



MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA
ACN 006 085 552

CODE OF PRACTICE

As amended at 4 March 2011

Key initiatives of this Code:

Members involved in credit activities must:

- comply with all laws
- maintain training standards
- hold professional indemnity insurance
- arrange appropriate finance for consumers
- act promptly and properly in relation to finance applications
- disclose commissions and other benefits (brokers only)
- maintain IDR and EDR schemes
- consider hardship applications

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Name of Code

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

Objectives of the Code

2. The objectives of the Code are to:
 - (a) promote and establish professional standards between Consumers 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 accreditation; and
 - (d) promote ethical and fair business practices for the benefit of consumers, the public and Members.

Application of the Code

3. 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 8 of this Code (general standards) applies to all Members.
4. 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 categories of Member.

General standards

5. Members must keep up to date with and comply with all 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 this Code requires a higher standard than any law or regulation specifies then this higher standard will apply. If this Code conflicts with any law or regulation, that provision will not operate but the balance of the Code will apply.
6. Members must undertake continuing education programs recognised by the Board and earn sufficient Continuing Professional Development (CPD) hours to maintain membership as determined by the Board from time to time.

7. Members must ensure that at all times they employ or otherwise engage only with operatives who hold any relevant licence or authorisation, and who have the qualifications and experience necessary to deal competently and professionally with Consumers.
8. Members must:
 - act with appropriate skill, care and diligence and adhere to the reasonable instructions of Consumers;
 - deal with all persons with whom they may come into contact in the course of their professional and commercial activities in good faith;
 - not engage in any acts or omissions of a misleading, deceptive, dishonest or fraudulent nature;
 - ensure that their advertising is not false, misleading, deceptive, dishonest or likely to mislead or deceive;
 - not engage in unconscionable conduct;
 - fully disclose any actual, apparent or potential conflict of interest of which a Member is, or reasonably ought to be, aware to the extent that such a conflict of interest may reasonably concern a Consumer;
 - act in a professional and courteous manner towards Consumers and fellow Members; and
 - refrain from any conduct which may embarrass, impugn, or discredit the MFAA or bring the MFAA into disrepute.

Professional Indemnity Insurance

9. Members who are Brokers, Mortgage Managers, or Servicers must at all times 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.

Contracts with Consumers

10. Brokers must record the essential terms of their agreement to provide services to a Consumer in a contract, which is to be signed by the Consumer and the Member. The Member must retain a copy of the agreement for at least six years after it is made.
11. Brokers who charge a fee for credit assistance to a Consumer, must enter a written contract with the Consumer which clearly:
 - (a) describes the nature of credit assistance to be provided for which the fee will be charged; and
 - (b) states the amount of the fee; and
 - (c) specifies when the fee is payable.

Members must never charge a Consumer a non-refundable fee for a Credit application if the Member knows or suspects that there is little or no chance of the Credit being approved, unless the Member has provided a service to ascertain the preliminary assessment of eligibility of the Consumer and the Consumer agrees to such a fee in writing before such a preliminary assessment is made.

12. Members who only represent one or a few Credit Providers must, before providing credit assistance to the Consumer, inform the Consumer that the Consumer should rely upon the Consumer's own enquiries about the competitiveness and appropriateness of the proposed credit.

Arranging Credit

13. Members must only suggest or recommend to Consumers Credit that Members reasonably believe are appropriate to the needs of that Consumer after undertaking an appropriate assessment of the Consumer's capacity to service the Credit.
14. Members must not receive a commission, payment or other incentive for negotiating the refinancing of Credit for a Consumer in circumstances where the Consumer is not better off as a result of the refinance, except with the specific instructions of the Consumer after appropriate advice has been given by the Member.
15. Members must always disclose to Consumers all relevant details known to the Member about proposed Credit as and when appropriate.
16. Members must always make such enquiries as are reasonable in all the circumstances to determine a Consumer's capacity to service the proposed Credit.
17. Members must submit a Credit application to the Credit Provider or the Credit Provider's representative, when practical, within five business days (but in any

case promptly) after receipt of a duly completed application containing all information required by the Credit Provider.

18. Members dealing with Consumers must always keep Consumers informed where appropriate of all relevant information known to Members relating to a proposed Credit application.

Outcome of Application for Credit

19. Members must advise Consumers of the outcome of the Credit application, whenever practical, within five business days (but in any case promptly), of the decision being notified in writing to the Member.
20. Members must refund any amounts due to Consumers, whenever practical, within five business days (but in any case promptly) of the decision to decline the Credit application.

Confidentiality

21. Members must at all times keep information that has been provided by a Consumer confidential and secure and only disclose information as required by law or as authorised by the Consumer.

Fees and Commissions Disclosure

22. If a commission or other benefit will or may be paid by or to a Member dealing directly with a Consumer for or in connection with Credit, the Member must always disclose to the Consumer:

- (a) that fact; and
- (b) the person by whom the fee or commission is payable; and
- (c) the person to whom the commission is payable; and
- (d) the amount of the fee or commission, if ascertainable; and
- (e) if the fee or commission is un-ascertainable, the basis of or formula for such fee or commission;

but this paragraph does not apply to:

- (f) the amount payable in connection with a credit related insurance contract;
or
- (g) 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 Consumer is provided with the Manager's or Servicer's own Credit product.

Dispute Resolution – IDR, EDR and the Disciplinary Tribunal

23. 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 Consumers.
24. Members must ensure that the complaints contact person has the authority to determine and respond to any complaint made by a Consumer.
25. 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.
26. Members must ensure that a complainant is treated courteously when making a complaint.
27. Members must not impose any fee on a Consumer who makes a complaint.
28. Members must be a member of an EDR scheme. Members must make information about their EDR scheme available to all Consumers, and that information must be posted on the Member's web-site, if any.
29. Members must respond in writing to written requests from their EDR scheme concerning a complaint promptly and in any event within ten business days.
30. Members must respond in writing to written requests from the MFAA Investigating Officer promptly and in any event within ten business days.
31. Members must respond in writing to written requests from the MFAA Disciplinary Tribunal promptly and in any event within ten business days.
32. Members must respond in writing to written requests from the MFAA Membership Secretary promptly and in any event within ten business days.
33. Members must maintain a written record of written complaints made against them and supply a copy to the Investigating Officer or MFAA Disciplinary Tribunal on request.

Money Held on Trust

34. Members who receive trust money must promptly, and in any event within two business days deposit that money into a trust account maintained by that Member with an authorised deposit-taking institution.
35. 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.
36. Members who hold trust money must keep such books and records as correctly record and explain the transactions in the trust account and have the account audited at least annually.

Hardship Applications

37. If a Member becomes aware, or is advised by a Consumer, that the Consumer 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, and if it is appropriate, suggest that the Consumer requests the Credit Provider to vary the Consumer's repayment terms.
38. Where appropriate, the Member must:
- (a) have regard to the Consumer's financial circumstances and consider in good faith and within a reasonable time the Consumer's request to vary the payment terms;
 - (b) suspend any action to recover any payments due under the Credit and, if it has not listed a default already, not list a credit default in respect of the Credit facility against the Consumer until:
 - (i) the Member informs the Consumer in writing whether or not it will vary the payment terms; and
 - (ii) if the Member and the Consumer agree to vary the payment terms, the Consumer fails to meet the varied payment terms; and
 - (c) encourage the Consumer to make payments the Consumer can afford pending the Member informing the Consumer of its decision.
39. Members must act reasonably in assessing a Consumer's request to vary payment terms. Amongst other things, Members must not require:
- (a) the Consumer to apply for the early release of any part of the Consumer's superannuation entitlements; or
 - (b) the Consumer 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.
40. Members who decide to vary the payment terms must promptly give the Consumer written notice setting out particulars of the varied payment terms.
41. Members who decide not to vary the payment terms must promptly give the Consumer written notice of:
- (a) its decision and the reasons for its decision; and
 - (b) the Consumer's right to make a complaint to the Member's IDR or EDR scheme if the Credit falls within the jurisdiction of those schemes.

Part 4 Definitions and Interpretation

Interpretation

In this document, unless the context requires otherwise:

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

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
Consumer	a natural person (i.e. an individual) or a small business (as defined by Part 7.1 of the Corporations Act 2001)
Credit	financial accommodation provided to Consumers, including lease finance, hire purchase, mortgage loans, personal loans
Credit Provider	a person that provides Credit to Consumers, and where the context admits, includes Servicers and Mortgage Managers acting for Credit Providers
EDR	an external dispute resolution scheme approved by ASIC

Fit and Proper

individuals having the necessary competence for the role in question 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 through reference to attributes such as diligence, honesty, integrity and reputation of that person.

The criteria for a Fit and Proper person include, but are 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;
- 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 it failed;
- been obstructive, misleading or untruthful in dealing with a regulatory body, or a court;
- 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 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) manages the relationship with the Consumer throughout the term of the Credit; and
- (b) undertakes some or all of the work associated with credit assessment; and
- (c) whose commission or remuneration is worked out 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 to be a Manager or not a Manager in respect of certain transactions.

Member

a person that is a member of the MFAA

MFAA

Mortgage & Finance Association of Australia, ACN 006 085 552

Misconduct

misconduct as defined from time to time in this Code of Practice and includes conduct involving:

- (a) fraud or dishonesty; or
- (b) misleading or deceptive representation(s) or activities; or
- (c) knowingly making a false statement; or
- (d) gross negligence; or
- (e) a refusal to or neglecting or failure to comply with a provision of the Constitution, the MFAA Code of Practice, the COSL Rules or any other ASIC authorised EDR Rules or the MFAA Disciplinary Rules; or
- (f) unreasonably failing or refusing to provide information to the MFAA Investigating Officer; or
- (g) misrepresentation of material facts in relation to an application for Membership of the MFAA; or

- (h) misrepresentation of material facts in relation to mentoring of a Member; or
- (i) 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
- (j) misrepresentation of material facts making a false statement or gross negligence in relation to any borrower, guarantor, proposed borrower or proposed guarantor; or
- (k) 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
- (l) 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
- (m) which is prejudicial to the reputation or interests of the MFAA; or
- (n) which is described by the Board as being a failure, without reasonable excuse, proof of which shall lie on the Member, to comply with a decision or any sanction or order of the Tribunal as to a sanction imposed on the Member; or
- (o) which is unethical conduct or conduct unbecoming of a Member; or
- (p) 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 whom ASIC or the MFAA has not declared the Member not to be a servicer or not a servicer in respect of certain transactions.