

# Finance Brokers Association of Australia Limited

ACN 094 784 040

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## Code of Conduct & Dispute Resolution Service Rules

**Produced by the Finance Brokers Association of Australia Limited**

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# Code of Conduct & Dispute Resolution Service Rules

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## 1 Introduction

### 1.1 Background of the FBAA

The activities of the FBAA originally commenced in 1992 as the Finance Brokers Association of Queensland Inc. The FBAA became a company listed guarantee in 1999 and in 2000 changed its name to the Finance Brokers Association of Australia Limited ACN 094 784 040. In 2001 it merged with the Finance Brokers & Mortgage Originators Association WA Inc. The Head Office is located at Level 1, 116 Ipswich Road Woolloongabba QLD 4102.

### 1.2 Objectives of the FBAA

- 1.2.1 To support, protect and advance the character status and interests of the Finance Broking profession generally and particularly of Finance Brokers being members of the FBAA.
- 1.2.2 To promote honourable practice, to repress malpractice, to settle disputed points of practice and to decide all questions of professional usage, etiquette or courtesy and all disputes between or amongst Finance Brokers.
- 1.2.3 To consider all questions affecting the interests of the Finance Broking profession and to initiate, promote, watch over and consider and if necessary to petition Parliament and organise deputations in relation to measures for the protection and the advancement of the Finance Broking profession and of Finance Brokers and general measures whether legislative or otherwise affecting the profession of Finance Broking and to procure improvements and promote uniformity in the principles, methods and practices of Finance Broking.
- 1.2.4 To promote, prescribe or adopt certification standards and classification of attainments and qualifications of Finance Brokers, for such purposes as to conduct examinations and other tests in the theory and practices of the finance industry and other subjects and to prescribe and receive fees for such examinations and tests and to grant diplomas and confer qualifications to designate the standard and status of Finance Brokers and in particular members of the association.
- 1.2.5 To provide, maintain, extend and improve a library or libraries containing technical literature and such other literature as may be of interest to Finance Brokers and to acquire, preserve and disseminate information and statistics concerning or relating to the principles and practices of the finance industry and other matters of interest to Finance Brokers.

- 1.2.6 To encourage the development or study of the finance industry and for these purposes from time to time to donate and to encourage the donation on such terms and conditions as may from time to time be determined or prescribed including the provision of a prize or prizes or other rewards or distinctions.
- 1.2.7 To promote information on the finance industry and other subjects of interest or value to Finance Brokers by lectures, discussions, books, correspondence with public and other bodies and individuals or otherwise.
- 1.2.8 To act as an intermediary for dispute resolution between Finance Brokers and their Clients.
- 1.2.9 To assist members with the running of their businesses where possible, including provision of standard forms and procedures.

### **1.3 Categories of Membership of the FBAA**

The Constitution provides for certain categories of membership in the FBAA, being:

(a) Member;

(b) Fellow;

(c) Life Member; and

(d) other categories or classes as established by the Board from time to time with such prerequisites, rights and privileges (inclusive of voting rights) as the Board thinks fit.

In relation to (d) above, the Board has established different categories of other types of membership, the criteria and conditions for which are published by the FBAA from time to time.

### **1.4 Outline of Code of Practice**

- 1.4.1 The Finance Brokers Association of Australia Limited (FBAA) Code of Practice ("Code") is intended to promote good relations between Finance Brokers that are Members of the FBAA and Clients, Credit Providers and others involved in the finance industry. It will also promote efficiency in transactions by describing standards of good practice and the level of service to be expected from Finance Brokers.
- 1.4.2 The Code has been prepared with an understanding that personal integrity is a quality which cannot be created or preserved by written rules alone. Codes of practice, like laws, cannot substitute for a sense of honesty, fairness and decency. Ultimately, the ethical conduct of the business of a Finance Broker depends upon

the understanding and judgment of the principals, employees and subcontractors. The FBAA expects that the actions of all its Members will reflect ethical standards that will bring credit to them, the FBAA and the industry.

- 1.4.3 The Code is part of a voluntary self regulatory scheme and acknowledges that various state or federal laws exist to regulate the conduct of Finance Brokers, in addition to the codes of other professional associations that Members may be bound by.
- 1.4.4 The Code sets standards of behaviour, accountability and record keeping that will minimize disputes with Clients and Credit Providers and thereby engender confidence in FBAA Members by professional indemnity insurers and thereby minimize the risk profile and consequent cost of professional indemnity insurance.
- 1.4.5 The Code also includes the Finance Brokers Association of Australia Dispute Resolution Service ("DRS"). All Finance Brokers subject to the Code will be bound by the terms of the Code and may have access to the DRS. The Code sets out the responsibilities of participating Finance Brokers and also requires them to establish an internal process for resolving disputes with Clients, Credit Providers and others. The Code does not create legal rights for Clients. A breach of the Code by a Finance Broker may give rise to binding orders or sanctions being imposed on the Finance Broker and may result in suspension or termination of membership of the FBAA, however, no additional monetary penalties may be imposed other than the imposition of a financial contribution to be made in appropriate circumstances commensurate with the costs incurred by the FBAA in a disciplinary procedure.
- 1.4.6 The Code recognizes that the primary responsibility of a Finance Broker is to the Client. However, in regard to some types of Credit Facilities, the Finance Broker may also act as a limited agent of the Credit Provider and therefore may act for both parties and have a responsibility and duty of care to both parties. In determining if the Finance Broker is an agent of the Credit Provider the FBAA and DRS is guided by Bulletin No. 36 dated December 2002 (issued originally by the Australian Banking Industry Ombudsman, since republished by the Financial Ombudsman Service), the Privacy Act 1988, and by any other applicable law.

## **1.5 Objectives of the Code**

The Code is intended to:

- 1.5.1 Describe standards of good conduct and service to be expected of Finance Brokers.
- 1.5.2 Promote informed and effective relationships between Clients, Credit Providers and Finance Brokers.
- 1.5.3 Promote efficiency in transactions in which Finance Brokers are involved and the appropriateness and effectiveness of the Brokers' services to Clients and Credit Providers.

- 1.5.4 Provide for consultation with Consumer Representatives in dispute resolution and reviews of the Code.
- 1.5.5 Promote the effective resolution of disputes between Finance Brokers, Clients and Credit Providers.

## **1.6 Principles of the Code**

The objectives of the Code will be achieved and the provisions of the Code will be applied having regard to:

- 1.6.1 The requirement of Finance Brokers to meet the standards established at common law and applicable Australian state, territory or federal statutory requirements.
- 1.6.2 The need for Clients and Credit Providers to be made aware of the relevant provisions of legislation including the National Consumer Credit Protection Act and the Competition and Consumer Act.
- 1.6.3 The need to promote effective competition in the finance broking industry and be well informed of the products and services available from the Credit Providers.
- 1.6.4 Circumstances or requirements imposed upon the Finance Broker by a Client or Credit Provider.
- 1.6.5 The need to conduct investigations under the DRS by the Mediation Officer and referrals to the FBAA for disciplinary action in accordance with the Constitution and Disciplinary Rules.

## **1.7 Monitoring and Review of the Code**

The Code will be monitored by the FBAA Compliance Subcommittee (as appointed from time to time by the National Executive Committee). It will comprise of a Consumer Representative, a Credit Provider, a practicing Finance Broker, a Legal Practitioner and the National Executive Committee of the FBAA. The Code is a "living" document and will be formally reviewed by the Compliance Subcommittee every year. The Compliance Subcommittee may issue guidelines as to the implementation and interpretation of the Code (not being inconsistent with the Constitution of the FBAA and the law). However, the Code can be adapted in the meantime to deal with any problems which may arise that require urgent attention and implementation of additions or amendments to the Code or DRS. All participating Finance Brokers are required to make information concerning the Code available to Clients and Credit Providers in a manner recommended by the FBAA or as otherwise approved by the FBAA.

## **1.8 Date and Commencement of the Code**

The date of Commencement of the Code is 18th November 2005. This Code replaces an earlier code which continues to have residual effect regarding matters that occurred during the period of its currency (save for disciplinary matters currently being conducted as at the date of the commencement).

## 1.9 How to Amend the Code

This Code may be amended in such manner as is provided in the Constitution.

## 1.10 Scope and Application

The Code will apply to all Members of the FBAA from the date of commencement of the Code.

## 2 Defined Words

- 2.1.1 **Aggregator:** A Finance Broker that channels loan applications to Credit Providers with whom they have limited agency arrangements on behalf of other Finance Brokers that do not have such arrangements. The Aggregator will receive any upfront and/or trailing commission from the Credit Provider and disburse it to the other broker in accordance with a prior written arrangement.
- 2.1.2 **Alternative Dispute Resolution Scheme (“ADRS”):** Means an ASIC registered scheme for investigating and resolving complaints regarding the activities of Finance Brokers, where the Finance Broker is either a member of such a scheme or an agent of a member of such a scheme and may include the Financial Ombudsman Service (FOS) or any other ASIC registered scheme capable of hearing disputes involving Credit Facilities or Finance Brokers.
- 2.1.3 **ASIC:** Australian Securities & Investments Commission.
- 2.1.4 **Board:** The board of Directors of the FBAA.
- 2.1.5 **Client:** Means a person or other legal entity that engages the services of a Finance Broker for the purpose of obtaining a loan or Credit Facility and includes any prospective borrower, lessee, hirer or guarantor that is a party to a transaction or the direct or indirect beneficiary of any information, advice or service provided by the Finance Broker, for financial or other reward. It is deemed that a Client will have a principal and agency arrangement with the Finance Broker appropriate to the circumstances of each appointment.
- 2.1.6 **Code or Code of Practice:** This document.
- 2.1.7 **Compliance Subcommittee:** The subcommittee appointed under the provisions of this Code to perform the certain functions as set out in this Code.
- 2.1.8 **Constitution:** The constitution of the FBAA.
- 2.1.9 **Consumer Representative:** A person who is capable of reflecting the viewpoints and concerns of consumers and be people in whom consumers and consumers groups can have confidence.
- 2.1.10 **Credit Facility:** Includes the types of facilities described under the definition of Finance Broking.



- 2.1.11 **Credit Provider:** For the purposes of this Code a Credit Provider includes:-
- Bank licensed under the Banking Act 1959
  - Credit union
  - Building society
  - Finance company
  - Mortgage manager
  - Merchant bank
  - Foreign bank
  - Trustee company
  - Pastoral company
  - Contributory mortgage scheme
  - Private lender
  - Superannuation fund who has or may receive a submission for finance broking services from the relevant Finance Broker.
- 2.1.12 **Director:** A director of the FBAA.
- 2.1.13 **Disciplinary Rules:** The rules of the FBAA providing for disciplinary action to be taken in relation to the conduct of Finance Brokers who are Members.
- 2.1.14 **Dispute Resolution Service** or “**DRS**”: The service established under this Code to assist Finance Brokers who are Members to resolve disputes as provided in this Code.
- 2.1.15 **FBAA:** Finance Brokers Association of Australia Limited ACN 094 784 040.
- 2.1.16 **Finance Broker:** For the purposes of this Code a Finance Broker is defined as being a person, corporation or partnership, that, as an agent, in the course of business negotiates or arranges loans of money or other credit facilities on behalf of Clients and is paid for that service either by the Client or a Credit Provider or both, including the act of originating and/or managing such loans or Credit Facilities on behalf of Credit Providers.
- 2.1.17 **Finance Broking:** For the purposes of this Code Finance Broking includes negotiating or arranging the following types of loans or credit facilities:-
- Residential mortgages
  - Secured and unsecured consumer finance including credit cards
  - Commercial mortgages
  - Secured and unsecured business finance
  - Lease finance, commercial hire purchase and chattel mortgages
  - Mortgage origination and/or management on behalf of Credit Providers
  - Debtor factoring and cash flow finance
  - Debt reduction plans

Finance Broking does not include other services relating to provision of contracts for insurance or advice relating thereto, or any financial or other advice or services relating to superannuation or other forms of investment or estate planning, remuneration or salary packaging, financial planning or taxation matters.

- 2.1.18 **Legal Practitioner:** An Australian legal practitioner is a lawyer who holds a current local practicing certificate or a current interstate practicing certificate.
- 2.1.19 **Mediation Officer or “MO”:** Means a person appointed by the DRS to investigate complaints, gather information and make written reports and recommendations to the DRS.
- 2.1.20 **Member:** A member of the FBAA.
- 2.1.21 **National Executive:** The body established as an advisory body to consider such matters as the Board may determine from time to time, and to perform such functions as this Code may specify, being the Board together with such additional Members as the Board may determine from time to time.
- 2.1.22 **Referee:** Means an independent person who is a member of the Compliance Subcommittee and appointed by the Compliance Subcommittee from time to time to receive reports from the MO, conducts hearings and make determinations on complaints as provided in the DRS.

### 3 Responsibilities of the Finance Broker to the Client

A Finance Broker, when acting on behalf of a Client in relation to a Finance Broking transaction will seek to:

#### 3.1 General

- 3.1.1 Discharge its responsibilities and duties competently and with integrity and honesty.
- 3.1.2 Act in the best interest of the Client but in a manner consistent with the Finance Broker’s appointment document and this Code.
- 3.1.3 Exercise reasonable care and skill.
- 3.1.4 Comply with its obligations to the Client, including:
- a. Avoiding conflicts of interest.
  - b. If a conflict of interest occurs, disclosing that conflict as soon as is reasonably practicable and disclose the existence of any agency arrangements or other commercial relationship with any recommended Credit Provider, valuer, mortgage insurer, lawyer, financial planner, financial advisor, insurer or

insurance broker that may be involved in a transaction where the Finance Broker is to receive a pecuniary benefit.

- c. Disclose in writing the source of any fees, trailing commission, other remuneration or benefit to be received by the Finance Broker and at such time and in such detail as may be required by law in the lawful jurisdiction of both the Finance Broker and Client.
  - d. Disclose in writing, the payment of any fees, trailing commission, other remuneration or benefit to any referrer, subcontractor or third party where such third party gives advice relating to the proposed transaction or otherwise assists or induces the Client to enter into the transaction and at such time and in such detail as may be required by law in the lawful jurisdiction of both the Finance Broker and Client.
- 3.1.5 Advise the Client of their eligibility for any government subsidies or other assistance that the Finance Broker can reasonably be expected to be aware of relating to obtaining a Credit Facility or dealing with personal or financial hardship during the term of a Credit Facility.
- 3.1.6 Maintain the confidentiality of Client details and other information in accordance with the Privacy Act 1988 and its amendments during the term of the Finance Broker's appointment and after the conclusion of the appointment.
- 3.1.7 Comply with the provisions of the Competition and Consumer Act 2010, Corporations Act 2001, Australian Securities and Investments Commission Act 2001, the National Consumer Credit Protection Act and any other Finance Broker specific legislation and any amendments thereto.
- 3.1.8 Maintain all records required by law and comply with all requirements for production of, access to, or copying of, such records as may be required by statute.
- 3.1.9 Provide such information as may be lawfully required by any regulatory or other authority.
- 3.1.10 Be familiar with the Code of Practice and rules of any ADRS that the Finance Broker may be a member of and thereby be able to assist Clients in understanding and enforcing their rights under such Codes and/or rules.
- 3.1.11 Promptly return to a Client any original documents provided for copying, or on demand by the Client provided that the Client has paid any outstanding amounts owing to the Finance Broker.
- 3.1.12 Unless contrary to any law, and subject to compliance with any laws relating to the disclosure of fees to a Client, a Member may charge non-refundable upfront fees provided the Member first draws to the Client's attention in writing that obtaining a Credit Facility on behalf of the Client is improbable or unlikely.

- 3.1.13 Advise the Client of the need to arrange the discharge of any existing mortgage, other charge or encumbrance over the proposed security for a Credit Facility that is necessary to effect settlement and at such time as is reasonably required to avoid any delay in settlement of the proposed transaction.
- 3.1.14 Advise the Client and Credit Provider of any benefit the Finance Broker may receive as a result of the Client entering into any credit related general or life insurance contract as part of any service or referral provided by the Finance Broker in regard to any Credit Facility arranged by the Finance Broker.
- 3.1.15 Advise the Client of the need to provide the Credit Provider, their solicitor or valuer of any documentation or information that may be required to obtain approval of a Credit Facility, or to facilitate preparation of any loan documentation, including production of certificates of title or ownership, evidence of insurance in a form required by the Credit Provider and to do so in an expedient manner.
- 3.1.16 Advise the Client of the process of arranging any registered second mortgage or company charge and the need for the Client to first obtain the consent of the prior mortgagee or charge in a timely manner to avoid delays in settlement of any proposed transaction.
- 3.1.17 Advise the Client of the types of loan products that the Finance Broker can obtain for the Client, explain the differences between various types of loan products and inform the Client which Credit Providers the Finance Broker deals with.
- 3.1.18 Advise the Client on the process of arranging credit generally including the likely time-frames and problems that could be encountered throughout the process.

## **3.2 Credit Applications and Contracts**

- 3.2.1 Assist the Client in understanding its contractual benefits and obligations with the Finance Broker and Credit Provider.
- 3.2.2 Maintain clearly written diary notes or provide written advice of reasons for any recommendations given to Clients and any variation subsequently sought by the Client or imposed by the Credit Provider. Any diary notes or written advice of reasons are to be kept by the Finance Broker in accordance with good business practice.
- 3.2.3 Make all reasonable enquiries of the Client as to their income, assets, actual and contingent liabilities, repayment history with other creditors or Credit Providers, details of any adverse credit or financial events and promptly convey such information, together with a fully completed credit application, to the Credit Provider in the form required.
- 3.2.4 Promptly advise the Client if a credit application is declined or consideration thereof by the Credit Provider is delayed or deferred pending the supply of further information required from the Finance Broker, Client or other party.

- 3.2.5 Promptly make available to the Client copies of any finance approval correspondence, indicative offers of finance, loan contracts or security documentation as may be required by the Credit Provider.
- 3.2.6 Take reasonable steps to obtain from the Credit Provider and promptly convey to the Client, relevant information and documents supplied by the Credit Provider.
- 3.2.7 Advise the Client in writing of the Credit Provider's fees and other charges, showing any fees charged by the Finance Broker separately, prior to the Client accepting an offer of finance from a Credit Provider.
- 3.2.8 Promptly deal with any variation in the Client's requirements and record such instructions, with reasons given, in writing.
- 3.2.9 Promptly advise the Client of any variation in the terms and conditions available from the selected Credit Provider that differ from those originally advised and retain a written record of such variations, with reasons given by the Credit Provider and the Client's reaction and subsequent instruction.
- 3.2.10 Where reasonably practicable, check the accuracy of documentation relating to a proposed Credit Facility supplied by the Credit Provider to the Client and ensure it is in accordance with the Client's recorded requirements.
- 3.2.11 (As permitted by privacy laws and consent held by the Finance Broker and provided that the Client has paid any outstanding amounts owing to the Finance Broker). Co-operating by promptly providing any information or assistance reasonably required by a valuer, lawyer, mortgage insurer or other party necessarily involved in the discharge of the Finance Broker's duties to the Client and/or Credit Provider.
- 3.2.12 When requested by, or previously arranged with, the Client or Credit Provider, providing reasonable assistance with any post settlement liaison between the Client and Credit Provider including communicating any permissible variations in the credit contract, renewal of the term or discharge of security.
- 3.2.13 Not knowingly be a party to or participate in any deliberate non-disclosure or misrepresentation of any facts pertaining to the Client, Credit Provider, the Credit Facility being arranged, and the circumstances of the transaction or the security being taken.
- 3.2.14 Assess the Client's ability to meet their obligations under a proposed Credit Facility in accordance with any Credit Facility affordability calculators supplied by a Credit Provider and advise the Credit Provider of any extenuating circumstances affecting the Client's ability to meet their proposed obligations to a Credit Provider.
- 3.2.15 Explain to Clients the possibility of notations being made on their credit record each time they apply for credit and take steps to avoid unnecessary notations on a Client's credit record.

## **4 Responsibilities of the Finance Broker to the Credit Provider**

A Finance Broker, when negotiating a loan application with a Credit Provider, to the extent required by the terms of any accreditation, agency or other agreement and any applicable common or statute law will:

### **4.1 General**

- 4.1.1 Disclose to the Credit Provider that it also acts for the Client and that it may receive a fee from the Client, such disclosure may be made in a pre-contractual statement or advised in writing when applicable.
- 4.1.2 Discharge its responsibilities and duties competently, with integrity and honesty and in accordance with any accreditation, agency or other agreement.
- 4.1.3 Exercise reasonable care and skill.
- 4.1.4 Comply with its obligations to the Credit Provider, including:-
  - a. Avoiding conflicts of interest.
  - b. If a conflict of interest occurs, disclosing that conflict as soon as is reasonably practicable to the parties and advise them to seek independent legal or other advice if required.
  - c. Maintaining the confidentiality of the Credit Provider's confidential internal information and procedures that is not related to product disclosure or other services available to the Client.
- 4.1.5 Maintain records required by law and comply with lawful requirements for production of, access to and copying of such records.
- 4.1.6 Provide such information as may be legally required by any regulatory or other authority.
- 4.1.7 Comply with the policies and procedures of the Credit Provider and attend all necessary product training sessions reasonably required by the Credit Provider to satisfy accreditation standards. (As permitted by privacy laws and consented by the Finance Broker and provided that the Client has paid any outstanding amounts owing to the Finance Broker).
- 4.1.8 Co-operating by promptly providing any information or assistance reasonable required by a valuer, lawyer, mortgage insurer or other party necessarily involved in the discharge of the Finance Brokers duties to the Client and/or Credit Provider.
- 4.1.9 When requested by, or previously arranged with, the Client or Credit Provider, providing reasonable assistance with any post settlement liaison between the Client and Credit Provider including communicating any permissible variations in the credit contract, renewal of the term or discharge of security.

- 4.1.10 Assess the Client's ability to meet their obligations under a proposed Credit Facility in accordance with any Credit Facility affordability calculators supplied by a Credit Provider and advise the Credit Provider of any extenuating circumstances affecting the Client's ability to meet their proposed obligations to a Credit Provider.
- 4.1.11 Where appropriate, interview any guarantor or third party to a proposed Credit Facility and advise them of their general obligations and extent of their liability and record the giving of such advice on the Client's file.

## **4.2 Credit Applications and Contracts**

- 4.2.1 Ensure Credit Providers are provided with all information required by them, or otherwise reasonably expected by them to determine the identity, personal or business circumstances, financial position, credit history and credit worthiness of the Client.
- 4.2.2 Ensure Credit Providers are provided with all available information relating to the proposed security for a loan or Credit Facility to assist in correctly identifying the property or goods.
- 4.2.3 Maintain written reasons for recommendations given to Clients and any variation subsequently sought by the Client or imposed by the Credit Provider.
- 4.2.4 Promptly provide the Client's credit application and supporting information to the Credit Provider following completion and signing by the Client where required, including any Privacy Act and disclosure documents required by the Credit Provider.
- 4.2.5 Make all reasonable additional enquiries regarding the Client's identity, personal circumstances, business, credit history or financial position that may assist the Credit Provider in making an informed decision.
- 4.2.6 Promptly advise the Credit Provider if a credit application is withdrawn by a Client or if there is a delay in providing any further information required from the Finance Broker, Client or other party.
- 4.2.7 Take reasonable steps to promptly make available to the Client copies of any finance approval correspondence, indicative offers of finance, loan contracts or security documentation as may be required by the Credit Provider.
- 4.2.8 Take reasonable steps to obtain from the Client and promptly convey to the Credit Provider, additional information and documents reasonably required by the Credit Provider.
- 4.2.9 Advise the Client in writing of the Credit Provider's fees and other charges, showing any fees charged to the Client by the Finance Broker separately, prior to the Client accepting an offer of finance from a Credit Provider.

- 4.2.10 Promptly deal with any variation in the Client's requirements and pass on such requests to the Credit Provider.
- 4.2.11 Promptly advise the Client of any variation in the terms and conditions available from the selected Credit Provider that differ from those originally advised and retain a written record of such variations, with reason given by the Credit Provider and the Client's reaction and subsequent instruction.
- 4.2.12 Check the accuracy of the Credit Provider's Credit Facility contract and relevant security documentation by comparison with the Client's requirements. (Except in instances where the Credit Provider and Client are in direct contact or communication and the relevant documents are not provided to the Finance Broker.)
- 4.2.13 (As permitted by privacy laws and consent held by the Finance Broker and provided that the Client has paid any outstanding amounts owing to the Finance Broker). Promptly provide any information or assistance reasonably required by a valuer, lawyer, mortgage insurer or other party acting under instructions from a Client and/or Credit Provider.
- 4.2.14 When requested by, or previously arranged with, the Client or Credit Provider, provide reasonable assistance with any post settlement communication between the Client and Credit Provider including advising any permissible variations in the credit contract, renewal of the term, discharge of security or default under the Credit Facility.
- 4.2.15 Not knowingly be a party to or participate in any deliberate nondisclosure or misrepresentation of any facts pertaining to the Client, Credit Provider, the credit facility being arranged, the circumstances of the transaction or the security being taken.

## **5 General Obligations of the Finance Broker**

A Finance Broker will:

### **5.1 Provision of Information**

- 5.1.1 Advise Clients and Credit Providers in writing that the Finance Broker is subject to the Code (including the FBAA DRS), which is available in the public section of the FBAA web site, [www.fbaa.com.au](http://www.fbaa.com.au).
- 5.1.2 Make copies of the Code available and provide same if requested by a Client or Credit Provider or upon receipt of a complaint.

### **5.2 Employees and Subcontractors**

- 5.2.1 Provide suitable ongoing training for its employees and subcontractors having regard to the employees or subcontractor's role and responsibilities.



- 5.2.2 Take reasonable steps to ensure that its employees and subcontractors comply with the obligations set out above.

### **5.3 Professional Indemnity Insurance**

- 5.3.1 Maintain a current policy of professional indemnity insurance with an insurer that the Finance Broker usually deals with, and for the amount, that is acceptable to the Credit Provider or Finance Broker.
- 5.3.2 When requested to do so by a Client, Credit Provider, FBAA or DRS, provide evidence of a current policy of professional indemnity insurance.

### **5.4 Membership of FBAA and Availability of Dispute Resolution Service**

- 5.4.1 Display in their place of business evidence of their current Accredited or Associate Membership of the FBAA, and to make available to Clients and Credit Providers a copy of the Code (including the FBAA DRS) and to advise Clients and Credit Providers of the Finance Broker's membership of any other ADRS.

### **5.5 Moneys Held on Trust**

- 5.5.1 Deposit (unless as otherwise required by law) by the next business day (or in any case promptly) any money received or held by the Finance Broker on trust for a Client into a trust account maintained by the Finance Broker with a government approved deposit-taking institution, which account must not contain any moneys other than moneys received or held on trust by the Finance Broker for Clients.
- 5.5.2 At the earliest practical opportunity, deliver money received or held by the Finance Broker on trust, to the party intended by the Client and not to any other party unless directed otherwise in writing by the Client.
- 5.5.3 Ensure that the Finance Broker's employees and subcontractors observe the above requirements for handling money received on trust from a client and must not request, require or induce a Client to pay or deliver money to the employee or subcontractor except as may be authorized by the Finance Broker in writing.

### **5.6 Pecuniary Interest in a Credit Facility or Related Sale of Property or Goods**

- 5.6.1 Disclose to the Client and Credit Provider any interest the Finance Broker, its employees or subcontractors or their family may have, or intends to have, in any loan transaction or related sale or purchase of property or goods and shall only act for either or both parties if they are fully informed of the Finance Broker, its employees or subcontractors or their family's interest and agree in writing to the Finance Broker, its employee or subcontractor continuing to act for them.

### **5.7 Instructing Licensed Valuers**

- 5.7.1 In the event a Client or Credit Provider instructs a Finance Broker to obtain a valuation of a property or goods the Finance Broker shall instruct a valuer nominated by the Client or Credit Provider or shall otherwise select an independent licensed valuer and take reasonable steps to ensure that the valuer has no interest whatsoever, financial or otherwise, in the property or goods to be valued or the Credit Facility for which the property or goods is required as security.
- 5.7.2 If the valuer is instructed by the Finance Broker the Finance Broker must ensure the valuer is provided with all necessary information regarding the property or goods to be valued as reasonably required by the valuer and ensure the valuation is carried out for secured lending purposes and that liability for the report is extended to the Client or Credit Provider as required.
- 5.7.3 Ensure that the Finance Broker does not have an improper business relationship with a valuer involved in a credit transaction, or receive any financial or other benefit as a result of instructing a valuer, and must be reasonably satisfied that the valuer is not subject to any coercion or inducement that might be intended to unreasonably influence the valuer's recommendations or judgment.

## **5.8 Conjunctual Arrangements**

- 5.8.1 When acting in conjunction with another Finance Broker to negotiate or arrange a Credit Facility, and making an agreement with the other Finance Broker in relation to sharing remuneration, the total remuneration must not exceed the maximum remuneration as determined by any applicable state, territory or federal law in the lawful jurisdiction of the Finance Brokers and the Client.

## **5.9 Comply with all applicable laws**

- 5.9.1 Abide by the laws applicable to the conduct of a Finance Broker's business which applies in the jurisdiction of the Finance Broker's business address and Client's residential or other applicable address.

# **6 Internal Dispute Resolutions Process**

## **6.1 General**

A Member will:

- 6.1.1 Have a documented internal process for handling disputes with a Client or Credit Provider in accordance with Australian Standard AS4269-1995 "Complaints handling" and AS 4608-2004 "Dispute Management Systems". A copy of these Australian Standards is available from [www.standards.com.au](http://www.standards.com.au) or by contacting "Standards Australia" Telephone 1800 035 822. This process shall provide a fair and timely method of handling disputes. (The FBAA notes that the Standards do acknowledge that some discretion/variation will apply to the guidelines when small businesses are concerned.)

- 6.1.2 Provide a Client or Credit Provider with free access to this process.
- 6.1.3 In the event of receiving a complaint or becoming aware of a dispute, make documentation available to a Client and Credit Provider which:
  - a. Describes the procedure for handling a dispute.
  - b. States the usual time within which a dispute will be determined. In most instances, it should be reasonable for a dispute to be determined within 20 working days from the Finance Broker having received all relevant information from the Client or Credit Provider.
  - c. Confirms that the dispute will be handled by an officer or employee of the Finance Broker with appropriate powers to deal with the dispute.
- 6.1.4 Promptly reply in writing to any request from a Client and Credit Provider for the resolution of a dispute.

## **6.2 If dispute is not resolved**

If the dispute is not resolved in a manner acceptable to a Client and Credit Provider, the Member will:

- 6.2.1 Provide to the Client or Credit Provider, where appropriate, the general reasons for that outcome.
- 6.2.2 Inform the Client or Credit Provider whether the Finance Broker believes the dispute is one to which the DRS will apply and information as to the availability of, and how to refer a dispute to, the FBAA DRS.
- 6.2.3 Inform the Client or Credit Provider of any ADRS that the Finance Broker is a member of that may be available to investigate the complaint or dispute if the FBAA DRS is unable to achieve a satisfactory conclusion.

## **6.3 When a dispute need not be dealt with**

A dispute need not be dealt with by a Member where:

- 6.3.1 Insufficient information has been provided by the Client or Credit Provider to allow the Finance Broker to properly consider the dispute after the Finance Broker has made a written request for such further information from the Client or Credit Provider;
- 6.3.2 The substance of the dispute is, or has already been, the subject of consideration by the Finance Broker's internal dispute resolution process, statutory body, or other complaint or dispute resolution process, or adjudication by a court, tribunal or other legal process; or
- 6.3.3 The matter is deemed frivolous, vexatious, or of improper purpose.

## **7 FBAA Disputes Resolution Service (DRS)**

The FBAA has in place a DRS to assist members to resolve complaints made by Clients or Credit Providers where they have been unable to reach resolution via their own internal dispute handling mechanism. FBAA Accredited Members and Associate Members may make this service available to the complainant following failure to resolve a dispute/complaint, and prior to having the matter escalated to any ADRS (External). Members are encouraged to explain the availability of this process to the complainant. Participation in the DRS is purely voluntary for members and complainants.

## **7.1 Who can complain?**

Someone who:

- 7.1.1 Is a Client or Credit Provider; and
- 7.1.2 Has been dealt with in a manner which is believed by them to be in breach of the FBAA Code of Practice; or
- 7.1.3 Has provided security for a financial service (e.g. guarantor) or in cases where there are claims by the customers relating to a breach of relevant laws, confidentiality or privacy or acted unfairly towards them.

The proviso applicable to all of the above being that the matter must have been dealt with first by the Member/business, but has been unable to reach resolution.

## **7.2 Who can't complain?**

- 7.2.1 Where the matter is deemed frivolous, vexatious, or of improper purpose. Where it relates to an area better served by another jurisdiction e.g. privacy commissioner or the courts.
- 7.2.2 Where it relates to a legally claimable broker fee/commission.
- 7.2.3 Where it relates to a lender's (or mortgage insurer's) decision, terms or conditions.
- 7.2.4 Where the substance of the dispute is or has already been the subject of consideration by the FBAA's internal DRS, statutory body, other complaint or disputes resolution body including ombudsman schemes, or adjudication by the court, tribunal or other legal process.

## **7.3 Step 1 – Process**

The matter will, in the first instance, be referred to the respective state FBAA President, who will endeavour to attain sufficient information to decide what path it would be prudent that the matter should take, he/she will consider whether it is a matter that can be considered by the FBAA DRS, and may be able to mediate the matter for resolution themselves. If unable to resolve, he/she then has the option to refer the matter to an MO under the FBAA DRS. The MO will be a person appointed by the FBAA whom they believe has the ability to mediate the dispute in an impartial manner. The MO will be guided by the procedures as per Standards Australia AS4608-2004 and AS4608-1995.

## 7.4 Step 2 – Resolving through Mediation Officer

- 7.4.1 *Conciliation of alleged breach of the Code by MO:* The MO will endeavour to resolve alleged breaches of the Code by conciliation. In conciliating the dispute, the MO is to give fair and just advice and assistance to the parties having regard to what is fair and reasonable in all the circumstances, the principles of any broker specific law and practice and the principles and objectives of the Code.
- 7.4.2 *Discretion of MO to refuse to consider or continue considering a dispute which is inappropriate for the procedure:* The MO will have discretion to refuse to consider or continue considering a dispute which the MO believes in all the circumstances to be inappropriate for this procedure, for example where:
- a. The MO does not believe that the conduct complained of is covered by the FBAA Code of Practice.
  - b. The alleged breach is also, or could be, the subject of a dispute already covered by the DRS or an ADRS.
  - c. The substance of the dispute is, or has already been, the subject of consideration by the MO, a statutory body, or other complaint or dispute resolution process, or adjudication by a court, tribunal or other legal process.
  - d. Insufficient information has been provided by the complainant to allow the MO to properly consider the dispute.
  - e. The complaint is deemed by the MO to be frivolous or vexatious or of improper purpose.
  - f. The Finance Broker's right to indemnity under a professional indemnity insurance policy may be seriously prejudiced if the matter was to proceed in the absence of consent by the relevant professional indemnity insurer and that insurer has refused or failed to provide an appropriate consent.

Where the MO exercises the discretion referred to above, the MO is required to provide written reasons for his/her decision to the complainant and where appropriate, any steps which the complainant must take before the MO will consider or continue to consider the alleged breach of the Code. Alternatively the complainant is to be advised that they may progress the matter to an ADRS or other means of having their grievances heard.

- 7.4.3 *Right to review decision by MO to refuse to consider or continue considering a dispute:* If the complainant informs the MO that they do not agree with the MO's decision to refuse to consider or to continue considering a dispute, the matter will be referred to the Referee. The MO will be required to provide to the Referee:
- a. Written reasons for the decision.
  - b. Such information and documents which the MO considers will be relevant in assisting the Referee to decide whether the decision was appropriate or not.
  - c. Such other information and documents which the Referee shall require.

If the Referee decides that the decision was not appropriate, the MO must continue to consider the alleged breach of the Code subject to the complainant complying with any steps which the Referee may require the complainant to take.

- 7.4.4 *Request for information by MO:* For the purpose of determining whether to consider, or continue considering any dispute, the MO may request from the Finance Broker, the complainant, or any third party, including another Finance Broker or a Credit Provider, documents or other information relevant to dispute. Any Finance Broker and complainant are encouraged to provide all such documents or information promptly. Provision of any confidential documents or information of the Finance Broker's Client relevant to the dispute is subject to the Finance Broker receiving the consent of its Client to providing such documents or information.

Any documents identified as confidential will retain to the fullest extent permitted by law, their confidential status and will not be provided to any person without prior written consent or except as required by law. A document identified as subject to a claim for privilege will not be copied or reproduced in whole or in part by the MO.

The MO will notify the Finance Broker and the complainant as soon as is reasonably possible if any document supplied by them to the MO is subpoenaed by any person or entity, or is otherwise required to be produced to any person or entity.

- 7.4.5 *Time frames for conciliation:* Conciliation of a dispute must be completed by the MO within 20 working days of the date on which the MO was notified in writing of the dispute, or such other time as the MO decides is reasonable in the circumstances.
- 7.4.6 *Failure of MO to resolve dispute – automatic referral to Referee by MO:* The MO does not have the power to make any decisions which bind the Finance Broker or the complainant. If a dispute is not resolved to the satisfaction of the complainant the Finance Broker will advise the complainant of the complainant's rights to refer the matter to an ADRS or lodge a complaint to the FBAA under the Disciplinary Rules.
- 7.4.7 *Terms of Reference – Complaints Handling:* The MO will be empowered with wide terms of reference to enable them to effectively and efficiently manage the dispute process. They will be guided by the procedures adopted from Guidelines of Standards Australia (AS4608-2004 and AS4269-1995).

## **8 Disciplinary Action by the FBAA**

In accordance with Section 13 of the Constitution the Directors of the FBAA may discipline a Member for any breach of this Code (including the possibility of termination of membership). The Directors may also exercise their discretion and caution or reprimand a Member and require the Member to undertake professional education of a specified type. A Member is to be given notice of any intended disciplinary action in accordance with the Disciplinary Rules.

## **9 Liability of Mediation Officer, Referee and FBAA Disputes Resolution Service**

The Mediation Officer, Referee and the FBAA will not be liable to a complainant or Finance Broker or any other person or entity for any loss or damage (including legal costs) arising directly or indirectly from performing their duties. A confirmation of this may be a condition precedent to use of the DRS or like services and will be required from the Finance Broker and complainant prior to initiating any DRS process.

For further information or assistance please contact:

The Mediation Officer, FBAA Disputes Resolution Service  
Address: Level 1, 116 Ipswich Road, Woolloongabba Qld 4102  
(07) 3847 8119  
Email: [disputes@fbaa.com.au](mailto:disputes@fbaa.com.au)