



**MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA**  
**ACN 006 085 552**

# **CODE OF PRACTICE**

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## **Key initiatives of this Code:**

Members involved in credit activities must:

- comply with all applicable laws;
- maintain appropriate and relevant training standards;
- hold adequate professional indemnity insurance;
- arrange appropriate finance for customers;
- act promptly and properly in relation to the management of finance applications;
- disclose commissions and other benefits received (brokers only);
- maintain IDR and membership of EDR schemes; and
- consider hardship applications submitted by customers in a timely and appropriately detailed manner.

## **1. Name of the Code**

- 1.1. This Code is the MFAA Code of Practice. Capitalised words are defined at the end of this document.

## **2. Objectives of the Code**

- 2.1. The objectives of the Code are to:
  - a. promote and establish professional standards between Customers and Members and between Members in the mortgage and finance industry;
  - b. promote commitment by Members to compliance with laws and regulations and the spirit of those laws and regulations;
  - c. promote the maintenance of the high public standing of MFAA membership; and
  - d. promote ethical and fair business practices.

## **3. Application of the Code**

- 3.1. This Code of Practice applies to and is binding on Members who are Brokers, Managers, Servicers, or Credit Providers (unless otherwise specified in this Code). Clause 4 of this Code (General Standards) applies to all Members.
- 3.2. The Board may from time to time:
  - a. amend this Code;
  - b. prescribe that parts or all of this Code applies to one or more classes of Member.

## **4. General Standards**

- 4.1. Members must not engage in Misconduct and must be, and continue to be, of good character and repute and a Fit and Proper person.
- 4.2. Members must always comply with this Code.
- 4.3. Members must keep up to date with and comply with all applicable laws, regulations and practices relevant to the conduct of their business. If the requirements of any law or regulation impose a higher standard than specified in this Code, then such higher standard will apply. If any provision of this Code conflicts with any law or regulation, that provision will not operate, however the balance of the Code will apply.
- 4.4. Members must undertake continuing education programs recognised by the Board and complete sufficient number of hours of Continuing Professional Development (CPD) to maintain membership as determined by the Board from time to time.
- 4.5. Members must ensure that at all times they employ or otherwise engage only with operatives who have any relevant licence or authorisation, and who have the

qualifications and experience necessary to deal competently and professionally with Customers.

- 4.6. Members must always conduct that Member's business in accordance with the Constitution of the MFAA and this Code of Practice.
- 4.7. Members are liable for any acts or omissions of any employee or representative that are within the scope of the employees' or representatives' duties or ostensible duties.
- 4.8. Members must:
  - a. act with appropriate skill, care and diligence;
  - b. deal with all persons with whom they may come into contact in the course of their professional and commercial activities in good faith;
  - c. not engage in any acts or omissions of a misleading or deceptive nature;
  - d. not engage in any acts or omissions of a dishonest or fraudulent nature;
  - e. ensure that their advertising is not false, misleading, deceptive, dishonest or likely to mislead or deceive;
  - f. not engage in unconscionable conduct;
  - g. fully disclose to any Customer or potential Customer any actual, apparent or potential conflict of interest of which a Member is or ought to be, aware, to the extent that such a conflict of interest may reasonably concern a Customer;
  - h. refrain from any conduct which may embarrass, impugn, or discredit the MFAA or bring the MFAA into disrepute; and
  - i. adhere to the reasonable instructions of Customers.

## **5. Professional Indemnity Insurance**

- 5.1. Members who are Brokers, Mortgage Managers, or Servicers (unless, in the opinion of the Board, they have net tangible assets that are satisfactory to cover professional indemnity risk, in the opinion of the Board) must maintain professional indemnity insurance:
  - a. of not less than \$2 million for any one claim and \$2 million in the aggregate; and
  - b. endorsed to cover a determination made by an EDR scheme; and
  - c. which provides at least 12 months 'run-off' cover; and
  - d. if trust money is held, with an extension for fidelity cover of not less than \$100,000; and
  - e. underwritten by an insurer regulated by APRA or otherwise acceptable to the Board; and
  - f. in a form approved by the Board from time to time.

## **6. Contracts with Customers**

- 6.1. Brokers are required to record the essential terms of an agreement to provide services to a Customer. This document can be combined with the prescribed disclosure documents under any relevant law. It is best practice to have the agreement signed by the Customer and the Member. If an agreement is entered into, the Member must retain a copy of the document for at least seven years after it is made. The Member must provide the Customer with a copy of the document upon request from the Customer.
- 6.2. Brokers who charge a fee for the provision of credit assistance to a Customer, must clearly:
  - a. describe the nature of credit assistance to be provided for which the fee will be charged, and
  - b. state the amount of the fee to be charged; and
  - c. specify when the fee is payablein writing.
- 6.3. Members must never charge a Customer a non-refundable fee for preparation and submission of a Credit application if the Member knows or suspects that there is little or no chance of the application being approved, unless the Member has completed a preliminary assessment of eligibility of the Customer and the Customer agrees to such a fee in writing before such a preliminary assessment is completed.
- 6.4. Members who represent one or a small number of Credit Providers must, before providing credit assistance to a Customer, inform the Customer that the Customer should rely upon the Customer's own enquiries about the competitiveness and appropriateness of the proposed Credit.
- 6.5. Members must express written terms and conditions of their services in plain language in English. This provision does not preclude a Member from also providing such written terms and conditions in a language/s other than English.

## **7. Arranging Credit**

- 7.1. Members must suggest or recommend to Customers only Credit that Members reasonably believe is appropriate to the needs of that Customer, after undertaking an appropriate assessment of the Customer's capacity to service the proposed Credit.
- 7.2. Members must not receive a commission, payment or other incentive for negotiating the refinancing of Credit for a Customer in circumstances where the Customer does not receive a beneficial result from the refinance, except where the Member has acted under the specific instructions of the Customer, after appropriate advice has been given to the Customer by the Member.
  - 7.2.1. A Customer will ordinarily not receive a beneficial result from a refinance where:

- a. the Customer can make offset and extra payment savings under their existing loan; or
  - b. the Customer cannot make offset savings under their existing loan, but the amount of those potential savings is less than the transaction costs that will be incurred as a result of refinancing.
- 7.3. Members must always disclose to Customers all relevant details known to the Member about a proposed Credit application as and when appropriate.
- 7.4. Members must always make such enquiries as are reasonable in all the circumstances to determine a Customer's capacity to service any proposed Credit.
- 7.5. Members must submit a Credit application to a Credit Provider or the Credit Provider's representative, when practicable, within five business days (but in any case promptly) after completion of a duly completed application, containing all information required by the Credit Provider to assess the application.
- 7.6. Members dealing with Customers must always keep Customers informed, where appropriate, of all relevant information known to Members relating to a proposed or current Credit application.

## **8. Outcome of Application for Credit**

- 8.1. Members must advise Customers of the outcome of a submitted Credit application, whenever practicable, within two business days (but in any case promptly), of the decision being notified in writing to the Member by the Credit Provider to which the application was submitted.
- 8.2. Members must refund any amounts due to Customers, whenever practicable, within five business days (but in any case promptly).

## **9. Confidentiality**

- 9.1. Members must at all times keep information, that has been provided by a Customer, confidential and secure and only disclose information as required by law, the MFAA Disciplinary Rules or as authorised by the Customer.

## **10. Fees and Commissions Disclosure**

- 10.1. If a commission or other benefit will or may be paid by or to a Member for, or in connection with, provision of Credit to a customer, the Member must always disclose to the Customer that fact and:
- a. the name of the person by whom the commission or other benefit is payable; and
  - b. the name of the person to whom the commission or other benefit is payable; and
  - c. the amount of the commission or other benefit, if ascertainable; and

- d. if the amount of the commission or other benefit is not ascertainable, the basis of or formula for such commission or other benefit;

but this disclosure requirement does not apply to:

- e. the amount payable in connection with a credit related insurance contract; or
- f. the commission or other benefits paid to employees of the Member.

Commissions and other benefits need not be disclosed by Managers or Servicers where the Customer is provided with the Manager's or Servicer's own Credit product.

## **11. Dispute Resolution – IDR, EDR, and the MFAA Tribunal**

- 11.1. Members must establish IDR procedures in accordance with guidelines issued from time to time by the MFAA. Members must make information about their IDR scheme available to all Customers and prospective Customers.
- 11.2. Members must ensure that their complaints contact person has the authority to determine and respond to any complaint made by a Customer.
- 11.3. Members must maintain a written IDR policy which is made available to any person on request and posted on the Member's website, if any.
- 11.4. Members must ensure that a complainant is treated courteously when making a complaint.
- 11.5. Members must not impose any fee in relation to a complaint on a Customer who makes a complaint.
- 11.6. Members must be a member of an EDR scheme. Members must make information about their EDR scheme available to all Customers and prospective Customers, and that information must be posted on the Member's web site, if any.
- 11.7. Members must respond in writing to written requests from their EDR scheme concerning a complaint promptly and in any event within 10 business days.
- 11.8. Members must respond in writing to written requests from the MFAA Investigation Officer promptly and in any event within 10 business days.
- 11.9. Members must respond in writing to written requests from the MFAA Tribunal promptly and in any event within ten 10 business days.
- 11.10. Members must respond in writing to written requests from the MFAA Membership Secretary promptly and in any event within 10 business days.
- 11.11. Members must maintain a written record of written complaints made against them and supply a copy to the Investigation Officer or MFAA Tribunal on request.

## **12. Money Held on Trust**

- 12.1. Members who receive trust money must promptly, and in any event within two business days, deposit that money into a trust account maintained by the Member with an authorised deposit-taking institution.
- 12.2. Members must promptly, and in any event within five business days, account for any money held in trust which has become payable to third parties.
- 12.3. Members who hold trust money must keep such books and records that correctly record and explain the transactions in the trust account and have the account audited by an independent external auditor at least annually.

## **13. Hardship Applications**

- 13.1. If a Member becomes aware, or is advised by a Customer, that the Customer is or may be in financial difficulties, the Member will consider in good faith whether it is reasonably appropriate to vary the payment terms of the credit facility, or if it is appropriate, suggest that the Customer contact the Credit Provider and request the Credit Provider to vary the Customer's repayment terms.

- 13.2. Where appropriate, the Member must:

- a. have regard to the Customer's financial circumstances and consider in good faith and within a reasonable time the Customer's request to vary the payment terms; and
- b. suspend any action to recover any payments due under a Credit contract and, if it has not listed a default already, not list a credit default in respect of the Credit facility against the Customer until:
  - i. the Member informs the Customer in writing whether or not it will vary the payment terms; and
  - ii. if the Member and the Customer agree to vary the payment terms, the Customer fails to meet the varied payment terms; and
- c. encourage the Customer to make payments the Customer can afford, pending the Member informing the Customer of its decision; and
- d. have a documented policy and procedure in place for receiving and assessing requests to vary credit contracts upon hardship grounds and must provide information about that hardship policy to a Customer on request.

- 13.3. Members must act reasonably in assessing a Customer's request to vary payment terms. Amongst other things, Members must not require:

- a. the Customer to apply for the early release of any part of the Customer's superannuation entitlements; or
- b. the Customer to obtain funds from family members, friends or other third parties;

prior to the Member considering whether to, or agreeing to, vary the payment terms.

- 13.4. Members who decide to vary the payment terms must promptly and in any case within 21 calendar days give the Customer written notice setting out particulars of the varied payment terms.
- 13.5. Members who decide not to vary the payment terms must promptly and in any case within 21 calendar days give the Customer written notice of:
- a. its decision and the reasons for its decision; and
  - b. the Customer's right to make a complaint to the Member's IDR and EDR schemes (providing contact details for those schemes) if the Credit falls within the jurisdiction of those schemes.

## 14. Interpretation and Definitions

### 14.1. Interpretation

In this document, unless the context requires otherwise:

- clause and sub-clause headings are for reference purposes only;
- the singular includes the plural and vice versa;
- words denoting any gender include all genders;
- a reference to a person includes any other entity recognised by law and vice versa;
- where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- any reference to any agreement or document includes that agreement or document as amended at any time;
- the use of the word *includes* or *including* is not to be taken as limiting the meaning of the words preceding it;
- the expression *at any time* includes reference to past, present and future time and performing any action from time to time.

### 14.2. Definitions

In this Code of Practice, the following words and phrases have the meanings and references set out below:

ASIC:	the Australian Securities and Investments Commission
Board:	the board of directors of the MFAA from time to time
Broker:	a Member when conducting the business of finance broking or mortgage broking, but excludes Members when acting as Mortgage Managers, Credit Providers, or Servicers



Customer:	a natural person (i.e. an individual) or a small business, that is, a business that employs fewer than 20 people, who engages a Member to provide services relating to the provision of Credit
Credit:	financial accommodation provided to Customers, including lease finance, hire purchase, mortgage loans, personal loans
Credit Provider:	a person that provides Credit to Customers, and where the context admits, includes Servicers and Mortgage Managers acting for Credit Providers.
EDR:	means an external dispute resolution scheme approved by ASIC for the purposes of the <i>National Consumer Credit Protection Act 2009</i> (Cth)
EDR Rules:	the rules of an EDR as defined above
Fit and Proper:	individuals having the necessary competence for the role/s that they purport to or seek to perform, taking into account such attributes as knowledge, skills, and experience and whether or not an individual is of good fame and character, as well as attributes such as diligence, honesty, integrity and judgement.

The criteria for determining whether a person is a Fit and Proper person includes, but is not limited to, an assessment of whether the person has:

- appropriate knowledge, skills, experience, competence, judgment, character, honesty and integrity;
- been subject to criticism, discipline, disqualification or removal by a professional or regulatory body, court or relevant tribunal where such outcome is relevant to the activities the person seeks to carry out as a Member of the MFAA;
- been subject to adverse findings in relevant criminal or civil proceedings;
- been refused a licence or registration for a commercial or professional activity;
- failed to manage personal debts satisfactorily;
- been a responsible officer in an entity at a time the entity failed;
- been obstructive, misleading or untruthful in dealing with a regulatory body, or a court;
- been inappropriately critical of a relevant self-regulatory body, or tribunal;
- demonstrated a lack of willingness to comply with regulatory or professional requirements;
- been involved in business activities that appear negligent, deceitful or otherwise improper;
- been, or is, considered of bad repute, or
- has surrendered, lost or failed to maintain an essential qualification, licence or requirement to be admitted to membership or to remain a Member of the MFAA, or such qualification has been terminated, suspended or cancelled, whether this qualification or requirement arises under the Constitution, the Disciplinary Rules or another requirement of the MFAA, or under law.

IDR: Internal Dispute Resolution

**Manager:** a Member who manages mortgages on behalf of a Credit Provider, including:

- a. management of the relationship with the Customer throughout the term of the Credit; and
- b. undertaking some or all of the work associated with Credit assessment; and
- c. whose commission or remuneration is calculated by reference to:
  - i. a pool of contracts for Credit in respect of which the commission is determined by reference to the net profit of operating the pool; or
  - ii. the difference between:
    - A. the delivery rate (being the cost of funds for the pool of contracts made available to the licensee or the credit representative); and
    - B. the interest rate and other income derived from the pool of contracts; and
- d. ASIC or the MFAA has not declared the Member not a Manager or not a Manager in respect of certain transactions.

**Member:** a person that is a Member of the MFAA as defined in the Constitution of the MFAA.

**Membership Secretary:** the Membership Secretary as defined in the Constitution of the MFAA

**MFAA:** Mortgage & Finance Association of Australia ACN 006 085 552

**MFAA Tribunal:** the Tribunal as defined in the Constitution of the MFAA

**Misconduct:** a breach of this Code of Practice or conduct involving:

- fraud or dishonesty; or
- misleading or deceptive representation/s or activities; or
- knowingly making a false statement; or
- gross negligence; or
- a refusal to, or neglecting, or failure to, comply with a provision of the Constitution, the MFAA Code of Practice, EDR Rules, the MFAA Disciplinary Rules; or
- unreasonably failing or refusing to provide information to the Investigation Officer; or
- misrepresentation of material facts in relation to an application for Membership of the MFAA; or
- misrepresentation of material facts in relation to mentoring of a Member; or
- misrepresentation of material facts, making a false statement or being grossly negligent concerning continuing professional development hours earned or to be earned as a Member; or
- misrepresentation of material facts, making a false statement or gross negligence in relation to any borrower, guarantor, proposed borrower or proposed guarantor, Credit application or Credit variation application; or
- a breach of any legislation relating to the Member's business activities; and:

- which indicates a failure to understand or practice the principles of honesty and fair dealing in relation to other participants in the mortgage and finance industry; or
- which indicates a substantial or consistent failure to reach reasonable standards of efficiency and competence in the conduct of business in the mortgage and finance industry; or
- which is prejudicial to the reputation or interests of the MFAA; or
- which is described by the Board as being a failure, without reasonable excuse, proof of which will lie on the Member, to comply with a determination, decision or any sanction or order of the Tribunal imposed on the Member; or
- which is unethical conduct or conduct unbecoming of a Member; or
- which the Board may in addition from time to time prescribe as Misconduct and has been made generally known for at least one calendar month, including publication on the MFAA website.

Servicer: a Member who is the principal servicer of Credit for a Credit Provider, and who exercises the majority of the credit and other decisions relating to the Credit Provider's Credit portfolio and who ASIC or the MFAA has not declared the Member to not be a servicer or to not be a servicer in respect of certain transactions.