

Approved form 2002-79

made under the

Credit Act 1985

Credit Act 1985—Form 11

(see s 142)

Australian Capital Territory

Credit Act 1985

Things you should know about guarantees

The law says the credit provider must give you this information about your **contract of guarantee**.

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

Guarantees

1 What is a guarantee?

A promise by you that the person who is getting credit under a credit contract will keep to all the terms and conditions. If that person does not do so, you promise to pay the credit provider all the money owing on the contract as soon as the money is asked for.

2 How do I know how much the debtor is borrowing and the credit charges?

These details are on the copy of the credit contract or offer that the debtor signed. You should have been given a copy of that contract or offer before you signed the guarantee papers.

3 What documents should I be given?

- * The document you are reading now.
- * A copy of your contract.
- * A copy of the credit contract or offer signed by the debtor.

4 What other information can I get?

- * If you have guaranteed repayment of a **credit sale contract** or a **loan contract**, you can write to the credit provider and ask for—
 - * an extra copy of your contract of guarantee;
 - * an extra copy of the debtor's credit sale contract or loan contract;
 - * a copy of any other document signed by the debtor (for example, a mortgage) or by you;
 - * a statement of the debtor's repayments under the credit sale contract or loan contract; and
 - * details of any insurance cover financed by the debtor's credit sale contract or loan contract.

When writing to the credit provider, you must pay any fee that the law says the credit provider can charge.

The credit provider will write back to you within 14 days after receiving your request.

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

- * If you have guaranteed repayment of a **continuing credit contract** you can write to the credit provider and ask for—
 - * an extra copy of the debtor's continuing credit contract or a notice stating the details of the contract; and
 - * a copy of any notice given to the debtor telling the debtor about a change in the debtor's contract.

Again, when writing to the credit provider you must pay any fee that the law says the credit provider can charge.

But the credit provider has to give you these documents only once in any period of 14 days.

- * You can write to the credit provider and ask for the **net balance due** (pay out figure) under the **credit contract** guaranteed by you. You will get this

information within 7 days after the credit provider receives your request. If you want to, you can also ask for details of how the balance is worked out. But the credit provider has to give you this information only once in any period of 3 months.

5 Can I cancel my contract of guarantee?

You may be able to under certain circumstances. For exact details, contact Consumer Affairs or get legal advice.

If the debtor defaults

6 Do I get any warning that the credit provider wants to take action against the debtor?

In most cases, yes. You get the same warning as the debtor. You get a notice in writing telling you why the credit provider wants to take action against the debtor. It also tells you what the debtor has to do to stop the action. The debtor has at least 1 month to try and fix up the problem. You should discuss the matter with the debtor immediately.

7 Can the credit provider take action against me without taking action against the debtor at the same time?

No, except where—

- * the debtor cannot be found;
- * the debtor's financial affairs are being handled under bankruptcy law;
or
- * a court has declared that action can be taken against you without action being taken against the debtor.

8 If the debtor cannot be found and the credit provider intends to take legal action against me do I get any warning?

Yes. You get a notice giving you at least 14 days warning.

9 Exactly how much do I have to pay the credit provider if the debtor defaults?

You have to pay what the debtor owes the credit provider, plus the credit provider's costs in having you honour your contract of guarantee.

General

10 What can I do if I am asked to pay out the credit contract and I cannot pay it all at once?

Talk to the credit provider and see if some arrangement can be made about paying. If you cannot come to 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.

11 If I pay out money for a debtor, is there any way I can get it back?

You can sue the debtor. But remember, if the debtor cannot pay the credit provider, he or she probably cannot pay you back for a while, if at all.

12 What happens if I go guarantor for someone who is under 18 when he or she signs a credit contract?

You are responsible for the full debt if the contract of guarantee had a clear and obvious warning near your signature. The warning had to tell you that the courts might not let you sue the debtor if you have to pay out the credit contract for the debtor.

13 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 SUMMARY. 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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