



**MINISTRY OF CONSUMER AFFAIRS**  
MANATŪ KAIHOKOHOKO

Dear Creditor

This letter sets out the Ministry of Consumer Affairs' view on security clauses in consumer credit contracts.

Clauses that claim a security interest in "*All present and after acquired property*" or "*All personal household chattels*" are not valid or enforceable when the credit is used for personal domestic household use.

Consumer goods are covered by section 44 of the Personal Property Securities Act. Consumer loans are covered by the Credit (Repossession) Act, and the Credit Contracts and Consumer Finance Act. The effect of these laws is to prohibit the use of such "blanket" or "dragnet" clauses in consumer credit contracts. A more detailed discussion of the legislation is included in an Appendix to this letter.

Where such clauses have been included in your contracts with consumer debtors, be advised that these are not valid and should not be enforced by you or your agents.

Any attempt to seize property on reliance on one of these clauses may amount to conversion and a breach of the above laws and the Fair Trading Act.

For further information you may contact us by the below means and request to speak to a Consumer Issues Advisor.

Yours faithfully

Ministry of Consumer Affairs  
PO Box 1473  
Wellington  
Tel: 04 474 2750  
Email: [mcainfo@mca.govt.nz](mailto:mcainfo@mca.govt.nz)

## Appendix

### The Credit Contracts and Consumer Finance Act 2003 (CCCFA)

#### *Part 2 (2) Disclosure*

The CCCFA sets rules about the information which must be disclosed in writing to the debtor. This information must

*(c) express the required information clearly, concisely, and in a manner likely to bring the information to the attention of a reasonable person; and*

*(d) not be likely to deceive or mislead a reasonable person with regard to any particular that is material to the consumer credit contract, guarantee, consumer lease, or buy-back transaction (as the case may be).*

*CCCFA Section 32(1)*

The clause which purports to create a security interest in personal property is unclear. It is a "blanket" or "dragnet" clause. It does not identify any particular goods, and it is too vague to meet the disclosure requirements.

Section 99 of the act makes it clear that a failure to meet the disclosure standard and to disclose the key information means the contract is unenforceable and a creditor cannot enforce the security interest.

#### ***Section 99 Enforcement of consumer credit contract prohibited***

*(1) If disclosure is required under section [17](#) or section [22](#), no person (other than a debtor under the consumer credit contract) may, before that disclosure is made,—*

*(a) enforce the contract; or*

*(b) enforce any right to recover property to which the contract relates;  
or*

*(c) enforce any security interest taken in connection with the contract*

#### *Part 5 Oppression*

The CCCFA gives a court or a disputes tribunal the power to reopen a credit contract where it finds the contract or its terms to be oppressive, or where it finds a creditor has exercised a power under the contract in a manner which is oppressive.

Oppressive is defined as: "harsh, unjustly burdensome, unconscionable, or in contravention of reasonable standards of commercial practice." Consumer credit contracts which contain this clause and the conduct of creditors who seize or threaten to seize household goods are likely to be seen by a court or a disputes tribunal as oppressive, especially where the debtor has had no independent legal

advice before entering into the contract. A debtor can take a claim under this section to a Court or a Disputes Tribunal.

### **The Personal Property Securities Act 1999**

Where the collateral is consumer goods “after acquired property” will only be subject to the security interest if the property was bought with the proceeds of other secured collateral or with the advances paid under the finance agreement.

In any other case the debtor must nominate any future property before it can form part of the collateral. In other words unless a debtor agrees; when they acquire new goods that these will be security, a creditor has no right to them. This is the effect of Section 44 of the PPSA.

*44.- Attachment of security interests in after-acquired property—  
A security interest in after-acquired property attaches without specific appropriation by the debtor, unless the after-acquired property is consumer goods where—*

*(a) Those consumer goods are not an accession or do not replace the collateral described in the security agreement; or*

*(b) The security interest in those consumer goods is not a purchase money security interest.*

Creditors who include a clause claiming an interest in after acquired property where the collateral is consumer goods, risk breaching the Fair Trading Act, if they rely on this clause to seize after acquired property which is not replacements for secured goods, or without appropriation by the debtor.

### **The Credit (Repossession) Act 1997**

This law applies to security agreements that create or provide for a security interest in consumer goods. It sets out the requirements a creditor must meet when exercising a right to repossess consumer goods. The act does not create such a right; rather the existence of any right depends upon it being included in a security agreement.

Before goods can be repossessed a creditor must send a prepossession notice in the form prescribed in the schedule to the act. This form requires that the creditor must describe the goods which are subject to the security agreement.

A statement such as “all personal property” is not sufficient to “describe” the goods. Therefore a creditor relying only on this type of broad description to claim a security interest cannot comply with the requirements of the Credit Repossession Act and is therefore unable to lawfully seize any property relying only on this general description.