



Attention: All Creditors

Information for all registrants under the *Cost of Credit Disclosure Act*

*Financial and Consumer
Services Commission
Consumer Affairs Division*

A copy of the *Cost of Credit Disclosure Act*,
chapter 28.3 may be obtained at
<http://www.gnb.ca/acts>

Effective September 15, 2010

Summary: A credit grantor must ensure the written disclosure requirements outlined in the *Cost of Credit Disclosure Act* of New Brunswick are provided to the borrower.

The *Cost of Credit Disclosure Act* defines a “credit grantor” as (a) a person who has entered into, or who is negotiating to enter into, a credit agreement under which the person extends or is to extend credit to a borrower if (i) the borrower has entered into or is to enter into the credit agreement primarily for the personal, family or household purposes of the borrower, (ii) the credit is not in respect of the sale of goods intended for resale, or (b) an assignee of the original credit grantor’s rights under a credit agreement, if the borrower has been given notice of the assignment, and includes (c) a credit card issuer, and (d) [...] a lessor.

The *Cost of Credit Disclosure Act* defines a “credit agreement” as an agreement “under which credit is extended and includes (a) an agreement in relation to: (i) a loan of money, (ii) a credit sale, (iii) a line of credit, or (iv) a credit card (b) a renewal of an agreement, and (c) [...] a lease. The legislation outlines the requirements for initial disclosure on loans, prepayment rights and the timing of required disclosures.

Failure to provide the required disclosure information is an offence under the *Cost of Credit Disclosure Act*. Registration as a credit grantor under the new legislation will be mandatory in the Province of New Brunswick. Registration will require that the credit grantor provide all copies of any/all documents used by the creditor in relation to their credit process. Copies of any amended documents will be required to be filed immediately.

Fixed Credit:

Disclosure Statement

Section 32(1) of the *Cost of Credit Disclosure Act* outlines the specific information that must be included in a fixed credit disclosure statement. The statement must be in writing or in a format that will allow the borrower to retain a copy of it. The information must be clear, concise and presented in a logical order. It must also be set up in a way that brings the statement to the borrower’s attention. The information that must be included in the initial disclosure statement is:

- the effective date of the statement;
- for a credit sale, a description of the product;
- the outstanding balance as of the effective date of the statement, taking into account every payment made by the borrower on or before the effective date of the statement;
- the nature and amount of each advance, charge or payment taken into account in the outstanding balance disclosed;
- the term;
- the amortization period if it is longer than the term;
- the date on which interest begins to accrue and the details of any grace period;
- the annual interest rate and the circumstances under which interest will be compounded;
- if the annual interest rate may change during the term,
 - the initial annual interest rate and the compounding period,
 - the method of determining the annual interest rate at any time, and
 - unless the amount of scheduled payments is adjusted automatically to account for changes in the annual interest rate, the lowest annual interest rate, based on the initial outstanding balance, at which the payments would not cover the interest that would accrue between payments;
- the nature and amount of any charges, other than interest, that will become payable by the borrower in connection with the credit agreement;
- the amount and timing of any advances to be made after the effective date of the disclosure statement;
- the amount and timing of any payments to be made after the effective date of the disclosure statement;
- the total of all advances made or to be made in connection with the credit agreement;
- the total of all payments to be made in connection with the credit agreement;
- the total cost of credit;
- the APR;
- the nature of any default charges provided for by the credit agreement;
- a description of the subject matter of any security interest;
- for a credit agreement in relation to a mortgage loan, a statement of the conditions, if any, under which the borrower may make prepayments, and any charge for prepayment;
- for a credit agreement other than a credit agreement in relation to a mortgage loan, a statement that
 - the borrower is entitled to prepay the outstanding balance at any time without any prepayment charge or penalty, and
 - the borrower is entitled to prepay a portion of the outstanding balance on any scheduled payment date, or at least monthly, without any prepayment charge or penalty;
- the nature, amount and timing of charges for any optional services purchased by the borrower that are payable to or through the credit grantor; and
- the conditions under which the borrower may terminate services.

With respect to the purchase of optional services like insurance, the credit grantor must disclose in writing: that the borrower may purchase the required insurance through an agent or insurer of the borrower's choice; and that a borrower may cancel any optional service of a continuing nature that is provided by the credit grantor, by giving 30 days notice or a shorter notice as provided under the credit agreement.

Notice

The borrower must receive a disclosure statement before the earlier of the date on which the borrower enters into the credit agreement, and the date on which the borrower makes any payment in connection with the credit agreement.

The borrower must receive a disclosure statement for mortgages at least two business days before s/he incurs any obligation to the credit grantor or makes any payment in connection with the mortgage loan [see s.16(3)(b) of the *Cost of Credit Disclosure Act*]. If the information in the document is not complete or correct, the borrower may be entitled to cancel the agreement. A borrower may waive the time for delivery of the disclosure statement under certain conditions. These conditions are as follows:

- If the borrower receives independent legal advice from a lawyer. A statement to that effect confirming the receipt of the independent legal advice signed by the lawyer must be attached to the waiver.
- If the mortgage loan, to which the waiver relates, provides the borrower with prepayment rights that are similar to those in s.23 of the *Act* for prepayment of non-mortgage loans. For example, a borrower is entitled to pay the outstanding balance of the credit agreement without any prepayment charge or penalty.

The waiver statement must be in writing, signed by the borrower, and disclose the borrower's rights clearly and prominently. If the borrower waives the time period, the credit grantor must deliver the statement to the borrower before the required 2 days elapses.

Calculating the Cost of Credit

In calculating the total cost of credit, the value received or to be received by the borrower in connection with the loan agreement must be taken into account. That would include:

- the money given to the borrower,
- the cash price of a product purchased or to be purchased,
- a payment, discharge or consolidation by the credit grantor of a pre-existing monetary obligation of the borrower,
- the amount of money obtained or to be obtained or the cash price of a product obtained or to be obtained through the use of a credit card,
- charges for any of the following, if the credit grantor incurs the expense for the purpose of arranging, documenting, insuring or securing a credit agreement and then charges the expense to the borrower:
 - a fee paid to a third party to record or register a document or to obtain a document or information from a public registry of interests in real property,
 - a fee for professional services required for confirming the value, condition, location etc. of the property that serves as security for the loan agreement, if the borrower is given a report signed by the person providing the professional services and may give the report to third persons;
 - premiums for casualty insurance, if the borrower is the beneficiary of the insurance and the insured amount is the full insurable value,
 - premiums for any insurance in connection with the credit agreement if the insurance is optional
 - and any application fee for insurance on a high-ratio mortgage.
- a fee charged by the credit grantor for maintenance of a tax account on a high-ratio mortgage.
- charges for shares in a credit union that a borrower must buy as a condition of entering into a credit agreement with a credit union

The total cost of credit is the difference between value given by the borrower and the value received by the borrower to the credit grantor in connection with the credit agreement. Some examples of value given by the borrower would include:

- money or property transferred to the credit grantor for any purpose in connection with the credit agreement;
- money or property transferred to a third party (not the lender) to pay for services that the credit grantor requires the borrower to obtain relating to the credit agreement, unless the charge:
 - is for an expense if it had been incurred by the credit grantor and then charged to the borrower
 - is for a services provided by a lawyer
 - is for title insurance provided by an insurer chosen by the borrower.

Part 4 of the *Cost of Credit Disclosure Regulation* outlines the formulas for calculating the APR and the total cost of credit.

Floating Interest Rates

If the interest rate floats, the credit grantor must, at least every 12 months, give the borrower a disclosure statement that includes the following information:

- the period covered by the statement (running from the date of the last disclosure statement)

- the annual rate of interest at the beginning and end of the period;
- the outstanding balance at the beginning and end of the period;
- if there are scheduled payments in the agreement, the statement must disclose the amount and timing of all remaining payments, based on the annual interest rate that applies at the end of the period.

Renewals

Where a credit agreement is renewed the credit grantor shall deliver to the borrower, on or before the effective date of the renewed agreement, a disclosure statement containing the information outlined in s. 36(2)(a) to (k) of the *Act*.

Advertising

If an advertisement offering credit identifies the interest rate or the amount of any payment, it must also disclose: the APR, the cash price of any specifically advertised product, and the term of the contract. In addition, if the advertisement refers to an “interest free period,” the advertiser must disclose whether the transaction is unconditionally interest free or if interest will accrue during the period but will be forgiven under certain conditions. If there are conditions, the advertisement must disclose the conditions and the APR for the period if the conditions are not met.

Practice Tip

Please review the *Act* and Regulations for further requirements in relation to:

- Interpretation and Application
- Registration
- General Disclosure Requirements and Rights of Borrowers and Lessees
- Fixed Credit
 - Application of Part.
 - Credit sales
 - Advertising for fixed credit.
 - Advertising interest-free periods.
 - Initial disclosure statement for fixed credit.
 - Disclosure regarding changes in interest rate
 - Disclosure regarding increases in outstanding principal
 - Disclosure regarding amendment.
 - Disclosure regarding renewals of credit agreements not in relation to mortgage loans
- Investigation and Inspections
- Offences and Penalties
- General Administration
- Regulations
 - Registration
 - Collection and Recovery of Debt – Prohibited Collection Practices
 - Calculations

For more information on the *Cost of Credit Disclosure Act and Regulation* the legislation can be purchased from the Queen's Printer for New Brunswick (phone (506) 453-2520) or found on the internet at www.qnb.ca/acts.

Open Credit:

“Open credit” means credit extended under a credit agreement if the credit agreement (a) anticipates multiple advances that are to be made when requested by the borrower in accordance with the credit agreement, and (b) does not establish the total amount to be advanced to the borrower under the credit agreement, although it may impose a credit limit;

Application for credit card

A credit card issuer shall ensure that the application form for a credit card contains the following information respecting the credit agreement in relation to the credit card:

- if the interest rate under the credit agreement is not a floating rate, the annual interest rate;
- if the interest rate under the credit agreement is a floating rate, the index rate and the relationship between the index rate and the annual interest rate;
- the details of any grace period;
- the nature and amount of any non-interest finance charges that are payable or may become payable by the credit card holder; and
- the date as of which the information referred to above is current.

Disclosure Statement

Section 41(1) of the *Cost of Credit Disclosure Act* outlines the specific information that must be included in an open credit disclosure statement. The statement must be in writing or in a format that will allow the borrower to retain a copy of it. The information must be clear, concise and presented in a logical order. It must also be set up in a way that brings the statement to the borrower’s attention. The information that must be included in the initial disclosure statement is:

- the effective date of the statement;
- the credit limit;
- the minimum periodic payment or the method of determining the minimum periodic payment;
- the initial annual interest rate and the compounding period;
- if the annual interest rate may change, the method of determining the annual interest rate at any time;
- the date on which interest begins to accrue on advances or different types of advances and the details of
- any grace period;
- the nature and amount, or the method of determining the amount, of any non-interest finance charges that may become payable by the borrower in connection with the credit agreement;
- the nature, amount and timing of charges for any optional services purchased by the borrower that are payable to or through the credit grantor and the conditions under which the borrower may terminate the services;
- a description of the subject matter of any security interest;
- the nature of any default charges provided for by the credit agreement;
- how often the borrower will receive statements of account; and
- a telephone number that the borrower can call to obtain information about their account during the creditor’s normal business hours, without incurring any charges for the call.

With respect to the purchase of optional services like insurance, the credit grantor must disclose in writing: that the borrower may purchase the required insurance through an agent or insurer of the borrower’s choice; and that a borrower may cancel any optional service of a continuing nature that is provided by the credit grantor, by giving 30 days notice or a shorter notice as provided under the credit agreement.

Statement of Account

The credit grantor shall deliver to the borrower, at least monthly, a statement of account that contains the following information:

- the period covered by the statement, which period shall run from the date of the first advance or, if a statement of account has been delivered under this section, from the date of the statement of account most recently delivered to the borrower;
- the outstanding balance at the beginning of the period covered by the statement;
- the amount, description and posting date of each transaction or charge added to the outstanding balance during the period covered by the statement;
- the amount and posting date of each payment or credit subtracted from the outstanding balance during the period covered by the statement;
- the annual interest rate or rates in effect during the period covered by the statement or any part of the period;
- the total of all amounts added to the outstanding balance during the period covered by the statement;
- the total of all amounts subtracted from the outstanding balance during the period covered by the statement;
- the outstanding balance at the end of the period covered by the statement;
- the credit limit;
- the minimum payment;
- the due date for payment;
- the amount that the borrower must pay on or before the due date in order to take advantage of a grace period;
- the borrower's rights and obligations regarding the correction of billing errors; and
- a telephone number that the borrower can call to obtain information about their account during the creditor's normal business hours, without incurring any charges for the call.

Notice

The borrower must receive a disclosure statement before the earlier of the date on which the borrower enters into the credit agreement, and the date on which the borrower makes any payment in connection with the credit agreement.

Credit card may only be issued on application

A credit card issuer shall not issue, deliver or cause to be delivered a credit card to an individual who has not applied for the card unless the credit card that is issued to the individual is to replace or renew a credit card that was applied for and issued to that individual.

Liability of credit card holder

A credit card holder who has, orally or in writing, reported a lost or stolen credit card, or the unauthorized use of the credit card or credit card number, to the credit card issuer is not liable for any debt incurred through the use of that credit card or credit card number after the credit card issuer receives the report.

The maximum total liability of a credit card holder arising from unauthorized use of a lost or stolen credit card before the credit card issuer receives notice is the lesser of (a) \$50, and (b) the maximum amount set by the credit agreement in relation to the credit card. However, it does not apply to the use of a credit card in conjunction with a personal identification number at a device commonly referred to as an automated teller machine or ATM.

Advertising

A credit grantor shall ensure that an advertisement that is published by or on behalf of the credit grantor and that gives any specific information about the cost of open credit states: the current annual interest rate for the open credit; and any initial or periodic non-interest finance charges for the open credit.

When advertising interest-free periods a credit grantor shall ensure that an advertisement that is published by or on behalf of the credit grantor and that states or implies that no interest is payable for a certain period in respect of a transaction under a credit agreement, states whether the transaction is unconditionally interest-free during the period, or that interest accrues during the period but will be forgiven under certain conditions.

If interest accrues during the period but will be forgiven under certain conditions, the credit grantor shall ensure that the advertisement also states the conditions and the annual interest rate for the period, assuming the conditions are not met. An advertisement that does contain the information required to be disclosed shall be deemed to represent that the transaction is unconditionally interest free during the relevant period.

Practice Tip

Please review the *Act* and Regulations for further requirements in relation to:

- Interpretation and Application
- Registration
- General Disclosure Requirements and Rights of Borrowers and Lessees
- Open Credit
 - Application of Part
 - Advertising for open credit
 - Advertising interest-free periods
 - Initial disclosure statement for open credit
 - Statement of account
 - Credit card may only be issued on application
 - Application for credit card
 - Additional disclosure for credit card
 - Liability of credit card holder
- Investigation and Inspections
- Offences and Penalties
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