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made under the

Credit Act 1985

Credit Act 1985—Form 4

(see s 34)

Australian Capital Territory

Credit Act 1985

Things you should know about your credit sale contract or loan contract

The law says that your credit provider must give you this information about your **credit sale contract** or **loan contract**.

This information tells you about some of your rights and obligations and those of your credit provider. It does not state the terms and conditions of your contract.

The Contract

1 How can I get a copy of my contract?

You should already have a copy of the agreement you signed. If you want a copy of your contract, write to your credit provider and ask for one. You must pay any fee that the law says your credit provider can charge. Your credit provider will send a copy of your contract to you within 14 days after receiving your request. Your credit provider has to give you a copy of your contract only once in any period of 3 months.

2 What should my contract tell me?

You should **read your contract** carefully.

Your contract should tell you about your obligations, and include the following details:

- * the amount financed;
- * any credit charge;
- * the total repayments (if known);
- * details of any instalments you must pay;
- * a statement of any **annual percentage rate** (interest rate).

If your contract does not tell you all of these details, contact Consumer Affairs or get legal advice, as you may have rights against your credit provider.

3 Can I get a statement of account from my credit provider?

Yes. Write to your credit provider and ask for one. (You must pay any fee that the law says your credit provider can charge.) Your credit provider will write back within 14 days after receiving your request telling you—

- * the date and amount of each payment already received;
- * details of any arrears (payments due which you did not pay); and
- * the dates and amounts of future repayments.

Your credit provider has to give you this information only once in any period of 3 months.

4 Can I pay out my contract early?

Yes. Pay your credit provider the amount owing on the day you wish to end your contract.

5 How can I find out the amount owing?

You can write to your credit provider at any time and ask for a statement of the **net balance due** (pay out figure). You will get this statement within 7 days after your credit provider receives your request. If you want to, you can also ask for details of how the balance is worked out. Your credit provider has to give you this information only once in any period of 3 months.

6 Will I pay less interest if I pay out my contract early?

Yes. Interest is calculated only for the actual time that money is owing.

However, under your contract you pay a big part of the interest in your early repayments. This means that, for example, by the time you are half-way through your contract, you have paid more than half the interest.

Therefore, the exact amount of interest you will save will vary, depending on when you pay out your contract.

7 Can there be an increase in the net balance due after I get from my credit provider a statement telling me what the amount is?

Your statement of the net balance due will tell you if this can happen. For example, if interest is charged on a daily basis, you also have to pay interest from the date the statement is calculated until the date your contract is paid out.

8 Can any of the conditions of my contract be changed by my credit provider?

Yes, but only if your contract says so. Your credit provider cannot increase your annual percentage rate.

9 Will I be told in advance if my credit provider is going to make a change in the contract?

Yes. You get at least 7 clear days' notice in writing.

10 If I have been charged by my credit provider for a lawyer to prepare my contract, can I do anything if I think the fee is unreasonable?

Yes. You can ask to have the Credit Tribunal decide whether the fee was reasonable. Contact Consumer Affairs on how to go about this.

11 Is there anything I can do if I think my contract is unjust?

Yes. You can have the Credit Tribunal look into the contract. Contact Consumer Affairs or get legal advice.

Insurance

12 Do I have to take out insurance?

With certain types of property you must take out insurance. If there is a mortgage, the mortgagee can insist that you insure the property covered by the mortgage. Otherwise, you can decide if you want to take out insurance or not.

13 Will I get details of my insurance cover?

Yes. You will get either a copy of the insurance contract from your insurer or the important details of your insurance cover from your credit provider. The copy of the contract, or the details, will be given to you within 14 days after the insurance contract is entered into or your insurance cover starts.

14 Do I get the benefit of any no-claim bonus?

Yes.

15 If the insurer does not accept my proposal, will I be told?

Yes. The insurer will write to you.

16 In that case, what happens to the premium?

If it has already been paid to the insurer, you get it back. If your credit provider has not paid it to the insurer, the insurer will tell you this in writing. You should then contact your credit provider to decide what is to happen to the premium.

Mortgages

17 If my contract says there is a mortgage, what does this mean?

A mortgage means that you have given the mortgagee certain rights over any property you have mortgaged. If you default under your contract, you can lose that property and you might still owe money to the mortgagee.

18 Is there anything that I am not allowed to do with the property I have mortgaged?

The law says you cannot sell the property unless you have your mortgagee's permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or cannot do with the property.

19 If my mortgagee writes asking me where the mortgaged goods are, do I have to say where they are?

Yes. You have 14 days after receiving your mortgagee's request to write and tell your mortgagee. If someone else has the goods, you have to give the name and address of that person. If you have lost the goods, you will have to say how they were lost. If your letter does not get back to the mortgagee within 14 days, or if there is information in it that you know to be false, you can be taken to court.

20 Should I get a copy of my mortgage?

Yes. It will be given to you within 14 days after your mortgage is entered into.

21 What can I do if I find that I cannot afford my repayments and there is a mortgage over property?

Get in touch with your mortgagee immediately. Discuss the matter and see if you can come to some arrangement. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.

If you cannot come to a suitable arrangement with your mortgagee and you want to keep the mortgaged property, contact Consumer Affairs for help or seek financial counselling immediately.

Otherwise you may—

- * give the property back to your mortgagee, together with a letter saying you want the mortgagee to sell the property for you;

OR

- * sell the property—but only if your mortgagee gives permission first;

OR

- * give the property to someone who may then take over the repayments, but your mortgagee has to give permission first.

If your mortgagee won't give permission, contact Consumer Affairs for help.

22 Can my mortgagee take or sell the mortgaged property?

Yes, if you have not carried out all of your obligations under your contract.

23 Must my mortgagee tell me first before taking or selling the mortgaged property?

In most cases, yes. In those cases, you get at least 1 month's notice in writing so that you can try to do something about the matter. The notice tells you why your mortgagee wants to take action against your property and what you can do to stop it.

Your mortgagee can take the property **without giving notice** if—

- * there is a good reason to think that you are going to sell, hide, damage or get rid of the property;
- * there is a good reason to think you deliberately misled your mortgagee when you entered into your mortgage; or

* your mortgagee has been unable to locate you after making reasonable efforts to do so.

If you have repaid more than three-quarters of the amount financed, your mortgagee will need an order from the Credit Tribunal to take anything you have mortgaged (apart from land). It will take more than three-quarters of your total repayments to repay more than three-quarters of the amount financed because only some of each repayment goes towards paying off the amount financed.

Remember, you must still pay what you owe on your contract, regardless of how little it may be.

24 Can my mortgagee or a person working for my mortgagee come onto my premises to take possession of goods without my permission?

Only if your mortgagee has an order of the Credit Tribunal.

25 What happens if my goods are taken by my mortgagee?

You get a notice setting out what you have to do if you want the goods back. The notice also tells you what happens if you do nothing. Your mortgagee cannot sell the goods until 21 days after you get a notice called 'Notice after taking possession of mortgaged goods'. So you have 21 days to do something if you want the goods returned.

However, the goods can be sold before the 21 days if you have freely given your mortgagee permission. The law will not allow anyone to force you or threaten you to give your permission.

The goods can also be sold before the 21 days if the Credit Tribunal has authorised the sale.

General

26 What do I do if I cannot make a repayment?

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. For example, you could ask for your contract to be varied, repayments to be deferred or action postponed.

27 What if my credit provider and I cannot agree on a suitable arrangement?

Contact Consumer Affairs for help.

If you have been **unemployed, sick** or there is another **good reason** why you are having problems with your contract, then your contract may be able to be varied under the law to meet your situation.

There are other people, such as financial counsellors, who may be able to help.

28 Can my credit provider take action against me?

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being harassed or threatened, contact Consumer Affairs or the Trade Practices Commission, or get legal advice.

29 Must my credit provider tell me first before taking action against me?

In most cases, yes. In those cases, you get at least 1 month's notice in writing so that you can try to do something about the matter. The notice tells you why your credit provider wants to take action against you and what you can do to stop it.

You do not get any warning if there is good reason to think you deliberately misled your credit provider when your contract was made.

30 Do I have any other rights and obligations?

Yes. The law does give you other rights and obligations. You should also **READ YOUR CONTRACT** carefully.

IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION, CONTACT CONSUMER AFFAIRS OR GET LEGAL ADVICE.

PLEASE KEEP THIS NOTICE. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.

Endnotes

- 1 This form was originally in the *Credit Regulations 1985*, schedule 1. Under amendments made by the *Legislation (Consequential Amendments) Act 2001*, the form was omitted from the regulations and became a form approved under the *Credit Act 1985*, section 256 (see amdts 1.966, 1.978 and 1.980).
- 2 This republication includes amendments made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

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