

# Disclosure requirements

## Introduction

One of the primary purposes of the Credit Contract and Consumer Finance Act 2003 ('CCCFA') is to protect the interests of consumers in connection with credit contracts. Providing adequate disclosure is an important component of meeting this requirement. In addition, the CCCFA requires lenders to comply with responsible lending principles. The Responsible Lending Code ('The Code') provides guidance about how to do this.

Please note that the requirements apply regardless of whether the person making disclosure is attending to the sign-up of the loan documents or not (i.e. when a justice of the peace is witnessing the customer signing our documents and verifying ID). In simple terms, **you, as a third-party introducer, are responsible for disclosure in accordance with the CCCFA.**

## Initial disclosure

Lenders (e.g. Avanti Finance) or a third-party introducer must make disclosure of the key information contained in the loan contract, the guarantee and the insurance terms **before** the loan contract, guarantee and insurance policy are entered into.

## How disclosure is made

Disclosure is made by:

- Giving the disclosure statement to the person; or
- Sending the disclosure statement by post; or
- By electronic communication by sending to the information system specified by the person for this purpose (**consent** to electronic disclosure must be obtained where documents are sent via email).

When disclosure is made by post or electronically, it is treated as being made on the day on which the disclosure statement is posted or sent.

**Every borrower and guarantor must receive their own disclosure copy of the loan contract, guarantee and insurance terms (as applicable). They must have the opportunity to consider the terms and ask questions about them.**

## Communication of key features

In addition to making disclosure as outlined above, the person making disclosure must also inform all borrowers and guarantors of the **key features** of the loan agreement or guarantee and clearly highlight those features in a way that draws the customer's attention to them.

With Avanti loan contracts, those key features include:

- All details contained in the disclosure statement:
  - Initial unpaid balance
  - Interest rate, method of charging interest & total interest payable
  - Credit fees and charges
  - Payments required – timing, number, amount and total
  - That an early repayment fee may be payable if the loan is repaid early
  - Details of the security property/vehicle and that the property and/or vehicle may be sold if the borrower defaults
  - The default interest rate and the default fees
  - The term
- That the customer has the right to cancel the loan contract for a short time; and
- That Avanti is appointed Attorney for the borrower/guarantor and can do things to protect its interests under this agreement.

The level of assistance and explanation provided when informing borrowers/guarantors of the key features may differ depending on the circumstances. Greater or further assistance should be provided when informing the borrower/guarantor of the key features where there is a risk the borrower/guarantor may not be aware of the implications of entering into the agreement/guarantee; for example, where they are **vulnerable**.

A borrower/guarantor is deemed vulnerable if:

- They are unlikely to understand the nature of the transaction because they don't have a good understanding of English, or they do not have basic knowledge about financial matters; or
- They appear to be under significant pressure to obtain credit or give a guarantee e.g. where the credit is needed urgently or for necessities or is under undue influence from another party to obtain credit or give a guarantee.

Independent legal advice must be recommended when there is more than one party to the loan but only one borrower is receiving the benefit of the loan or if any borrower may be under undue influence from any other party. Where possible, this recommendation should be made without the presence of the other parties to the loan. Independent legal advice should be from a lawyer who is not advising any other parties to the loan.

If you suspect that the borrower/guarantor does not have a good understanding of the English language you should refer the borrower/guarantor to someone who can act as an interpreter. Such interpreter must be over 18 years of age and must not be someone who can exert influence over the borrower/guarantor (e.g. an adult child). If an interpreter has been used, please advise Avanti Staff.

## Guarantors

Specific additional rules apply when using a guarantor. In addition to the key features that must be communicated about the loan contract referred to above, key features of the guarantee must also be highlighted.

These are:

- That the guarantor as well as the borrower is liable for the full amount of the loan; and
- That the guarantor will be informed when repayment difficulties occur.

Guarantors **must** be given the opportunity to seek independent legal advice, and this should be recommended. In some instances, independent legal advice will be a requirement, e.g. where the guarantor's home is used as security for the loan or where you believe the guarantor may be under undue influence from any other party.

The guarantor must be given the opportunity to ask questions without the borrower present.

## Insurance (Autosure)

You must make reasonable inquiries to ensure that the insurance product will meet the borrower's requirements. You must ensure the borrower knows that the insurance is optional, and that the borrower can obtain insurance from elsewhere.

The insured person must be provided with the terms of the insurance (the policy booklet) **before** the insurance is arranged.

The key features of the policy must be explained to the borrower. These include:

- The amount of the premium;
- The cover provided;
- That exclusions apply;
- The duration of the cover; and
- Any cooling off period provided.

The level of assistance and explanation provided when informing borrowers of the key features of the insurance product may differ depending on the circumstances. The comments above relating to the level of assistance for borrowers/guarantors also apply.

### Oppression

You must ensure that borrowers or guarantors do not feel pressured into entering into an agreement or giving a guarantee immediately without allowing them time to consider the information.

In all cases you are required to consider whether there are any matters which lead you to reasonably believe that the borrower or guarantor may not be reasonably able to protect their own interests, for example due to their age or physical or mental condition. Where you are in doubt, you should refer the borrower or guarantor to independent legal advice or other specialist expertise.

### Failure to make adequate disclosure

Failure to comply with the CCCFA is an offence. If adequate disclosure is not made the loan contract may be unenforceable and Avanti and the third-party introducer may be liable for statutory damages.

### Other points to note

As a third-party introducer, you have other responsibilities under the Code. These include being familiar with the responsible lending principles and training your staff on them. The Responsible Lending Code can be accessed on the consumer affairs website: [www.consumeraffairs.govt.nz](http://www.consumeraffairs.govt.nz)

Please contact your Avanti Finance lender directly or via the mortgages team 0800 33 33 20 if you have any queries about these requirements.