



**ENFORCEABLE UNDERTAKING
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT**

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission ("ASIC") by:

Express Loans and Finance Pty Limited ACN 102 849 918

1. Background

- 1.1. Express Loans and Finance Pty Limited ("ELF") has, since its incorporation in November 2002, conducted a mortgage broking business ("**the Broking Business**"). The Broking Business commenced operation in about January 2002 and, prior to the incorporation of ELF, was conducted by Mr Adrian Abe Camilleri under the registered business name "Express Loans and Finance".
- 1.2. The Broking Business charges its clients a fee for its mortgage broking services. The Broking Business' practice is to require that its clients pay part of this fee, usually \$600-700, up front. The Broking Business also received a commission payable by the relevant mortgage originator or lender upon the drawing down of any loan that it brokers, and an ongoing commission based on the balance of the loan.
- 1.3. The Broking Business has, from time to time, placed advertisements ("**the Advertisements**") in publications including the Yellow Pages, Homes Pictorial, EAC Realtor, the Daily Telegraph and a number of local newspapers. A number of these advertisements contained one or more of the following statements.
 - (a) "100% Home Loans Available".
 - (b) "No deposits".
 - (c) "100% Loans Available".
 - (d) "WE ACCEPT: -...No Deposit ..".
- 1.4. ASIC has received a number of complaints from clients of the Broking Business. These complaints allege, amongst other things, that employees or representatives of the Broking Business told them that:
 - (a) the Broking Business could organise a loan for 100% of the price of a house plus the costs associated with purchasing the house; and

- (b) such a loan could be obtained even though the client did not have a deposit or other property to secure such a loan.
- 1.5. The Broking Business had a practice of lodging applications for deposit guarantees on behalf of clients. The purpose of this practice was to allow clients who were applying for a loan for 100% of the purchase price, and who did not have the funds to pay for a deposit, to exchange contracts for the sale of land.
- 1.6. A deposit guarantee can be used by a purchaser instead of paying a deposit on the exchange of contracts for the sale of land. The purchaser must then pay 100% of the purchase price on completion of the sale. Under the terms of the deposit guarantee the issuer of the guarantee promises to pay the amount of the deposit to the seller of a property if the purchaser does not complete the sale of the property. If the deposit guarantee issuer is required to pay the deposit, they will seek to recover that amount from the purchaser.
- 1.7. In assessing an application for a deposit guarantee one of the key issues for the issuer is whether the purchaser has the necessary funds to complete the purchase. In relation to a number of deposit guarantee applications employees or representatives of the Broking Business:
 - (a) completed an application form on behalf of the client which contained a representation that the client had in principle loan approval for 100% of the purchase price of the relevant property; and/or
 - (b) issued a letter of loan approval on the Broking Business letterhead ("**the Loan Approval Letters**") which represented that the client had in principle loan approval for 100% of the purchase price of the relevant property through a particular mortgage originator.
- 1.8. ASIC has examined the relevant files kept held by the Broking Business and is satisfied that the representations made in a certain number of the deposit guarantee applications and the Loan Approval letters did not reflect the true position. This was because:
 - (a) no loan approval was ever obtained through the relevant mortgage originator; or
 - (b) loan approval had been obtained, but it was for a lower amount; or
 - (c) loan approval was obtained after the deposit guarantee application was lodged, but for a lower amount.
- 1.9. ASIC has received three complaints from clients of the Broking Business who exchanged contracts for the sale of land using a deposit guarantee arranged by the Broking Business in the belief they had sufficient finance to pay 100% of the purchase price on completion. Each of these clients was unable to complete the contract for the sale of land and is now indebted to the deposit guarantee issuer for the amount of the deposit and legal costs. ASIC is also aware of many other clients of the Broking Business who exchanged contracts using a deposit

guarantee in the belief they had sufficient finance to pay 100% of the purchase price on completion, only to discover they were short of funds to complete the sale.

- 1.10. ASIC is concerned that the statements in the Advertisements amounted to representations that the Broking Business could, and had in the past, obtain loans with the following characteristics:
- (a) a loan amount for 100%, at least, of the cost of purchasing real property;
 - (b) available to people who did not have access to funds for a deposit or existing equity in property; and
 - (c) available on terms comparable to standard mortgage loans.
- 1.11 Further, ASIC is of the view that the conduct identified in 1.3 – 1.5 and 1.7 – 1.8 above ("**the Conduct**") was misleading and deceptive and may have:
- (a) led the relevant deposit guarantee issuer to believe that clients of the Broking Business had in principle loan approvals in circumstances in which they did not;
 - (b) caused the relevant deposit guarantee issuer to issue deposit guarantees to clients of the Broking Business in circumstances in which they would not have otherwise done so;
 - (c) led clients of the Broking Business to believe that they had in principle loan approval for at least 100% of the purchase price of properties in circumstances in which they did not;
 - (d) caused clients of the Broking Business to exchange contracts for the sale of land in circumstances where they did not have funds to complete the sale; and
 - (e) resulted in clients of the Broking Business incurring losses as a result of being unable to complete contracts for the sale of land.
- 1.12 ASIC is also concerned that the Broking Business' practice of charging an up front fee for its broking services may be in breach of the *Credit (Finance Brokers) Act (NSW) 1984*.
- 1.13 ASIC is responsible for monitoring and promoting consumer protection in relation to financial services, and under s12GD of the Australian Securities and Investments Commission Act 2001 ("*ASIC Act*") ASIC may, amongst other things, seek injunctions restraining a person from engaging in certain conduct or requiring that person to do any act or thing and/or place corrective advertising. Under section 12GM of the *ASIC Act*, ASIC may commence proceedings for or on behalf of consumers who have suffered damage by reason of a contravention of the Act. Under s12GLA of the *ASIC Act* ASIC may seek non-punitive orders

such as a community service order or an order requiring publication of an advertisement in relation to a contravention of the *ASIC Act*.

- 1.14 ELF acknowledges ASIC's concerns about the Conduct, the Advertising and the charging of upfront fees and has offered (and ASIC has agreed to accept) this Enforceable Undertaking as an alternative to facing proceedings by ASIC for the remedies set out in 1.13 above.

2. Undertakings

Pursuant to section 93AA of the *ASIC Act*, ELF offers the following undertakings to ASIC:

Compensation

- 2.1 ELF will, within 7 days of the date of this undertaking, send by pre-paid post a notice in the form of Annexure A to this undertaking to all clients of the Broking Business who obtained a deposit guarantee with the assistance of the Broking Business.
- 2.2 ELF will, within 7 days of the date of this undertaking, place on its website a notice in the form of Annexure B to this undertaking. The notice will be flagged on the home page under the heading "Notice to past customers – 100% and no deposit home loans". The notice will remain on the website for a period of 6 months from the date of this undertaking.
- 2.3 ELF will provide reasonable assistance to all customers who claim or inquire about a potential claim for loss or damage by reason of the Conduct and ensure that all employees, officers and representatives of ELF will use their best endeavours to assist customers make a compensation claim.
- 2.4 ELF will maintain a register of all enquiries received from customers about compensation claims or potential compensation claims ("**Claims Enquiry Register**") including details of the customer and any information provided to the customer.
- 2.5 If ELF receives a claim ("compensation claim") from a customer ("claimant") for loss and damage suffered by reason of the Conduct, ELF will, subject to clause 2.9, accept and pay the compensation claim within 28 days of receiving the compensation claim.
- 2.6 ELF will, within 28 days of the date of this undertaking, appoint an independent person ("claims reviewer") to conduct a review of any compensation claims pursuant to the process outlined in clauses 2.8 to 2.13. The claims reviewer shall be:
- (a) Legally qualified and with not less than 5 years experience of handling disputes and claims under relevant consumer protection legislation.

- (b) A person who is not previously known to or associated with anyone known to the directors and employees of ELF.
 - (c) A person whose appointment is approved by ASIC.
- 2.7 The terms of engagement of the claims reviewer are to be approved by ASIC, and must include provision for the claims reviewer to provide written reasons for the rejection of claims referred to in clauses 2.11.
- 2.8 ELF will refer any claim it disputes to the claims reviewer within 28 days of receiving the compensation claim.
- 2.9 ELF will not be obliged to pay a compensation claim to the extent that it is able to establish in respect of that claim, to the satisfaction of the claims reviewer, any one or more of the following matters:
 - (a) The claimant did not rely upon any aspect of the Conduct.
 - (b) The claimant did not suffer any loss or damage by reason of any aspect of the Conduct.
 - (c) The claimant did not suffer loss and damage to the extent claimed in the compensation claim.
- 2.10 If the reviewer accepts the compensation claim, ELF will pay the claim within 7 days of being notified of the acceptance by the claims reviewer.
- 2.11 If a compensation claim is rejected by the claims reviewer Express Loans will provide the claimant, within 7 days of receiving the claims reviewer's reasons for rejecting the claim:
 - (a) Written reasons by the claims reviewer as to why the compensation claim was rejected.
 - (b) A written notice in the form contained in Annexure C.
- 2.12 If part of the compensation claim is rejected on the grounds contained in clause 2.10(c), within 7 days of the rejection ELF will:
 - (a) Pay the claimant so much of the compensation claim as has not been rejected.
 - (b) Provide the claimant with the claims reviewer's written reasons for the rejection of the compensation claim.
 - (c) Provide the claimant with a written notice in the form contained in Annexure D.
- 2.13 ELF will provide the claims reviewer with a copy of this Enforceable Undertaking and will pay the costs of the claims reviewer.

Report to ASIC

- 2.14 Express Loans will, within 3 months, 6 months, 9 months and 12 months of the date of this undertaking, provide ASIC with report, signed off by the managing director, that includes:
- (a) A copy of the Claims Enquiry Register.
 - (b) Details of the number of compensation claims received and the dates on which they were received.
 - (c) Details of the number of compensation claims outstanding.
 - (d) Details of the number of compensation claims accepted and paid, and the amounts of those claims.
 - (e) Details of the number of compensation claims refused and a copy of the written reasons for each refusal.
 - (f) A copy of all written reasons prepared by the claims reviewer pursuant to clauses 2.11 and 2.12.

Future advertising

- 2.15 ELF will not, in advertising, promotional material or through its employees, directors or officers represent that:
- (a) 100% loans are available;
 - (b) 100% home loans are available; or
 - (c) no deposit loans are available

where such loans are only available on one or more the following terms:

- (d) additional security is required;
- (e) the loan is sourced from more than one lender; or
- (f) the loan is sourced from more than one transaction and those transactions are on different terms;

unless those terms are clearly disclosed at the time of the representation.

Representations about loan approvals

- 2.16 ELF will not represent to its clients, or to any third parties, that its clients have loan approval, in principle approval, or pre-approval unless ELF has received

from the relevant mortgage originator or lender a corresponding loan approval, in principle approval or pre-approval.

Up front fees

2.17 ELF will not charge up front fees for its finance broking services.

General

2.18 Where ASIC, on reasonable grounds, has concerns about ELF's compliance with this undertaking ELF will, at ASIC's written request, provide ASIC officers with access to books and records so as to enable ASIC to determine whether or not ELF has complied with this undertaking.

3. Acknowledgements

3.1 ELF acknowledges that ASIC

- (a) may issue a media release on execution of this undertaking referring to the terms of the undertaking and the concerns of ASIC which led to its execution;
- (b) may from time to time refer publicly to this undertaking;
- (c) will make a copy of the executed undertaking available on a Public Register.

3.2 ELF acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct described in this undertaking.

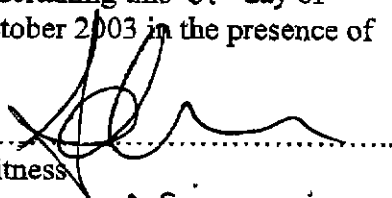
3.3 ELF acknowledges that ASIC is continuing a criminal investigation in relation to the conduct described in this undertaking and that this undertaking does not affect ASIC's powers to do so.

3.4 ELF acknowledges that this undertaking does not affect ASIC's powers to investigate a contravention arising from future conduct.

3.5 ELF acknowledged that the undertaking has no operative force until accepted by ASIC.

The Common Seal of Express Loans)
and Finance Pty Limited (ACN 102)
849 918) was duly affixed to this)
undertaking this 29th day of)
October 2003 in the presence of)

Witness

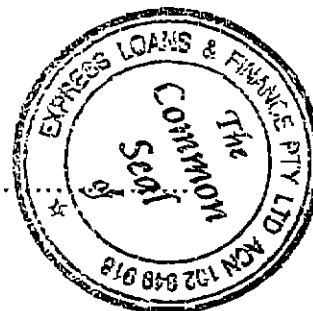


A Carulli

4/37 Smith St

PALRAMATTA


Director/Secretary



ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION PURSUANT TO SECTION 93AA OF THE ASIC ACT BY ITS
DULY AUTHORISED DELEGATE


.....

~~Jan Redfern~~

~~Deputy Executive Director, Enforcement~~

PETER KELL

NSW REGIONAL COMMISSIONER

ANNEXURE "A"**LETTER TO CLIENTS OF EXPRESS LOANS****Re: 100% or no deposit home loans and deposit guarantees**

We are writing to you as you may be able to apply for compensation if you suffered loss as a result of lodging an application for a home loan with us.

Since January 2002 Express Loans has, from time to time, engaged in the following activities.

1. We used advertising and promotional material that referred to "100% home loans" and "no deposit" loans.
2. We arranged deposit guarantees for some clients who were applying for a 100% home loan and did not have a deposit.
3. We issued some letters which stated that clients had in principle loan approval when in fact they did not have in principle loan approval, or they had in principle loan approval for a lesser amount than stated in our letter.

The Australian Securities and Investments Commission (ASIC) has brought to our attention that the above activities may have misled some of our clients into believing they had sufficient funds to purchase a house when in fact they did not. This, in turn, may have led some of our clients to sign a contract for the sale of land without having sufficient funds to be able to complete that contract.

If you have suffered loss or damage by reason of our activities outlined above you may be entitled to receive compensation from Express Loans. You should forward all details and copies of documents supporting your claim to Express Loans at the address below. Express Loans will consider, and if appropriate, pay a claim for loss and damage by reason of our activities.

Express Loans will provide reasonable assistance to all Express Loans customers who claim or inquire about any potential claim for loss or damage. If you require further information to determine whether you have a claim or the amount of such claim, you should state the information that you require and forward your request to:

Please be aware that Express Loans, by agreement with ASIC, has appointed an independent person to assess claims.

Yours sincerely

ANNEXURE "B"

100% or no deposit home loans and deposit guarantees

You may be able to apply for compensation if you suffered loss as a result of lodging an application for a home loan with us.

Since January 2002 Express Loans has, from time to time, engaged in the following activities.

1. We used advertising and promotional material that referred to "100% home loans" and "no deposit" loans.
2. We arranged deposit guarantees for some clients who were applying for a 100% home loan and did not have a deposit.
3. We issued some letters which stated that clients had in principle loan approval when in fact they did not have in principle loan approval, or they had in principle loan approval for a lesser amount than stated in our letter.

The Australian Securities and Investments Commission (ASIC) has brought to our attention that the above activities may have misled some of our clients into believing they had sufficient funds to purchase a house when in fact they did not. This, in turn, may have led some of our clients to sign a contract for the sale of land without having sufficient funds to be able to complete that contract.

If you have suffered loss or damage by reason of our activities outlined above you may be entitled to receive compensation from Express Loans. You should forward all details and copies of documents supporting your claim to Express Loans at the address below. Express Loans will consider, and if appropriate, pay a claim for loss and damage by reason of our activities.

Express Loans will provide reasonable assistance to all Express Loans customers who claim or inquire about any potential claim for loss or damage. If you require further information to determine whether you have a claim or the amount of such claim, you should state the information that you require and forward your request to:

Please be aware that Express Loans, by agreement with ASIC, has appointed an independent person to assess claims.

ANNEXURE "C"**NOTICE OF REJECTION OF COMPENSATION CLAIM**

You have made a claim for compensation in response to a letter sent to you by Express Loans and Finance Pty Ltd ("Express Loans").

Your compensation claim is for loss and damage that you allege to have suffered as a customer of Express Loans by reason of the following activities Express Loans engaged in from time to time from January 2002:

1. We used advertising and promotional material that referred to "100% home loans" and "no deposit" loans.
2. We arranged deposit guarantees for some clients who were applying for a 100% home loan and did not have a deposit.
3. We issued some letters which stated that clients had in principle loan approval when in fact they did not have in principle loan approval, or they had in principle loan approval for a lesser amount than stated in our letter.

Express Loans has considered your compensation claim and had it reviewed by an independent claims reviewer. Express Loans has satisfied the claims reviewer that the claim should not be paid. The reasons for the rejection of your claim are attached.

The rejection of your claim does not prevent you from taking legal action to pursue your claim if you are not satisfied with the reasons attached. You should seek your own legal advice in those circumstances. If you wish to discuss the rejection you may contact Express Loans on [contact details].

ANNEXURE "D"**NOTICE OF REJECTION OF PART OF COMPENSATION CLAIM**

You have made a claim for compensation in response to a letter sent to you by Express Loans and Finance Pty Ltd ("Express Loans").

Your compensation claim is for loss and damage that you allege to have suffered as a customer of Express Loans by reason of the following activities Express Loans engaged in from time to time from January 2002:

1. We used advertising and promotional material that referred to "100% home loans" and "no deposit" loans.
2. We arranged deposit guarantees for some clients who were applying for a 100% home loan and did not have a deposit.
3. We issued some letters which stated that clients had in principle loan approval when in fact they did not have in principle loan approval, or they had in principle loan approval for a lesser amount than stated in our letter.

Express Loans has considered your compensation claim and had it reviewed by an independent claims reviewer. Express Loans has satisfied the claims reviewer you did not suffer loss and damage to the extent you claimed. The reasons for the rejection of part of your claim are attached.

A cheque is attached for that part of your compensation claim that has been accepted.

The rejection of part of your claim does not prevent you from taking legal action to pursue that part of your claim that was rejected if you are not satisfied with the reasons attached. You should seek your own legal advice in those circumstances. If you wish to discuss the rejection you may contact Express Loans on [contact details].