the lender, they have to:

- › make reasonable inquiries before an insurance contract is signed
- › ensure the policy is likely to meet the borrower's requirements and that payments will not cause substantial hardship.

The lender can rely on information the borrower provides, unless the lender has reasonable grounds to believe the information is not reliable.

- › Assist borrowers to make informed decisions about buying that insurance and to be reasonably aware of the full implications of doing so. This includes making sure:
 - any advertising distributed by the lender is not likely to be, misleading, deceptive or confusing to borrowers
 - information is not presented in a misleading, deceptive or confusing manner.

Responsibilities to guarantors

Lenders need to:

- › Make reasonable inquiries, before guarantees are given, that guarantors can likely comply without suffering substantial hardship. The lender can rely on information the guarantor (or borrower) provides, unless the lender has reasonable grounds to believe the information is not reliable.

- › Assist guarantors to reach informed decisions about agreeing to the guarantee and to be reasonably aware of the full implications of doing so. This includes making sure:
 - any advertising distributed by the lender is not likely to be, misleading, deceptive or confusing to borrowers
 - information is not presented in a misleading, deceptive or confusing manner.
- › Treat guarantors reasonably and in an ethical manner. This includes when the debtor defaults or when other problems arise.
- › Not use oppression in dealings with guarantors to ensure:
 - contracts are not oppressive
 - their lending powers are not exercised in an oppressive manner
 - guarantors are not induced into guarantees by oppressive means.
- › Meet all their legal obligations to guarantors. This includes:
 - following the rules about disclosure, credit fees, unforeseen hardship applications, and credit repossession in the Credit Contracts and Consumer Finance Act
 - not making false or misleading representations or include unfair contract terms, as required by the Fair Trading Act
 - carrying out their services using reasonable care and skill as required by the Consumer Guarantees Act.

Consumer Protection

Ministry of Business, Innovation and Employment

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ISBN 978-1-851750-6 (print)

MB13927 | MBCA0003 | April 2017