

**CODE OF PRACTICE**

**OF**

**THE MORTGAGE ORIGINATION REGULATORY COUNCIL OF  
SOUTH AFRICA**

**(“THE ASSOCIATION”)**

## Overview of the Code of Practice

### 1. Introduction

- 1.1 A “**Code of Practice**” is a developed statement of principles dealing with industry practices designed to set a standard of good industry practice and fair dealing between Consumers and Members. The Code of Practice aims to instil public confidence in the operations of Members. The Code of Practice is binding on Members.
- 1.2 The Association believes that by Members making a commitment to good industry practice and fair dealing in the mortgage finance marketplace, and putting that commitment into practice, the confidence of both Consumers and the public generally will be enhanced.
- 1.3 Mortgage finance plays a pivotal role in the South African residential property market. It is thus imperative that Consumers have confidence in their dealings with mortgage originators.
- 1.4 Membership of the Association is “accreditation” that a person has met the Association’s standards to be admitted as a Member and so has the right to publicly proclaim membership of the Association. The Association believes that this is not simply an empty phrase. It is the outward sign of a Member’s commitment to good industry practice and fair dealing. “**MCAA**” and “**AMC**” or the various other Association accreditations stand as the sign of a skilled professional who not only has this commitment but who puts that commitment into practice. Accreditation must have value to both Consumers and Members of the Association themselves.
- 1.5 This Code of Practice specifies minimum standards of professional conduct and good industry practice to be adhered to by Members. It also specifies minimum requirements of professional qualifications and/or experience and Professional Indemnity Insurance applicable to Members.

### 2. Consumer Complaints Handling

- 2.1 Complaints against Members are dealt with via one or more of the following three dispute resolution procedures:
- 2.1.1 through **Internal Dispute Resolution Procedures (“IDRPs”)** covering complaints made directly to the Member concerned regarding that Member or any of its staff;

- 2.1.2 through the **Disciplinary Tribunal** where the complaint relates to an alleged breach by a Member of the Code of Practice, IDRPCs and / or the Constitution; or
- 2.1.3 through the **Ombudsman** where the Complainant has suffered financial loss and where the IDRPCs have failed to produce an outcome satisfactory to the Complainant and where the complaint meets the criteria for consideration by the Ombudsman.
- 2.2 The Association has promulgated, *inter alia*, the IDRPCs and Ombudsman Rules, amended from time to time as provided therein, with which every Member must comply and copies of which are available on the Association's website and from the Association's offices.

### 3. **Independent Ombudsman for Origination of Mortgages**

- 3.1 Under powers contained in the Constitution, the Association has established an Independent Ombudsman for Origination of Mortgages ("**Ombudsman**") and the Ombudsman Committee. The Ombudsman rules made by the Ombudsman Committee ("**Ombudsman Rules**") set out how the Ombudsman will deal with complaints by Complainants against Members and also how disputes will be resolved.
- 3.2 A copy of the Ombudsman Rules can be obtained from the Association's website or from the Association's offices.

## THE CODE OF PRACTICE

### 1. Interpretation

All definitions and interpretations used in the Constitution shall have the same meaning in this Code of Practice, unless the context indicates otherwise. For the sake of convenience certain of these definitions are repeated hereunder. In this Code of Practice, the following words and phrases have the meanings and references set out below:

- 1.1        “**Association**” means the Mortgage Origination Regulatory Council of South Africa;
- 1.2        “**Code of Practice**” or “**Code**” means this Code of Practice as promulgated by the Exco from time to time;
- 1.3        “**Constitution**” means the Constitution of the Association;
- 1.4        “**Consumer(s)**” means members of the public who deal with Members whether as borrowers, applicants, guarantors, prospective borrowers or prospective guarantors, or who in any other way seek the services of Members in the ordinary course of business in the Industry;
- 1.5        “**CE**” means the Continuing Education obligations placed on Members and scored on a points system as provided for in the Code and as required pursuant to the Code for the renewal of Membership;
- 1.6        “**Complainant**” means a Consumer who lodges a complaint with a Member about that Member’s conduct and / or the provision of Mortgage Origination services to that Consumer by a Member;
- 1.7        “**Credit Provider**” means any individual, corporation, bank, financial institution or other entity that lends or provides mortgage secured finance to Consumers;
- 1.8        “**Determination**” means an agreement, settlement or award made pursuant to the Ombudsman Rules;
- 1.9        “**Disciplinary Rules**” means the Disciplinary Rules as promulgated by the Association from time to time in terms of the Constitution;
- 1.10       “**Exco**” means the Executive Committee of the Association from time to time;
- 1.11       “**IDRM**” means an individual (or that individual’s replacement from time to time) employed by or consulting to a Corporate Member who has been nominated as its

"Internal Dispute Resolution Manager" who is authorised by that Corporate Member to resolve complaints against that Corporate Member in terms of the Association's Internal Dispute Resolution Procedures ("**IDRPs**"), unless that individual is conflicted in relation to that complaint, in which case the Corporate Member shall appoint, on an ad hoc basis, another individual employed by or consulting to that Corporate Member, who is not conflicted, to action the relevant complaint;

1.12 "**IDRPs**" means the Internal Dispute Resolution Procedures, as amended by the Exco from time to time;

1.13 "**Industry**" means the Mortgage Origination Industry in South Africa;

1.14 "**Member**" means any person or entity entered in the National Register of Members of the Association as a Corporate Member, an Accredited Mortgage Consultant or a Mortgage Consultant Awaiting Accreditation;

1.15 "**Tribunal**" or "**Disciplinary Tribunal**" means the Disciplinary Tribunal established pursuant to the Constitution and the Disciplinary Rules and regulated by the Exco from time to time to handle Consumer complaints relating to breaches by Members of the Association's policies, rules or procedures.

## 2. **Name of Code**

This code is the Association's Code of Practice.

## 3. **Objectives of the Code**

The objectives of the Code are:

3.1 to establish professional standards of Consumer/Member dealings in the Industry;

3.2 to promote commitment by Members to compliance with:

3.2.1 the applicable national laws and regulations applicable to the conduct of Mortgage Origination business; and

3.2.2 the rules, policies and procedures that Members are subject to by virtue of their Membership to the Association;

3.3 to promote the maintenance of the high public standing of the Association's accreditation of Members;

3.4 to promote ethical and fair business practices to the benefit of Consumers and Members; and

3.5 to promote continual education and professional programs for Members.

#### **4. Ongoing relevance of the Code**

The Association will actively review changes in the Industry with a view to ensuring the maintenance of good practice standards at all times and the Exco will amend this Code where there is a need or benefit to Consumers and / or the Industry in doing so.

#### **5. Application of the Code**

5.1 This Code of Practice applies to and is binding on every Member.

5.2 This Code applies to and binds and continues to apply to and to bind a Member to whom the Code applies, or has applied, notwithstanding that the Member has ceased for any reason to be a Member of the Association, or has been suspended from Membership, after the date (or, when more than one, on the last of such dates) upon which the facts giving rise to the complaint by the Consumer occurred.

5.3 The Exco may from time to time prescribe that this Code applies to a particular class of transaction not otherwise referred to in this Code. Any such prescription shall as between a Member and the Association, or as between Members, be final and binding.

#### **6. Qualifications and Experience of Members**

6.1 Members must keep up to date with the laws and practices in the Industry as they change and evolve. In this regard, individual/natural person members must undertake CE programs recognised by the Exco and earn sufficient CE points for each relevant period as determined by Exco from time to time to maintain membership.

6.2 Corporate Members must ensure, where relevant, that at all times they employ/contract Accredited Mortgage Consultants or Mortgage Consultants Awaiting Accreditation and have the CE points and experience necessary to deal competently and professionally with Consumers.

#### **7. Professional Indemnity Insurance**

7.1 All Individual and Corporate Members must at all times maintain Professional Indemnity insurance:

7.1.1 of not less than such amount determined by the Exco for any one claim in the aggregate / on a per claim basis, and

- 7.1.2 endorsed to cover a Determination made by the Ombudsman; and
  - 7.1.3 provided by an insurer approved by the Exco ; and
  - 7.1.4 provided in terms of a policy in a form approved by the Exco from time to time; and
  - 7.1.5 that provides, where the policy is extended to insure agents, sub-agents and/or consultants, that such persons and/or companies are named as an "insured person" on the policy.
- 7.2 The terms and conditions of the Professional Indemnity insurance must at all times meet other minimum standards as may be set by the Exco from time to time.
- 7.3 The purpose of the requirement for Professional Indemnity Insurance is to ensure that any third party Consumer who has suffered a loss due to some act or default of a Member has recourse to the proceeds of the insurance policy irrespective of the Member's own financial capacity to meet a determination or award by the Ombudsman against that Member.

## **8. Practice Standards for Association Members**

The Practice Standards set out hereunder apply to and bind Members..

- 8.1 A Member must always comply with this Code and all other laws and regulations applying to the submission of mortgage finance loan applications and the process of mortgage origination.
- 8.2 A Member must suggest or recommend to a Consumer only those arrangements for finance that the Member reasonably believes are appropriate to the needs of that Consumer and must never exert undue pressure on a Customer to select a particular finance arrangement.
- 8.3 A Member must always disclose to a Consumer all relevant details known to the Member about a proposed mortgage finance product at the time of application, other than proprietary information.
- 8.4 A Member must deal correctly and efficiently with any questions that a Consumer may have pertaining to interest rate structures and mortgage finance products offered from time to time by Credit Providers, and any other matter that may be of assistance to the Consumer.

8.5 Notwithstanding the provisions above, in dealing with a Consumer a Member shall not:

8.5.1 discriminate unfairly against a Consumer on the grounds that the Consumer will not, or is unlikely to, make use of mortgage finance facilities made available to the Consumer by a Credit Provider through the Member's efforts; or

8.5.2 discriminate unfairly against any person on any of the grounds listed in section 9(3) of the Constitution of the Republic of South Africa, Act 108 of 1996; or

8.5.3 claim or hold itself out to be an expert or to have specialised knowledge in respect of any Mortgage Origination service if, in fact, the Member is not such an expert or does not have such special knowledge.

8.6 A Member must submit a loan application to a Credit Provider or Credit Providers, whenever possible, within 3 Business Days (but in any case promptly) after receipt of a duly completed application, supplying all information required by the Credit Provider(s) (including but not limited to supporting documentation) to make the decision whether or not to grant the loan for which applied.

8.7 A Member must always keep a Consumer informed of all relevant information known to the Member relating to a loan, prior to registration of the related mortgage bond, to the extent that that information applies to that Consumer.

8.8 Where a Credit Provider requires or requests further information from a Member in relation to any loan application, such requirement or request must be communicated to the Consumer by the Member within 3 Business Days (but in any case promptly) of receipt of such notification from the Credit Provider.

## 9. **Outcome of Loan Application**

A Member must advise a Consumer of the outcome of the loan application, whenever possible, within 3 Business Days (but in any case promptly), of the loan decision being notified in writing by the relevant Credit Provider to the Member, and the Member should not otherwise indicate the outcome of the loan application to the Consumer until receiving such notice.

## 10. **Confidentiality**

A Member must at all times respect and maintain the highest levels of confidentiality with regard to information which of necessity the Member elicits from a Consumer and



must not disclose such information to any party, save as is required by law or with the Consumer's consent, not having a *bona fide* interest in the information and that is involved in the process of compiling an application for a loan, submitting such application, having such application granted and subsequently having any loan secured by the registration of a mortgage bond.

#### **11. Fees and Commissions Disclosure**

If a Member is not an agent or employee of a Credit Provider and such Member solicits from, completes for or concludes a mortgage finance loan agreement with a Consumer for or on behalf of a Credit Provider (whether pursuant to an agreement between such Member and a Credit Provider or between such Member and another Member), such Member must disclose to the Consumer prior to conclusion of the mortgage finance loan agreement any fee or commission, and the amount thereof, payable to such Member in terms of the credit agreement.

#### **12. Skill, Care and Diligence**

- 12.1 A Member must act with all due care, skill and diligence in their Industry dealings, including adherence to the reasonable instructions of Consumers.
- 12.2 A Corporate Member must always ensure that it and, where applicable, its staff are thoroughly knowledgeable in those areas and aspects of the Industry in which they participate.
- 12.3 A Member must undertake all necessary education, CE and other Association endorsed programs to maintain and further their and, where applicable, their staff's professionalism.

#### **13. Honest and Honourable Dealings**

- 13.1 A Member must deal with all persons with whom they may come into contact in the course of their professional and commercial activities honestly, honourably and in good faith.
- 13.2 At the time of the first engagement with a Consumer, a Member must advise a Consumer of its or its employer's terms and conditions of service and must give the Consumer reasonable notice before any variation thereof takes effect.
- 13.3 A Member must not engage in any acts or omissions of a misleading, dishonest, deceptive or fraudulent nature.
- 13.4 A Member's advertising must not be misleading, dishonest or deceptive.

## **14. Complaints Handling**

- 14.1 A Member must and any staff member of a Corporate Member must be instructed to always tell a Complainant, the name of the Corporate Member's IDRMs.
- 14.2 A Corporate Member must always ensure that its IDRMs have the written authority to determine and respond to any complaint made by a Complainant.
- 14.3 A Member must always comply with the Association's IDRPCs.
- 14.4 A Member must not, subject to statutory requirements, impose any fee on a Complainant.
- 14.5 An IDRMs must always advise a Complainant about the Ombudsman and about how, and to whom, to make a complaint whenever a Complainant informs a Corporate Member that the complaint has not been dealt with to the Complainant's satisfaction.
- 14.6 During or after the lodgement of the complaint, the Complainant may not be prejudiced by the actions of any Member, such as through the levying of any charges or the withdrawal of any applications for mortgage finance.
- 14.7 A Member must always respond in writing to the Ombudsman, whenever possible, within the period laid down in the Ombudsman Rules after receipt by a Member of a written complaint against that Member referred by the Ombudsman to that Member for response.
- 14.8 A Corporate Member must always maintain a record of written complaints made against that Member and its staff in the form and manner stipulated by the Ombudsman and / or Exco from time to time.

## **15. Conflict of Interest**

A Member must fully disclose to a Consumer any actual or potential conflict of interest of which a Member is aware to the extent that such a conflict of interest may affect a Consumer's decision in respect of its mortgage finance application.

## **16. Member Dealings with the Association and other Members**

- 16.1 An AMC or MCAA who receives an application for mortgage finance in the course of his or her employment with a Corporate Member may only submit such application through such Corporate Member, save with the prior written permission from and / or in terms of a written contract with such Corporate Member. Any Member who accepts a mortgage finance application from an

employee of another Corporate Member without that Corporate Member's prior written consent shall be in breach of this Code.

16.2 A Member must always conduct that Member's Mortgage Origination business in accordance with the Constitution, this Code of Practice, the Disciplinary Rules, the IDRs, the Ombudsman Rules and any other policies, rules or procedures made by the Association and / or the Exco and / or the Ombudsman from time to time, and must at all times act in a professional and courteous manner towards Consumers and fellow Members, and refrain from any conduct that may embarrass, impugn or discredit the Association or bring the Association, its Members or the Industry in general into disrepute.

16.3 A Corporate Member may only:

16.3.1 employ MCAA's and / or AMC's in order to interact with Consumers for the purposes of Mortgage Origination; and

16.3.2 other than normal Industry related interactions with Consumers, conduct its Mortgage Origination business with other Members and/or Credit Providers.