



OFFICE OF **FAIR TRADING**

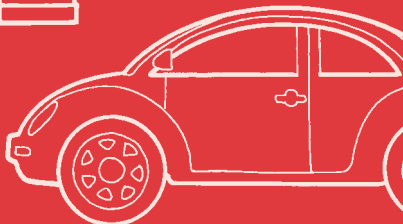
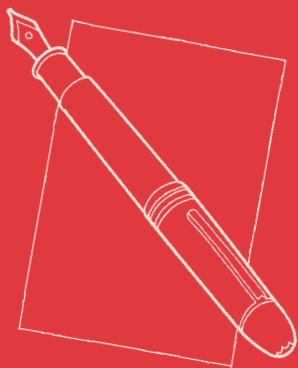
*NSW Consumer Protection Agency*

Department of Commerce

# Using a broker to obtain credit

*FT267*

*July 2004*



[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

If you are thinking about getting a loan for a home or a car or considering consolidating your current debts, you may be considering using a broker to help you.

Finance or mortgage brokers act as intermediaries between you and a credit provider, and may have access to a range of credit providers and products. Some consumers go to a broker because they believe the broker will find them the best loan, and others may go because they don't want to do the 'shopping around' for credit themselves.

The law now helps you in your dealings with finance or mortgage brokers.

There are two important things you should remember when you go to a broker:

- the broker must not start to negotiate credit for you until you have signed a finance broking contract that contains details of the credit you want the broker to obtain for you and
- the broker must not ask you for any commission before the credit is obtained and the credit matches the details in the finance broking contract.

### **The finance broking contract**

The broker must prepare a finance broking contract for you to **read, confirm** and **sign** before starting to negotiate credit on your behalf. This contract will record details of the credit you want the broker to access as well as having important information about any broking charges, which will be in addition to the credit provider's charges.

The contract will also tell you which credit providers the broker can access for your loan. There may be very limited numbers of credit providers that have agreements with the broker you are negotiating with, so make sure you note how many and what kind of credit providers are on the broker's panel.

The broker is required by law to tell you about financial or other benefits the broker will receive from a credit provider if they recommend that provider's credit product to you.

The broker must give you a signed copy of the contract, which you must keep, so that you can refer to it to check that the credit secured matches your requirements. You will also need to have the finance broking contract if any problem arises in your dealings with the broker.

### **Your credit requirements**

The details of the credit you require, which the law says must be recorded in the finance broking contract, are what the broker will be using to find you a matching loan. It is very important that you take time to consider carefully what is recorded and that you sign the contract only after checking those details carefully.

You need to record:

- the total or maximum amount of credit you want the broker to find for you
- the term of the loan
- the date by which the credit is to be secured

- the maximum periodic repayment you are prepared to pay (including repayment of any charges)
- the maximum interest rate you will accept
- any specific features (eg. a redraw facility) you want in the credit product.

You should take care when working out the maximum loan repayment you can afford. Consider all ongoing and occasional expenses and leave a margin for unforeseen events.

Don't be persuaded to record a higher amount than you know you can pay. Once the credit is secured for you, you may have to pay the broker commission whether you take the credit or not.

### **Broker and credit provider commission – who pays?**

There are three types of commission or benefit disclosures in the finance broking contract. These are described below:

#### *The client*

The first is whether the broker will require you to pay any commission.

If the contract says you will have to pay commission, the law says that you only have to pay if the credit secured for you matches the details in your finance broking contract. If you decide not to take the credit but the credit matches the contract details, you may still have to pay commission for the work undertaken if this has been agreed in the contract. Check carefully whether this is

stated in the contract. If it is not, then the broker can not charge you.

The broker can not charge an amount of commission greater than that disclosed in the contract and can not ask you to pay the commission before the credit you require is secured for you.

Many brokers do not charge you commission and only accept payment from the credit provider. If there is nothing in the contract which says you have to pay commission to the broker, then the broker can't charge you.

#### *The credit provider*

Some credit providers will give a commission to a broker if the broker arranges credit with them for a client.

The broker is required to disclose in the contract both the highest and the lowest financial or other benefit the broker would receive from the credit providers on the broker's panel. This is so you can see the benefit to the broker when a credit product is recommended and where that benefit fits in to the range of benefits offered by credit providers. If the recommended product is at the high end of the range, you may want to ask why this is the best product for you.

After recommending a credit product, the broker is also required to tell you about financial or other benefits received by persons other than the broker (eg. the broker's employer) from the credit provider, and any interests or relationships of the broker, if

those benefits, interests or relationships are likely to influence the broker's selection of a credit provider and product.

These disclosures are intended to alert you to any conflict of interest the broker might have in selecting an appropriate product for you.

### *The broker*

If you were referred to the broker by a third party, (eg. a real estate agent or a car dealer for a loan) it is possible the broker will provide that third party with a commission, referral fee or other benefit. If so, the broker has to tell you this in the financing broking contract. This will let you know that the referral is not necessarily a recommendation that this broker can get you a particularly good deal or will give you a good price but that the referring source is being paid by the broker to refer clients. You may decide you would prefer to find your own broker or go to one who is recommended by someone you know and can trust.

### **Other fees and charges**

The only other fees and charges the broker is permitted to accept, are those such as valuation fees, credit establishment fees or credit application fees. If you are asked to pay such fees, the cheque, money order or transfer must be made payable to that person or the person authorised to accept fees on their behalf.

## **What to do if you have a complaint against the broker**

If you believe that the broker has not complied with the finance broking contract, has charged an excessive commission or has acted in a way which you believe is unjust, the law gives you access to certain remedies through the Consumer, Trader and Tenancy Tribunal. Contact your local Fair Trading Centre for more information about your rights on 13 32 20.

## **Checklist**

### *Before you go to a broker*

- Detail all your expenses, regular and occasional, and decide whether you can comfortably take on more debt.
- What is the total amount of credit you require? If you don't have funds you can draw on, you may have to add in a number of fees and charges as well as stamp duty in some cases.
- What is the maximum repayment you can afford? Don't forget to leave a margin for unexpected expenses.
- Over what period of time can you repay the loan? Remember, the shorter the term, the less interest you pay, but the repayments will be higher.
- Do you want a loan with any special features? If you are not sure what is available, you might want to pick up some brochures from credit providers to get some idea of the choices.

- Take note of some of the advertised interest rates on the kind of loan you are looking for. You will then have something to compare with the product the broker suggests.

### *When you contact the broker*

- Before you start to explain what you are looking for, ask whether the broker will charge you commission, and if so, how much.
- Ask which lenders are on the broker's panel. If they are not familiar to you, ask the broker to tell you how their interest rates and fees compare with the lenders you know about before you enter into a contract with the broker.
- Don't pay any fees to the broker up-front. The law says the broker cannot charge you commission before credit is secured, and the credit secured is the same as the product and the price you have detailed in the finance broking contract.
- Make sure that the financial details of the loan in the finance broking contract are what you have requested before you sign.
- Take note of the benefits to be provided by the lenders to the broker and use the range disclosed to compare the benefit the broker will receive for the product that is recommended to you.
- Ask the broker to explain any product options that you are not familiar with.
- Check the finance broking contract to see whether commission is charged if you decide not to take the loan secured. The law generally allows commission to be

- charged if the loan is secured for you and matches your requirements, but you decide not to go ahead and the contract.
- Read the finance broking contract before you sign to make sure you are happy with the terms and the details of the credit you are asking to be obtained for you.
- Don't sign any statement that says the credit is for business purposes unless it really is. You will lose the protection of the law that covers consumer credit contracts.
- Make sure you keep a signed copy of the finance broking contract.

### *When the broker recommends the loan*

- Check the details of the cost of the loan and the repayment schedule against the finance broking contract details.
- Ask the broker why the broker has recommended this loan above other options and why it is the best for you.
- Check that the recommended credit has the features you asked for and is a suitable product for your purpose.
- Check whether the broker is able to recommend or set conditions of the contract, such as the interest rate, fees and charges or the term of the loan. If so, you need to be sure that the broker has not recommended the product to get a higher benefit from the credit provider by setting the terms to their own advantage.
- Check the broker's financial or other benefits on the recommended loan against the range of benefits disclosed in the

finance broking contract. If it is at the high end of the range, you need to be satisfied that the credit is what you want and the broker's explanation as to why it is the best available is convincing.

- Agree to go ahead with the application only if you are satisfied that the recommended product is what you want.

#### *When you make the credit application*

- Again, do not sign anything that says the loan is for a business purpose if it is not.
- Make sure that your personal financial details are correctly recorded.

#### *When you receive the credit documentation*

- Check the details of the credit contract to make sure that it matches those you agreed with the broker and recorded in your finance broking contract.
- Take time to read the credit contract and get independent advice if there is anything you don't understand. You don't have to sign it on the spot.
- Make sure you keep a copy of the signed credit contract.



# phone 13 32 20

For help on any fair trading issue call your nearest Fair Trading Centre or Government Access Centre or call the service listed below which is relevant to your inquiry.

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**Fair Trading Centres – call 13 32 20**

Albury	Dubbo	Newcastle	Sydney
Armidale	Gosford	Orange	Tamworth
Bathurst	Grafton	Parramatta	Tweed Heads
Blacktown	Hurstville	Penrith	Wagga Wagga
Broken Hill	Lismore	Port Macquarie	Wollongong
Coffs Harbour	Liverpool	Queanbeyan	

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**Specialist services**

Rental bond enquiries ..9377 9000 ..1800 422 021(*outside Sydney*)

Tenancy enquiries .....9377 9100 ..1800 451 301(*outside Sydney*)  
.....9377 9099 (\*TTY)

Strata schemes .....9338 7900 ..1800 451 431(*outside Sydney*)

Aboriginal tenancy.....9377 9200 ..1800 500 330(*outside Sydney*)

REVS .....9633 6333 ..1800 424 988(*outside Sydney*)  
.....1300 369 889 (\*TTY)

Business licences.....9619 8722 ..1800 463 976(*outside Sydney*)

Registry of Co-operatives and Associations  
.....6333 1400 ..1800 502 042(*outside Bathurst*)

Consumer, Trader and Tenancy Tribunal (CTTT)  
.....1300 135 399

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TTY .....9338 4943  
(*telephone service for the hearing impaired*)

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Language assistance ..13 14 50  
(*ask for an interpreter in your language*)

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9895 0111

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**[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)**

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This brochure must not be relied on as legal advice. For more information about this topic, please refer to the appropriate legislation.