

NOT FOR SALE

My Guide to Microfinance Lending

The Judith Lee Stronach Baccalaureate Prize
University Of California, Berkeley
Consumer Unity & Trust Society, Nairobi

Consumer Information Network
Consumers Federation Of Kenya
Microjustice For All

Introduction

Summary of this manual project

This manual is the final product of the project, entitled “Expanding the Realm of Consumer Protection through Education: The Case of Microfinance in Kenya,” created and implemented by Lauren Herman as a Judith Lee Stronach Baccalaureate Prize recipient and visiting scholar at the University of California, Berkeley.

From June 2011-May 2012, Lauren worked in Nairobi, Kenya to create this manual which contributes to the financial literacy and consumer awareness of Kenyan microfinance borrowers, and the training programs of consumer advocacy organizations.

Over one hundred microfinance borrowers, four consumer advocacy organizations, professionals and consultants from various fields, community based organizations, and self-help groups contributed to the progress of this manual.

The project was completed in May 2012 when this manual was distributed to Kenyan consumers and released online for public access.

What is the purpose of this manual?

As financial services are becoming increasingly available throughout Kenya, there is need to increase access to information and training for financial consumers. This is particularly true for microfinance borrowers.

The manual is divided into seven sections. The sections were compiled based on research conducted on the Kenyan microfinance industry, interviews with microfinance borrowers and discussions with self-help groups and community organizations in Nairobi.

Each section contains vital information that all borrowers should know and understand, including the rights and protections of financial consumers in Kenya, a sample microfinance loan application, the importance of reading and understanding a microfinance loan agreement, resources to assist microfinance borrowers with their concerns and grievances, common terms used by microfinance lenders, and the consequences of not paying a microfinance loan.

Most importantly, the experiences of microfinance borrowers are included in each section of the manual to provide Kenyans with the opportunity to learn about lending through their peers.

It is hoped that each section will improve upon the experiences of Kenyan microfinance borrowers, especially those who borrow to support micro, small or medium sized enterprises.

Acknowledgments

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Also, thank you to the Kenyan microfinance borrowers who shared their borrowing experiences with me as well as the self-help groups and the community organizations that I visited for allowing me to learn about their informal savings and lending programs.

Lastly, thank you to the individual staff members of the Kenyan microfinance programs that I visited for helping me to learn about the Kenyan microfinance industry.

Sincerely,

Lauren Herman
Preoject Creator and Director
My Guide to Microfinance Lending

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A summary of the rights and protections for financial consumers in Kenya



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Rachael is a small scale farmer who wanted to borrow a loan to buy new farm equipment. She was unsure where and how much to borrow, but she was determined to make an informed decision. Many of her friends, who borrowed from different microfinance lenders, experienced financial hardships that she wanted to avoid.

Rachael decided to visit a lender in order to learn about their loan products, but to her surprise the loan officer whom she met was unwilling to answer her questions. When she tried to explain that she was trying to seek information in order to make an informed decision, he told her that she was wasting his time.

Rachael felt that her rights were violated because every consumer has the right and responsibility to ask questions and seek information in order to make informed decisions. She still does not understand why, if every financial institution must create and follow credit policies and procedures, the lender would not answer her questions.

As A Consumer, You Have Rights!

What will I learn from reading this information?

- Below is a list of financial consumer rights that are internationally recognized and protected in Kenya.
- Specifically, the rights granted to financial consumers of commercial banks, microfinance institutions and sacco societies are listed.

Why is this information important?

- Depending on your lender, you may have specific rights granted to you as a financial consumer.
- Knowing your rights and the protections provided by the law will help you to ensure that can uphold your rights, and hold others accountable for harmful and illegal behavior.

The United Nations Guidelines for Consumer Protection recognizes these fundamental consumer rights.

Right to be Informed

Right to Choose

Right to be Heard

Right to Safety

Right to Consumer Education

Right to Redress

Right to Healthy a Environment

Right to the Satisfaction of Basic Needs

Some of these rights are protected by financial legislation and regulation in Kenya.

As a Kenyan financial consumer, you have the right to consumer education because...

Consumers in Kenya have the right to the information necessary for them to gain full benefit from goods and services.¹

As a Kenyan financial consumer, you have the right to be informed because...

There are often specific requirements for financial institutions to formulate and follow well-defined credit policies and procedures.² This allows institutions to provide clear and truthful information in a timely manner to consumers.

Individuals have the right to access and request a free copy of his or her credit report maintained by a Credit Reference Bureau at least once a year.³

If an institution reports an individual to a bureau, it must notify him or her within thirty days of its submission, including the contact information of the Bureau along with an explanation that he or she has the right to a free copy of the information provided to the Bureau and the right to dispute and correct the information held by the Bureau.⁴

As a Kenyan financial consumer, you have the right to redress and to be heard by your lender and the financial regulators because...

Regulated financial institutions are forbidden to act in a reckless or fraudulent manner.⁵ Thus, institutions must provide clear, truthful and timely information to consumers.

No financial institution shall make false representations or claims about accepting deposits from the public. Only regulated, licensed financial institutions can accept deposits from the public.⁶

If such a financial institution dissolves, clients have the right to seek compensation from the Deposit Protection Fund or the Deposit Guarantee Fund for his or her deposits that would have been paid had he or she demanded payment from the insolvent institution.⁷

¹The Constitution of Kenya, Article 46.

²Such requirement(s) can be found in the Banking Act, Section 4 (1 and 5); Microfinance Regulations 2008, Section 35 (3); Sacco Regulations 2010, Section 28 (2).

³Such requirement(s) can be found in the Banking Regulations 2008, Section 20 (1-3).

⁴Such requirement(s) can be found in the Banking Regulations 2008, Section 28 (1).

⁵Such requirement(s) can be found in the Banking Act, Section 11 (1A); Microfinance Regulations 2008, Section 32 (1-2); Sacco Regulations 2010, Part VI.

⁶Such requirement(s) can be found in the Banking Act Section 16 (1); Microfinance Regulations 2008, Section 3(1); Sacco Regulations 2010, Section 4 (1).

⁷Such requirement(s) can be found in the Banking Act Section 39 (2); The Microfinance Act 2006, Section 40 (2); The Sacco Societies Act 2008, Section 59 (5).

Individuals have the right to challenge information in his or her credit report maintained by a Credit Reference Bureau.⁸

If an individual challenges the information of his or her credit report, the Bureau is required to investigate the dispute within fifteen days of receiving the written notice. If a Bureau finds an error in the credit report of the customer, it is required to correct the incorrect information. If the Bureau does not complete the investigation within fifteen working days of receiving the dispute, the Bureau must delete the disputed information from the report of the individual.⁹

A Bureau can charge the individual a reasonable fee for conducting an investigation of the disputed information in a credit report.¹⁰

Individuals also have the right to disagree with the findings of the Bureau upon the completion of its investigation. If the individual disagrees with the findings, he or she can write a statement that the Bureau must attach to his or her credit report.¹¹

As a Kenyan financial consumer, you have the right to safety because...

Financial Institutions and all Credit Reference Bureaus are required to treat client information with confidentiality and protect it against unauthorized disclosure.¹²

As a consumer, you also have responsibilities

Consumer rights do not exist without consumer obligations.

Consumers have responsibilities while participating in the financial sector that they have to follow in order to enjoy their rights.

Remember as a financial consumer, you have the...

Responsibility to choose for yourself what financial services to use.

Responsibility to be critical in questioning or asking for information.

Responsibility to understand loan agreements.

Responsibility to comply with or honour loan agreements.

Responsibility to evaluate costs of financial products before making any decisions.

Responsibility to treat your lender with respect as your lender must treat its clients with respect.

⁸Such requirement(s) can be found in the Banking Regulations 2008, Section 20 (5).

⁹Such requirement(s) can be found in the Banking Regulations 2008, Section 20 (5-12).

¹⁰Such requirement(s) can be found in the Banking Regulations 2008, Section 20 (14).

¹¹Such requirement(s) can be found in the Banking Regulations 2008, Sections 20 (13).

¹²Such requirement(s) can be found in the Banking Act Section 31 (1); Banking Regulations 2008, Section 15 (1-4); Microfinance Act 2006, Section 34 (2-3); Sacco Regulations 2010, Section 66 (10).

Questions to ask a microfinance lender before applying for a loan



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Jane borrowed a loan that she agreed to pay over two years in order to support her cereal business. During the second year of paying her loan, her loan officer asked her to start paying higher repayment amounts. This surprised Jane because she was not prepared to pay more for her loan.

When she asked how this was possible, the loan officer told her that the interest rate on her loan changed. When she protested for not receiving more time to prepare for such a change, the loan officer scolded her for not understanding her loan terms that allow the lender to change her loan interest at anytime.

Jane regrets not asking her lender specific questions before becoming a microfinance borrower.

What will I learn from reading this information?

- Below is a list of questions that you should ask a lender before applying for a loan.
- Take this manual with you to ask a lender these important questions.
- These questions will allow you to understand the different loan requirements, the cost of borrowing, and the consequences of not paying a loan.

Why is this information important?

- Everyone has different financial needs and goals, so not all loan opportunities are the best option for you.
- It is important that you find a lender with the requirements that you understand and agree.

Questions to ask a microfinance lender before applying for a loan.

1. What loan products are available? Can clients borrow as an individual or in a group?

2. What are the eligibility requirements? Please explain each.

3. What amounts are available (maximum and minimum loan amounts)?

4. What is the longest and shortest loan repayment period available?

5. What is the loan repayment frequency? Are loans paid daily, weekly or monthly?

6. What is the cost of borrowing? Please explain all of the loan fees.

(Examples include interest rate, loan application fee, loan disbursement fee, insurance fee, account opening fee, passbook fee, advocate fee, commitment fee, registration fee.)

7. Under what circumstances can the interest rate of a loan change? Are borrowers notified of such changes?

8. Is loan insurance required? What is the cost of the insurance? Please explain the insurance coverage. Will a loan balance of a borrower be paid, if his or her business is damaged by fire, burglary, political unrest or a natural disaster? Will a loan balance of a borrower be paid, if he or she dies or becomes ill?

Questions to ask a microfinance lender before applying for a loan.

9. Are loan agreements, repayment schedules and repayment receipts issued to borrowers? If so, is there a fee and how often are each issued?

10. What are the security (collateral) requirements? What is the value that the security (collateral) must equal? Please explain what items (chattel or land) are accepted.

11. Is savings required before a loan is disbursed and during the loan repayment period? If so, what percentage of a loan is a borrower required to save? Do the savings of a borrower earn interest?

12. Are co-signers or guarantors required? What are the responsibilities of the co-signers or guarantors?

13. Is there a grace period? If so, are fees charged and how long is the grace period?

14. Can a borrower reschedule his or her loan payments or refinance his or her loan? If so, what are the requirements and fees?

15. Is there a penalty, if a borrower pays for his or her loan early (before the loan period ends)? Is full interest charged if a borrower pays his or her loan early?

16. When is a loan considered to be in arrears? When is a loan considered to be in default?

17. What are the penalties if a borrower defaults? What are the penalties if a borrower is in arrears?

18. What actions does the lender take to recover the loan of a defaulter? What happens to the security of a defaulter?

19. Is training provided to borrowers? If so, is there a fee for the training?

20. Are borrowers required to attend weekly or monthly meetings?

21. What can a borrower do, if he or she has a complaint or question about his or her loan?

22. Will my personal or financial information be shared with anyone outside the institution? If so, whom and for what purpose?

A sample of a microfinance loan application



© configmanager

Lucy joined a microfinance program in order to borrow a loan for her tailoring business. After much anticipation, she was given a loan application. She was disappointed to learn that after months of savings, she could not fulfill all of the requirements of her loan application. This was an inconvenience as she wanted to use a loan to purchase fabrics for her business that would help to expand her clientele.

Lucy wishes that she could have reviewed a loan application to help her prepare for the loan requirements of her lender.

What will I learn from reading this information?

- Below is a sample loan application that was created based on the review of loan applications and agreements of eight microfinance providers in Kenya.
- This sample will help you to prepare for your own loan application.
- You can also ask your lender for its loan application before you decide to borrow.

Why is this information important?

- By being prepared with the required information that is most commonly asked on loan applications, you can plan when you are ready to borrow, what amount you can afford to borrow and the cost of borrowing.
- By being a prepared loan applicant, you will save yourself money and time

A Sample Loan Application

LOAN APPLICATION

Personal Information:

Name: _____
Postal Address: _____
Mobile Number: _____
Passport No.: _____ ID No: _____
Nationality: _____
Date of Birth: _____ Gender/Sex: _____
Home Location: _____
Village/Estate/Town: _____ Nearest land mark: _____
Next of Kin: _____ Relationship: _____
Marital Status: _____ Dependant(s): _____ Age(s): _____ ID No.: _____

Business Information:

Location of Business: _____ Nearest land mark: _____
Type of Business: _____ Sector of Business: _____
Year Started Business: _____ Number of employee(s): _____
Monthly sales from business (Kshs) (amount you earn from your business): _____
Monthly business expenses (Kshs) (amount you spend on your business): _____
Monthly income from business (Kshs) (amount you pay yourself): _____
How much do you save per month (Kshs)? _____
Number of clients who owe money to your business? _____ Amount (Kshs): _____

List other sources of income:

Monthly sales from these other income sources (Kshs): _____
Monthly expenses from these other income sources (Kshs): _____
Monthly income from these other income sources (Kshs): _____

List of Assests in your business (examples: machinary, tools, stock, etc):

Item: _____ Current value in Kshs: _____
Item: _____ Current value in Kshs: _____
Item: _____ Current value in Kshs: _____
List of current stock in your business: _____
Value of stock in your business (Kshs): _____

Accounts in bank(s)/financial institution(s):

Bank: _____ Branch: _____ Amount: _____
Date of Account Opening: _____
Bank: _____ Branch: _____ Amount: _____
Date of Account Opening: _____
Bank: _____ Branch: _____ Amount: _____

Loan Application Details:

Loan amount (Kshs) (amount you want to borrow): _____
Payment period proposed (time in which you want to pay your loan): _____
Payment frequency proposed (weekly or monthly payments): _____
Grace period proposed (time that you have until you start paying for your loan): _____
Savings proposed during loan period (how much will save during loan period): _____
Purpose of loan (what do you want to do with your loan): _____

Past and Current Loan(s) in Banks/Financial Institutions:

Number of prior loan(s): _____ Number of current loan(s): _____
Name(s) of prior lender(s): _____
1. Loan Amount: _____ Loan Issue Date: _____ Loan Completion Date: _____
Name of lender: _____ Outstanding Amount: _____
2. Loan Amount: _____ Loan Issue Date: _____ Loan Completion Date: _____
Name of lender: _____ Outstanding Amount: _____
3. Loan Amount: _____ Loan Issue Date: _____ Loan Completion Date: _____
Name of lender: _____ Outstanding Amount: _____

Securities (collateral):*

Below are a list of items (assets) owned by the borrower or the borrower's grantor(s).

The items listed will be used as securities for the borrower's loan.

1. Item: _____ Date of Purchase: _____
Description of item: _____ Serial Number: _____
Current Value (Kshs): _____ Cost at Purchase: _____
Location of Item: _____
2. Item: _____ Date of Purchase: _____
Description of item: _____ Serial Number: _____
Current Value (Kshs): _____ Cost at Purchase: _____
Location of Item: _____
3. Item: _____ Date of Purchase: _____
Description of item: _____ Serial Number: _____
Current Value (Kshs): _____ Cost at Purchase: _____
Location of Item: _____

Total value of items (assets) in Kshs: _____

***The number and value of items required to secure the loan of the borrower will depend on the amount of the loan and the requirements of the lender.**

Declaration of Applicant and Guarantor(s)

I (name of applicant) _____ and members of the group (group name) or guarantor(s) _____ declare that all of the information in this loan application to be truthful to best of our knowledge.

Signature of Applicant: _____ Date: _____
Signature(s) of Group Official(s) or Guarantor(s): _____ Date: _____

Declaration of Spouse

I _____ (spouse's name of the applicant) have read this loan application and declare the information in the loan application to be truthful to the best of my knowledge.

Name of Spouse: _____ Date: _____
Signature of Spouse: _____ Date: _____

Information to know before signing a loan agreement



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John thought that he finished paying his loan, so he started planning to borrow a larger amount to invest in machinery for his welding business. After asking a loan officer for a loan application form, John was told that his current loan was not paid in full.

When he was given a copy of his loan agreement, he then learned that he had made a mistake. He did not correctly remember his loan repayment period.

John regrets not taking the time to write down his loan terms before signing his loan agreement, specifically his loan repayment period.

What will I learn from reading this information?

- Below is a list of information that you should know about a loan offer before signing a loan agreement.
- Not all loans have the same requirements and terms, so this information will help you to understand and decide if your loan offer is a good financial decision for you.

Why is this information important?

- You will be responsible for understanding all information in your loan agreement; if you do not, there are consequences. You may lose your property, your savings, and the opportunity to borrow again and serve in public office.
- If you do not receive a copy of your loan agreement, do not understand your loan agreement, or do not want to consult your lender, you should seek assistance from an advocate or consumer organization.

Before signing your loan agreement, use this section to write down important information about your loan offer. Then, check the boxes after asking yourself each question that will help you to make an informed decision.

What is my loan amount?

☐

Will this loan amount meet my needs?

When will my loan be disbursed?

☐

Is this time frame too long to meet my needs?

How many loan payments will I make? What are the amounts?

☐

Will the profit from my business allow me to pay this amount?

What are the dates that I make my first and last loan payments?

☐

Will I be prepared to make all loan payments during this time period?

How often will I pay my loan?
Do I pay daily, weekly or monthly?

☐

Will the profit from my business allow me to make all of the scheduled repayments?

For how long will I pay my loan?
Months or years?

☐

How will I manage any unexpected expenses during my loan period and pay my loan on time?

Is there a grace period for my loan?
If so, for how long and is there a fee?

☐

Is this grace period too short to allow me to earn a profit from my business to make the first loan payment?

Will I be required to pay any fees before my loan is disbursed? If so, what are the fees?

☐

How will these fees impact my business expenses and the loan amount that I can invest in my business?

What is the interest rate? What amount will I pay? Is the rate paid annually, weekly or monthly?

Will I be required to purchase insurance? If yes, what is the cost? What does the insurance cover?

Will I be required to save during my loan repayment period? If yes, what amounts and how often?

What should I do, if I cannot pay my loan at anytime?

What is the penalty for late payments?
What is the penalty for default?

What should I do, if I have a concern or about my loan?

After signing this agreement, can I stop my loan from being disbursed? need or want this loan after signing. If so, what are the requirements?

How will this interest rate impact my business profits and loan repayment amounts?

Under what circumstances, will I benefit from the insurance?

How will this savings requirement impact my business profits and my ability to repay my loan?

How will my inability to pay my loan impact my guarantors or co-signers, and my future loan opportunities?

How will these penalties impact myself, my business and my family?

Is the help offered by my lender sufficient to address my concerns and answer my questions?

Is there a possibility that I will not need or want this loan after signing my loan agreement?

Common terms and their meanings used by microfinance lenders



© neajjean

Ibrahim was confident that he understood his loan agreement, but months after receiving his loan to expand his transportation business he learned that he did not understand some words that were used in the document.

Ibrahim did not understand the meaning of grace period. Despite the fact that his grace period was one month, Ibrahim started paying his loan after one week even though it was a financial hardship. Weeks after making loan payments, a loan officer congratulated Ibrahim for paying his loan before his grace period ended. Ibrahim felt ashamed for putting himself under so much pressure for no reason.

For his next loan, Ibrahim has decided to ask for or research the meaning of words used in his loan agreement that he does not understand.

What will I learn from reading this information?

- Below is a list of common terms and their meanings used by microfinance lenders in Kenya.
- The definitions are based on the review of Kenyan financial legislation and regulations.

Why is this information important?

- The words used in microfinance loan applications and agreements are often different compared to language used by consumers.
- Use the list of words to help you understand anything you read, write or sign as a microfinance borrower.

Common Terms Used by Microfinance Lenders

Annual Percentage Rate: The percentage of a borrowed amount that is paid by a borrower to their lender on a yearly basis before or during the duration of the loan period. This amount is a fee determined by the lender and agreed upon in the loan agreement between the borrower and lender. Please beware that some microfinance programs require interest on loans to be paid in one payment rather than throughout the loan repayment period.

Arrears: A loan that has not been paid over a short period of time according to the terms and requirements as agreed upon between lender and borrower in a loan agreement. Please ask your lender about its credit policy regarding arrears.

Auctioneer: A person who holds a valid license issued by the Auctioneers Licensing Board to repossess and sell property by auction on behalf of the appointing authorities. Lenders hire auctioneers to repossess and sell property on their behalf.

Bank: A company that is registered and regulated by the Central Bank of Kenya to carry on banking business that accepts and lends deposits from the public.

Borrower: A consumer who willingly enters into an agreement with a lender with the intention of accessing credit or a loan of money.

Chattel: Movable property, including household appliances, business machinery, vehicles, crops and wool, that are used to secure a loan within microfinance. It does not include title deeds, shares or interest in stock.

Chattel mortgage: An instrument used by a borrower to secure a loan that transfers the rights of chattel from borrower to lender. The transfer of ownership allows the lender to repossess the chattel to pay any portion of or the entire loan balance, including interest, not paid by the borrower.

Consumer: A person to whom goods or services are marketed to by a business.

Credit Reference Bureau: A credit reference bureau that is licensed and regulated by the Central Bank of Kenya to collect and maintain credit reports about financial clients. These bureaus give financial institutions the opportunity to share information about Kenyan financial clients with one other.

Credit Report: A customer information file containing an individual's credit history, including but not limited to his or her assets, financial obligations and access to credit, that is compiled and maintained by a Credit Reference Bureau. It may include publicly available information.

Default: A loan that has not been paid over a long period as agreed upon between lender and borrower. There is little hope of ever receiving payment from the borrower. As a result, such loan has been or is about to be written off by the lender. Please ask your lender about its credit policy regarding default.

Defaulter: A borrower who fails to pay any portion of his or her loan amount, including fees and interest, within the agreed upon time frame under his or her loan agreement. Generally, there is little hope of ever receiving payment from this person. As a result, the loans of defaulters have been or are about to be written off by the lender. Please ask your lender about its credit policy regarding default.

Default charge: A fee that is charged to a borrower who fails to comply with the obligations of his or her loan agreement, specifically making a scheduled loan payment.

Delinquent loan: Any loan for which the principal amount or interest remain unpaid for the entire loan term. Please ask your lender about its credit policy regarding delinquency.

Deposit-Taking Microfinance: A microfinance business that is licensed and regulated by the Central Bank of Kenya to collect deposits from the public and provide financial services for low income individuals, specifically the provision of small, short term loans to individuals otherwise excluded from formal financial services.

Grace period: A period of time for which a borrower is not required to pay any portion of his or her loan. Grace periods can be subject to penalties or other fees depending on the discretion of the lender.

Group Loan: Loans given to individuals in a group in which all group members jointly guarantee each other. If any of the group members fail to pay his or her loan, the other group members must pay the amount owed, including any penalties or fees.

Guarantor: An individual who pledges to pay the loan of a borrower in cases of default.

Interest rate: A percentage of a loan amount paid in the form of a fee established in a loan agreement for which the borrower pays during his or her loan period. There are different types of interest rates that are calculated differently. Please ask your lender about its credit policy regarding how the interest rate is calculated for your loans.

Compound Interest: A percentage of a loan amount that is a fee paid by the borrower to the lender. The percentage increases the principle loan amount owed by the borrower during the loan period. The percentage is established and agreed upon in the loan agreement between a borrower and their lender.

Flat Interest (Simple Interest): A percentage of a loan amount that is a fee paid by the borrower to the lender. The percentage is calculated based on the principle loan amount rather than the amount outstanding at any time during the loan period. This percentage is established and agreed upon in the loan agreement between the borrower and lender.

Interest on a Reducing Balance: A percentage of a loan amount that is a fee paid by the borrower to the lender. The percentage is calculated based on the reducing balance of the loan as the borrower makes payments rather than the principle loan amount. This percentage is established and agreed upon in the loan agreement between the borrower and lender.

Lender: A person who or an institution that is or is not legally licensed and regulated to accept deposits and lend money to the public with or without interest or other fees. Please research whether your lender is licensed and regulated because borrowers of such institutions, including commercial banks, microfinance institutions and Sacco Societies, are guaranteed certain protections by the Kenyan government that borrowers of informal finance, including shalarks and pawn shops, are not.

Loan (or credit): Money that is borrowed and must be paid back with or without interest or fees within the time period and under the terms as agreed upon between borrower and lender.

Loan agreement (credit agreement): An agreement between a willing lender and a willing borrower under which a lender extends credit or lends money to a borrower under prescribed terms.

Loan insurance: A guarantee by the lender that the loan of a borrower is paid in full under certain circumstances predetermined by the lender and insurance company established in the borrower's loan agreement. Such circumstances may include the death or disability of the borrower, theft, fire damage to the business of the borrower and other related perils. As the insurance terms vary depending on the lender, please ask your lender about its insurance coverage.

Loan refinancing: The extension of credit to a borrower with a pre-existing loan at a fee. The terms and policy of the original agreement between borrower and lender will most likely change.

Loan rescheduling: The extension of the repayment period between a lender and borrower with or without a fee.

Loan repayment period: The duration for which a borrower will make payments until his or her loan is paid in full.

Loan repayment frequency: The number of payments a borrower will make until his or her loan is paid in full.

Microfinance: The provision of financial services to low income individuals, including saving, credit, insurance and payment services, for a variety of purposes. In addition, many microfinance programs provide other services such as group formation, training in financial literacy and management capabilities for its clients. Only licensed deposit-taking microfinance institutions can accept and lend deposits from the public.

Microenterprise: An income generating activity that generates profits of not more than five hundred thousand Kenyan shillings (Kshs) annually and employs less than ten people.

Non-Governmental Organization: A private voluntary grouping of individuals or associations registered under the Non-Governmental Organizations Co-Ordination Act, 1990 that functions for the promotion of social welfare, development, charity or research rather than for profit or other commercial purposes. Non-governmental organizations are not licensed to accept deposits from the public.

Principle loan amount: A sum of money borrowed, not including any fees or charges.

Sacco Society: A savings and credit co-operative society registered under the Co-operative Societies Act, 1997 and regulated by the SACCO Societies Regulatory Authority that provides financial services to its clients. Only licensed deposit-taking Sacco Societies can accept and lend deposits from the public.

Savings: Money for which a client deposits into a deposit-taking financial institution or bank that is accessible by the client on the terms agreed upon by the client and the institution or bank.

Security/collateral: Property, either movable or unmovable, used by a borrower to secure a loan. In cases of default, a lender has the authority using legal means to repossess the pledged security to pay the unpaid loan balance and fee(s) of the defaulter.

Small Enterprise: An income generating activity that generates profits of between five hundred Kenyan shillings (Kshs) and five million Kenyan shillings (Kshs) annually and employs ten to fifty people.

Common consequences of not paying a microfinance loan



© otherpaths

Susan was a first time microfinance borrower when she became very ill. As a result, her hotel failed and she was unable to pay her loan.

Upon her second missed payment, her group members came to her home to take her property, including her bed, cooking gas and television. The group members explained to Susan that they had to take her property in order to pay the remaining amount that she owed. The group members told her that they could not afford to pay her loan.

Susan regrets not understanding what would happen to her home, her business and to the other group members, if she did not pay her loan.

What will I learn from reading this information?

- Below is information about the common consequences of not paying a microfinance loan, specifically what actions lenders can and cannot undertake in order to recover the debt of a borrower.

Why is this information important?

- By reading this information, you will be able to understand the risk of borrowing and using your property as collateral, and hold lenders or auctioneers accountable for their actions.
- If you think that your rights have been violated by an auctioneer or lender, you have the right to contact a consumer organization or legal advocate for assistance.

Common consequences of not paying a microfinance loan.

What happens if I do not pay my loan?

If you do not pay your loan according to the terms of your loan agreement, there are many possible consequences.

A lender will undertake several measures to recover the amount that you owe, including the loan balance, fees and penalties. For a lender to take your savings and/or your property (either land or chattel) to pay the amount that you owe, there are legal requirements that must be followed (This information is provided below).

There are other consequences of not paying your loan, including the possibility of being reported to a Credit Reference Bureau in which your payment history will be documented in your credit report. Defaulters may also lose the opportunity to access credit in the future or hold public office.

If I do not pay my loan, can a lender take my property?

A staff member of a microfinance lender cannot take your property at any time for any reason, even if you do not pay your loan.

A lender must hire a licensed auctioneer (a debt collector) with proof of a chattel mortgage instrument to take your property to pay your debt. Only the property that you pledged as security that is listed in the chattel mortgage instrument should be taken, but it is common for any property of value to be taken to pay your debt. An auctioneer can legally take other property, but only if he or she obtains authority from a court order.

If I do not pay my loan, can the co-signers or guarantors of my loan take my property?

Even if you do not pay your loan, the cosigners or guarantors cannot take your property at any time or for any reason.

If you default, the cosigners or guarantors can obtain the services of an advocate and a court order to hire an auctioneer to take your property to pay your debt.

If I do not pay my loan, what is the process in which my property can be taken?

There is a different process that a licensed auctioneer (debt collector) must undertake when repossessing either land or chattel.

The repossession process for both land and chattel is described in the Auctioneers Act.

In order to take your chattel to recover the amount that you owed as a defaulter, an auctioneer must undertake the following requirements.

A licensed auctioneer must come to your residence (the defaulter) to issue a “Proclamation of Attachment, Repossession, Distraint of Movable Property” form that informs you of your debt. This form can be found in the Auctioneers Act. The form states whom you owe money to, the amount of your debt and the consequences of not paying your debt and the auctioneer fees. A list of auctioneer fees can be found in the Auctioneers Act.

If you do not pay your debt and auctioneer fees within the seven days of when the form is issued, the auctioneer will return to take your chattel in order to pay your debt.

When taking your chattel, the auctioneer must give you a “Notification of Sale of Movable Property” form. This form can be found in the Auctioneers Act. The form states what chattel was taken and its value, and notifies you that if you pay your debt and the auctioneer fees before the auction, you will regain your property. Please use this form to ensure that the value of your chattel is not undervalued by the auctioneer.

The items taken by the auctioneer are kept in a storage facility until the date of auction. All items taken by an auctioneer must be sold at public auction that takes place seven days after the form is issued and after the auctioneer advertises the property in a newspaper.

Common consequences of not paying a microfinance loan.

If I do not pay my loan, what chattel can an auctioneer take?

The total value of the chattel that is taken by an auctioneer cannot be more than your debt (the amount that you owe your lender and the auctioneer fees). Please ensure that the value of your chattel is not undervalued by the auctioneer who is required to give to you a "Notification of Sale of Movable Property" form that states what property is taken and its value.

An auctioneer can only take the chattel that you (the defaulter) pledged as security for your loan that is listed in the chattel mortgage instrument unless the auctioneer obtains a court order that states he or she can take other items of value to pay your loan.

How do I know that the person taking my property is a licensed auctioneer?

If you are unsure whether the person taking your property is an auctioneer, ask him or her for an identification card issued by the Auctioneer Licensing Board. You can also contact the Auctioneer Licensing Board for a list of all licensed auctioneers.

What can I do, if I am mistreated by an auctioneer?

If you are mistreated by an auctioneer, you can submit a complaint with the Auctioneer Licensing Board. This will lead to an investigation of the auctioneer and possible discipline. The "Complaint Against an Auctioneer Act" form can be found in the Auctioneers Act.

How can I stop my property from being taken and auctioned?

You have the right to challenge your lender, an auctioneer and your co-signers or guarantors from taking your property.

By hiring an advocate, often at your own expense, you can ask for legal advice about obtaining an injunction stopping an auctioneer from taking your property or a court order stopping the sale of your property at public auction.

Can I challenge my lender or the auctioneer who takes my property, even if I signed a loan agreement that forbids me from doing so?

Yes. You have the right to challenge a lender or auctioneer who takes your property at any time by seeking the assistance of an advocate. A lender cannot ask you to sign away any of your rights granted to you by the law.

Can I be held in a police cell or arrested by the police, if I do not pay my loan?

You cannot be arrested for not paying your debt unless a court order is issued. If you are detained and held by the police, the law requires that you are charged or released within 24 hours of arrest.

A court order is most often issued if you purposely avoid paying your debt. This includes moving the location of your business and/or moving from your home to avoid paying your debt.

How do I avoid the nonpayment of my loan(s) and suffering the consequences that result from it?

First, you should compare different microfinance programs in order to find a lender for which you understand its loan products and terms. Do not solely make a decision to borrow based on the advice from your friends and family. People borrow different amounts from different lenders because everyone has different financial needs.

Second, if you experience financial hardships that will prevent you from paying your loan at any time, you need to consult your lender and notify the co-signers or guarantors of your loan. Explain to a staff member of the problems that you are experiencing, and what amount you can afford to pay at the moment. Only through communicating with your lender will you be able to learn of any penalties and ask for the possibility of refinancing your loan or rescheduling your loan payments. Avoiding your lender will only cause further problems for you, including losing the ability to borrow again.

List of resources to assist microfinance borrowers



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Jeff became a microfinance borrower one year ago. He decided to borrow a loan because he wanted to start a kiosk business to support his children through primary school. He was excited about the progress of other microfinance members, but he had reservations about borrowing money.

Even though Jeff knew that the other members would help him through the lending process, he was still nervous about deciding a loan amount to borrow. He wanted to borrow a large amount to grow his business, but he did not want the amount to be a financial strain to his other responsibilities.

Jeff decided to seek financial training from a consumer organization. He is grateful for the help that he received and encourages all consumers to seek such assistance in order to make informed decisions.

What will I learn from reading this information?

- Below is a list of resources that can help borrowers in different ways, including financial education, legal assistance, and consumer advice .
- This list of resources includes consumer advocacy organizations and legal service providers (advocates).

Why is this information important?

- Since microfinance borrowers face different challenges at different times, it is important to know in what ways Kenyan organizations can provide assistance when it is needed.

Legal Assistance Organizations

The following legal assistance organizations provide free or low cost legal advice and representation.

Microjustice For All (MJ4All)

Description of Organization: MJ4All is a not-for-profit organization that recognizes that just as low income communities require financial services, so too do they require legal services tailored to meet their unique needs.

Phone: +254 0722 869 414

Email: microjust4allkenya@gmail.com

Website: www.microjustice4all.org

Services: A standardized set of legal services which address issues such as birth and death certificates, identity cards, property registration and inheritance issues. MJ4All helps to break the chain of exclusion for the poor by assisting them to overcome administrative and legal barriers to accessing entitlements and building assets.

Fees: Fees depend on the service given.

Days and Hours: Monday to Friday 8am – 5pm.

Office Location: Sunbeam Place, Tigoni Road, off Argwings Kodhek Road near Yaya Centre, Nairobi.
P.O. Box 5913-00100, Nairobi.

Kibera Law Centre

Description of Organization: A non-profit organization that provides legal and arbitration services for low income Kenyans.

Phone: +254 0700 086 608 or
+254 020 271 2642/3

Email: Information not provided.

Website: www.kiberalawcentre.org

Services: Past and present cases include violations of human rights, land disputes, landlord and tenant disputes, domestic violence, probate and estate administration, child abuse, child custody and access to basic services.

An advocate is available 24 hours for any legal emergencies.

Advocates travel in a mobile clinic twice a week to multiple locations of Kibera to offer legal advice to individuals.

Fees: No fees or charges.

Days and Hours: Monday to Friday 8am to 5pm

Office Location: Bemuda Plaza 3rd floor Suite D3, Ngong Road, Nairobi.
P.O. Box 15950-00100, Nairobi

Consumer Organizations

The following consumer organizations answer questions and offer advice regarding consumer rights. Some of these organizations also provide financial training for consumers as well.

Consumer Unity and Trust Society, Nairobi (CUTS, Nairobi)

Description of Organization: Consumer Unity and Trust Society-Center for International Trade Economics and Environment is an independent Nonprofit, Non-Governmental Organization. It functions as a regional (East African) centre of excellence for policy research, advocacy, capacity building and networking within its programme areas.

Phone: + 254 20 386 2149/50, +254 733 990 202
Email: Nairobi@cuts.org, doa@cuts.org
Website: www.consumerforum.co.ke
OR <http://cuts.international.org/ARC/Nairobi/>

Services: Consumer education services, consumer complaints and redress services, consumer advisory services, and consumer policy advocacy.

Fees: None
Days and Hours: Monday to Friday 8:30am - 5pm

Office Location: Yaya Court 2nd floor No. 5, Ring Road Kilimani off Argwings Kodhek Road, Nairobi.
PO Box 8188-00200, Nairobi, Kenya

Consumer Information Network (CIN)

Description of Organization: CIN is an independent, not-for-profit consumer organisation registered in Kenya with the objective of empowering consumers in protecting consumer rights and promoting consumer responsibility through research based advocacy on education, policy and consumer concerns.

Phone: +254 20 2368 204, +254 722 555 099
Email: admin@consumerupdate.org
Website: www.consumerupdate.org

Services: CIN focuses on various programmes; namely health, trade, financial education counselling, sustainable consumption, food safety and security and access to knowledge among others.

Financial education is also available for consumers through training sessions with staff members.

Fees: None.
Days and Hours: Mondays to Thursdays 8am-5pm and Fridays 8am-1pm.

Office Location: KCB building, Ground Floor Room 3 Jogoo Road, Nairobi.
Consumer Advisory Centre (CAC) Solai Plaza off Kamunde Road, 5th Floor Room 509, Kariobangi, Nairobi.

Consumers Federation of Kenya (Cofek)

Description of Organization: Cofek is a not-for-profit organization registered as a membership society under cap 108 laws of Kenya. It seeks to nurture a vibrant society where consumers, as part of the wider civil society, hold institutions and leaders to account and ensure that consumer rights and protection are upheld and that justice and the rule of law reign.

Phone: +254 0715 555 550
Email: hotline@cofek.co.ke
Website: www.cofek.co.ke

Services: Services provided through a raft of programs include: consumer education and information, consumer research and advocacy, governance and litigation, product certification, service assessment and rating and consumer publications.

Fees: Membership fee is Ksh 10,000 annual fee and a membership of Ksh. 5000 paid once. However, you do not have to be a member to be assisted.

Days and Hours: Monday to Friday 8 am to 5 pm.
Saturdays 9am to 12pm.

Office Location: Natu Court (Meky Place), Block F – 45, Ngong Rd/Ring Rd. Kilimani Junction, Nairobi.
P.O. Box 2733 – 00200, Nairobi.

