



# Financial Rights

LEGAL CENTRE

FACTSHEET



Financial Rights Legal Centre Inc.  
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## I'M THINKING OF USING A FINANCE/MORTGAGE BROKER - WHAT DO I NEED TO KNOW?

This factsheet is for information only. It is recommended that you get legal advice about your situation.

### CASE STUDY

Matt and Sam had been living together for 2 years. Both had jobs paying around \$30,000 a year. They decided to buy a house. Roger from SMALL MORTGAGE BROKERS called them about a "special mortgage deal". As they were shopping around for a loan anyway, they made an appointment with Roger.

Roger told them about the "special mortgage deal". He showed them graphs of how much they would save if they put all their salary into the loan and only withdrew their living expenses. Roger said that only he could arrange this deal. After Roger spent several hours with them they agreed to sign some forms to apply for the loan. Roger left at midnight.

Matt and Sam found a house to buy. Roger arranged for Matt and Sam to sign the loan documents. Soon the purchase of their home settled. A few days later Matt and Sam received a letter and were horrified to find that Roger had added a "commission" of \$3500 to the settlement. Worse, the special deal Roger had arranged was actually a "line of credit loan" with a higher interest rate than an ordinary home loan. A year later Matt realised that they were not careful enough with withdrawing their expenses and, as a result, the loan balance had not reduced at all.

### WHAT IS A FINANCE BROKER?

A finance broker is a "go-between" who usually arranges loans for a fee (paid by you or the lender or both). A finance broker deals with the lenders for you and arranges a loan for you.

Some finance brokers are called "mortgage brokers". Mortgage brokers are finance brokers who specialise in arranging home loans or investment property loans.

### DOES A FINANCE BROKER HAVE TO BE LICENCED?

Yes. If a finance broker is arranging a loan covered by the credit law the finance broker must have a licence. You can check to see if the finance broker is registered by phoning 1300 300 630 or at [connectonline.asic.gov.au](http://connectonline.asic.gov.au).

[financialrights.org.au](http://financialrights.org.au)



## HOW MUCH DOES A FINANCE BROKER COST?

It will depend on which finance broker you use. There are 3 types:

1. Finance brokers who do not charge you a fee. The lender pays this type of finance broker. The lender will usually pay the broker a fee for introducing you to them and an ongoing fee for the length of your loan (called a “trailing commission”). Mortgage brokers often operate this way.
2. Finance brokers who charge you a fee (or commission) and receive a one-off commission and a trailing commission from the lender.
3. Finance brokers who only charge you a fee and do not receive any payment from the lender for introducing the loan. This type of finance broker is not as common as the other two types.

It is recommended that you try to only deal with finance brokers who do not charge you a fee. If you decide to use a finance broker that is charging you a fee, as a guide the fee should not be any larger than 1.5-2% of the amount of the loan being arranged. As this amounts to \$3000 – \$4000 on a \$200,000 loan for example, you should also be sure you feel you are getting value for money from the service and you have checked what other services are available.

## WHAT IS A “CLAWBACK” CLAUSE?

If you refinance loans after 1 or 2 years, brokers may charge a “clawback” of the commission. Check your contract and documents from your broker carefully. If it contains a clawback clause and you are considering switching loans, consider if this is value for money given the clawback.

## WHO IS THE FINANCE BROKER ACTING FOR?

**You!** The finance broker is providing a service to you.

**BEST ADVICE:** Do not assume that a finance broker is acting in your best interests and will get you the “best deal”. In some cases they may be motivated by the commission paid by the lender rather than your best interests. Shop around and make sure you ask about commissions and other kickbacks.

## SHOULD I USE A FINANCE BROKER?

This is up to you. You do not have to use a finance broker. You always have the option of dealing with most lenders directly.

Finance brokers can be good value and find you a loan that suits your needs with a competitive interest rate. For busy people this can save a lot of time and effort in shopping around for a loan.



Finance brokers can also be poor value and put you in a loan that is completely unsuitable for you. Furthermore, often you could have approached the lender directly and got the same loan (without having to pay any fee!)

Even if you decide to use a finance broker you should shop around *and* check what deals you can get direct from a lender anyway.

## **CAN A FINANCE BROKER ARRANGE A LOAN WHEN I WOULD NOT BE ABLE TO GET A LOAN ELSEWHERE?**

The answer should be no. If you are having trouble getting a loan you should get advice. There is a range of reasons why you may not be able to get a loan: for example, a past bankruptcy; you do not earn enough; or, a poor credit record. Loans from alternative lenders that target borrowers with a poor credit history are usually more expensive, so make sure you really have no other alternative. Keep in mind that whatever your problem is, it will not be improved by getting a loan that does not suit your needs.

If you are seeking another loan because you are having difficulties paying the loans you already have, you should try to come to an arrangement with your existing lenders. Beware of finance brokers who charge a substantial fee or commission and direct you to expensive alternative lenders. You may find yourself in a worse position than the one you were trying to fix.

## **WHAT DOES THE FINANCE BROKER HAVE TO TELL ME?**

The law that applies to finance brokers is the National Consumer Credit Protection Act 2009 (the “National Credit Act.”)

This is a national law that commenced on 1 July 2010. So if you deal with a broker after this date this law applies. This law requires finance brokers give you both a Credit Guide and a quote. The Credit Guide must:

1. be in writing;
2. specify the name, contact details and license number of the finance broker;
3. specify any fees payable for the work;
4. specify the six lenders that the finance broker refers to most often (if the finance broker deals with less than six lender, then the names of those lenders);
5. provide details of the finance broker’s:
  - a. internal dispute resolution procedures;
  - b. the External Dispute Resolution (**EDR**) scheme of which the finance broker is a member; and
  - c. inform you of the prohibition on finance brokers suggesting,



# Financial Rights

LEGAL CENTRE

## FACTSHEET

recommending or assisting you to enter or remain in contracts that are unsuitable for you, and of your right to request a copy of the assessment.

The finance broker must also give you a quote that:

- a. must be in writing;
- b. specifies the services being provided;
- c. specifies the maximum amount that will be payable by you (including fees and charges); and
- d. states whether the fee is still payable if you do not proceed.

## HINTS FOR GETTING THE MOST OUT OF A FINANCE BROKER

1. Only deal with licenced finance brokers.
2. If you are not sure whether you are dealing with a finance broker *ask or get advice!* Some people think they are dealing with the lender when in fact they are speaking to a broker.
3. Shop around. Ring other finance brokers and check what they charge and what they are offering to do.
4. Ask how much the service will cost you.
5. Do not sign anything without reading it carefully first. If you don't understand anything, get independent advice: see our [Getting Help factsheet](#). Many potential borrowers have signed a document presented by a broker (sometimes thinking it is a loan application), only to discover later that they have signed a binding contract including a substantial fee that is payable whether they accept the loan arranged by the broker or not.

## WHAT ARE THE MOST COMMON PROBLEMS?

The most common problem when dealing with a finance broker is that they might arrange an unsuitable or unjust loan. The credit law includes responsible lending conduct provisions that apply to finance brokers (and lenders). This means that a finance broker must:

- make reasonable enquiries about your financial situation;
- make reasonable enquiries about your requirements and objectives in seeking a loan;
- take reasonable steps to verify your financial situation.

A loan will be *unsuitable* if:

- you cannot meet the financial obligations under the contract, or not without substantial hardship; and/or
- the loan does not meet your objectives and requirements.



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FACTSHEET

## WHAT IF I HAVE PROBLEMS WITH MY FINANCE BROKER?

As long as the finance broker is licenced then it must be a member of an EDR scheme. EDR is a free process where you can get a dispute determined by an independent body. If you are unable to resolve your problem directly with the finance broker you should lodge your dispute in EDR: see our [Dispute Resolution factsheet](#).

For more information see our [Using a Finance/Mortgage Broker checklist](#).

*Last Updated: December 2017*