

FIRST HOMEBUYER'S GUIDE

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DISSECTING YOUR MORTGAGE CONTRACT

Once you sign your mortgage contract you're locked in for the life of that loan, with high refinancing costs the only way out. To ensure you have no reason to incur these, make sure you understand how to read your mortgage contract and comprehend every word. **Genavieve Zoeller** shows you how to make sense of this important document

With the large volumes of loans written by lenders each day, mistakes in mortgage contracts are common. You can never be sure that your lender has drafted your contract exactly as you expect and it is your responsibility to raise any mistakes you find with your lender.

If you know how to analyse a mortgage contract, there should be no reason for you to come across any nasty surprises later on in your loan term. In fact, reading your contract thoroughly with your solicitor before you sign gives you the perfect opportunity to straighten

There is no substitute for the use of a solicitor when it comes to mortgage contract. Skimping on professional advice here would be a grave mistake.

David Singh, a solicitor and director of Conveyancing & Property Lawyers, says borrowers should read their home loan contract through with a lawyer to ensure they are 100% aware of what happens if they fail to make their repayments.

"It takes time to read a loan contract properly, to make sure your home loan is structured appropriately and you are signing what you originally agreed on. If the terms of the loan are not what

"Once you've signed the home loan contract and settled your loan you're legally bound by it. You have to either refinance or win the lottery and pay that loan out to end the contract. Refinancing can be a very expensive process and you may need to pay deferred establishment fees to exit your loan contract"

out and clarify any problems, and answer any questions.

"It's important that you take this time to fully comprehend your rights and responsibilities as the borrower as well as familiarise yourself with your lender's rights and responsibilities," says Mark Bouris, chairman and founder, Wizard Home Loans.

"The important things to remember are that you should never be pressured to sign the contract if you have not had a chance to review it, and, if you do sign a loan contract, be aware that it is your responsibility to understand and accept all the terms of the contract, as you are now legally bound," Bouris explains.

Don't rush

When you receive your home loan contract, you generally have around 30 days to sign and return the documents or contact your lender with any amendments.

Firstly, you should read the contract from front to back; noting any questions or alterations (on a photocopy, not the original) you might like raise with your lender. Then, take a copy of the contract to your solicitor and have them walk you through it to spot any items in error and answer any questions.

you originally agreed on with your lender or mortgage broker, ask the lender to amend the documents," Singh explains.

Your legal responsibilities

The legal responsibilities you have for a loan after you have signed the contract and returned your forms to your lender are simple, says Singh. "If you don't make your repayments on time your lender will terminate your loan contract, take possession of your property – by evicting you or your tenant – and then sell your property, usually at an auction, to the highest bidder," he explains.

The legalities of default are stated loud and clear in your home loan Terms and Conditions booklet, which is provided to you along with your Letter of Offer.

Other legal obligations include:

- keeping the property in good condition
- insuring the property
- notifying the lender of any proposed changes to the property
- notifying the lender if you intend to lease the property
- paying all applicable fees and charges on time such as council rates, water, rates and, if applicable, strata levies

Step-by-step guide to understanding your loan contract

1. Lay out all the loan documents (there are quite a few pieces of paper involved here)
2. Review all the documents briefly and get a general understanding of what each one does
3. Read the table of contents of the larger documents and get a feel for the topics that are covered in them (you may find a table of contents in the Loan Standard Terms and Conditions and the Mortgage Memorandum)
4. Now read through all the documents in detail, ie, every word
5. On your personal copy of the document (not the original – and it is likely that you will be given a copy), highlight any clauses that are not 100% clear to you
6. Send the loan documents to your lawyer along with advance notice of any questions you may have
7. Contact your lawyer and make an appointment with them to review the documents. Completing steps 1 to 6 above makes the meeting with your lawyer much more productive and you then have a better understanding of what your lawyer tells you
8. Meet your lawyer and discuss your loan documents
9. Don't sign the loan contract under any circumstances if there is anything in the documents that you don't understand or didn't agree to with the lender
10. If there are any errors in the documents, have your lender correct it and issue new documents (lenders generally won't accept handwritten amendments)
11. Complete point 10, if applicable, as soon as you receive your loan documents. Don't leave it to the last minute as you may need to make changes – which means new loan documents need to be issued. If you've left it too late, your lender may not be ready to settle on your due date for settlement

Source: David Singh is a solicitor and director of Conveyancing & Property Lawyers

"Once you have signed the home loan contract and settled your loan, you are legally bound by it. You have to either refinance or win the lottery and pay that loan out to end the contract. Refinancing can be a very expensive process and you may need to pay deferred establishment fees to exit your loan contract," explains Singh.

Will your contract have any hidden facts and fees?

Mortgage contracts were once written in detailed legal language and were considered difficult to interpret by the average borrower. Today, they are delivered in plain English and are legally

bound to expose any hidden facts and fees which you might incur over the life of your loan (or during the application process).

"The fees aren't hidden, and they are generally printed over a number of pages or so. As a borrower you want to make sure that you understand what you have to pay and when, and that you can make the payments on time and meet all other obligations under the loan contract," Singh explains.

If any elements in your Letter of Offer have not been addressed – such as information regarding lenders mortgage insurance – it will be summarised in your Home Loan Terms and Conditions booklet. If not, it is your responsibility to clear these queries with your lender before signing the contract and before it lapses.

Still, the two sections of the contract may not state everything you need to know about your home loan. For instance, your lenders mortgage insurance (LMI) agreement is arranged between your lender and the insurance provider. If you would like further details on the LMI agreement (and whether you might be eligible for an LMI refund), it is up to you to obtain the

information before you go ahead and sign the contract.

The contract

Typically, most loan contract documents are the same. They state that the lender has offered a home loan agreement and will itself provide it on the terms and conditions as outlined in the contract documents.

There are two parts to a contract – the Home Loan Terms and Conditions booklet and the Letter of Offer.

The Terms and Conditions booklet

This booklet should be a generic across all home loan providers and outlines the

When you read your mortgage contract, if you spot some differences from the original agreement you made with your lender you should contact the lender. You must do this before signing anything and mailing back your forms

provisions under which you are agreeing to take on the mortgage.

It also outlines in detail a range of fees, charges, clauses and conditions that may apply to your mortgage from the onset or during the life of the loan. It explains your responsibilities as the borrower and those of your lender.

The Terms and Conditions booklet also explains how interest is calculated on a home loan, outlines insurance and LMI, and states what happens should you default on your home loan.

The Letter of Offer

The second part of your home loan contract is the Letter of Offer, which is commonly known as the 'contract' itself. This document outlines your actual home loan agreement with the lender. You should read your Letter of Offer with the Terms and Conditions booklet handy.

This makes it much easier for you to ask questions if need be or clarify the meaning of some of the terms and charges. Starting on the page opposite, there is an overview of a sample contract. This is an example only and not based on any actual contract from any lender. It is simply a guide to what you might find in a contract of this kind.

'ABC' HOME LOANS CONTRACT



Credit Provider: 'ABC' Home Loans (including its ABN and address)

Offers to enter into a loan contract with:

Borrower: (this is you)

- Joe Bloggs of (current address)

Make sure all your personal details are listed and spelt correctly, otherwise the contract is legally null and void!

Here there is a disclaimer from your bank, stating that the following offer from your lender has been made to you on the terms set out in the contract and Terms and Conditions booklet.

You must return the documentation (signed) to your lender by this date or it will lapse. There is usually a 30–40-day time period to do this. If you require longer, your solicitor should be able to arrange it with your lender.

Offer lapse date: 20 March 2009

Or such other date as the Bank may agree ('offer lapse date')

This is the date that the offer was made and issued to you as the borrower.

Disclosure date: 19 February 2009

Financial Table (all fiscal details of the contract)

Ensure these details and figures are correct and you are happy with the interest rate and repayments proposed

Amount of credit	\$352,500.00
Annual Percentage Rate	The rate for your loan is the ABC Home Loans variable Basic Home Loan reference rate – currently at 8.96% per annum. This rate applies to the Unpaid Balance of your Loan Account commencing on the date the loan, or any part, is advanced
Repayments	Repayable over 30 years, by 360 minimum monthly repayments of \$2,826. The first repayment is due one month after the date the loan, or any part, is advanced and later repayments are due on the same day in each subsequent month

You will not be exposed to all the following fees and charges. Your solicitor can confirm which of these fees are applicable to you now and later on in the term of your mortgage

FEES AND CHARGES, PAYABLE TO THE BANK

You must pay these before any part of the Amount of Credit is advanced (to the extent ascertainable).

Bank Fees:

- Application fee.....\$600
- Bank cheque fee.....Not ascertainable
- Valuation fee.....\$250

Government Fees:

Fees paid to your lender in reimbursement of Land Titles Office fees and charges

- Mortgage registration fee.....\$75
- Discharge of pre-existing mortgage registration fee.....Not ascertainable

Fees paid to your lender in reimbursement of State Revenue Office fees and charges

- Mortgage stamp duty
- Transfer duty

Exempt in many states

Determined by property price

Other fees and charges:

These may be payable to your lender in reimbursement of fees such as search service fees

Total Fees and Charges Payable to the Bank

\$TOTAL

You only pay what is ascertainable at the moment

Bank Discharge Fees:

These fees may include costs to prepare discharge documents by the lender, legal fees for the preparation of discharge, discharge settlement attendance fee and third party fees.

Only charged if you discharge the mortgage before a particular term (determined by your lender) has expired

Government Discharge Fees:

These are paid to your lender in reimbursement of Land Titles Office fees and charges if your lender incurs them. An example is the fee attached to discharge a mortgage registration fee.

Remember that many of these are charged on occurrence or per dealing. For example, legal fees will be charged per dealing

The following fees will become payable where relevant :

This could be around \$75 but varies across states

Bank Fees:

(Some examples are)

- Repeat statement of account fee \$6
- Statement faxing fee \$4
- Bank cheque fee \$10
- Title production fee \$130
- Search handling fee \$40
- Voucher search fee \$8-12
- Other bank Automatic Teller Machine (ATM) fee \$1.50-2.50
- Online banking pay anybody fee \$0.25-1
- Loan maintenance fee \$8/mth
- Yearly fees \$399
- Home loan portability fee \$250-500
- Deferred Establishment Fee (DEF) \$1,000 within the first 5yrs

When the lender is required to produce title documents

When the lender is required to conduct a search

When your lender is required to retrieve and produce information concerning your account

Payable when using your ABC Home Loans online banking to transfer funds

Payable when you apply to substitute your existing security with another security

Other

• Sometimes your bank will require you or any guarantor to obtain independent legal advice. The adviser you use may charge a fee.

The DEF is the cost to exit your loan and it ranges from \$0 to many thousands of dollars. Consider this carefully. It may be a flat fee or a percentage of your loan amount.

(NB: Your lender can change any of the information listed in the Financial Table at any time without your consent. An exception to this is any annual percentage rate or interest rates which are fixed.)

..... End of Financial Table

Purpose of the loan

Purchase an owner-occupied or investment property

This simply confirms why you have taken out the mortgage

Commission

This section of the contract stipulates whether or not the lender received your business through a mortgage broker, and how much that broker was paid in commission

Credit-related insurance financed by this contract

This states whether you have decided to pay for additional mortgage protection insurance to cover your mortgage repayments for a length of time, if you could not work due to illness or injury

Security

• A mortgage will be taken from Joe Bloggs over property situated at (the new address)

It is important that you confirm that your security (your new property) is stated correctly

Disbursement Instructions

To: 'ABC' Home Loans

Your written instructions for the remaining Amount of Credit must be provided to your lender, through your solicitor, at least seven days before settlement day.

This lets the parties involved know who is paying the final balance and any ascertainable fees and charges financed by your home loan as listed in the Financial Table above

Conditions Precedent

This outlines any outstanding elements which need to be paid before confirmation of the home loan goes ahead. Some examples are guarantees to provide a certain document, a professional building and pest inspection, and any other fees and charges.

Special Conditions

These conditions form part of the terms and conditions upon which your home loan has been offered to you. They will be explained in full in your Terms and Conditions booklet.

Make sure these are completed and you are happy with them

This offer is made on the Disclosure Date

Signed:.....
For and behalf of
'ABC' Home Loans Australia (ABN)

To accept this offer you must sign and return this offer to your lender before the offer lapse date.

By signing the contract and sending it back to your lender, you are officially and legally accepting the terms and conditions of that offer

You should not sign this document unless it is a certified copy from your lender and is stated as being a true copy. Do not sign this contract if you have not received a current version of the Terms and Conditions booklet. By signing this contract, you acknowledge you received these documents before you signed.

Read this final disclaimer

Signature:
Joe Bloggs

Date:

Disclaimer: This Letter of Offer was formulated by Your Mortgage as an example and does not reflect the Letter of Offer you might receive from your lender. It is not based on a particular Letter of Offer provided by any lender. Not all the fees and charges are listed, as they will be individual to you as a borrower. Also, the amounts of the fees and charges will be individual to your lender, hence you should not take the amounts quoted as applicable to your contract. You can expect there to be many more pages included in your individual Letter of Offer. For this reason it is essential that you read through your Letter of Offer thoroughly and ensure you understand the meaning of each charge and how much you will have to pay before you sign the contract.

What if the contract doesn't meet your expectations?

If, when you read your mortgage contract, you spot some differences from the original agreement you made with your lender, you should contact the lender immediately – before signing anything and mailing back your forms.

Your lender should be able to make changes to your contract and it should then issue a new one which includes the alterations to the conditions.

To avoid this and, indeed, to avoid delays in the finalising of your mortgage, make sure you have been through the conditions of the mortgage with your lender before the contracts are drawn up.

Lenders have been known to make unlikely mistakes, such as the number of years over which the mortgage is repaid. If you are still unhappy with the contract, you have no obligation to take the loan and can simply let the offer lapse. **YM**

Your First Home Owner Grant

First homebuyers be aware! Make sure you have organised your First Home Owner Grant before your loan contract is drawn up. It's your responsibility as a borrower to organise this and talk it through with your lender, broker and financial advisor – otherwise you could miss out on the \$7,000 and possibly even your dream home!



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Refinancing

First homebuyers

www.yourmortgage.com.au/brokers

and follow the prompts

YOUR MORTGAGE