

INTERNAL DISPUTE RESOLUTION PROCEDURES

OF

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

(“THE ASSOCIATION”)



INTERNAL DISPUTE RESOLUTION PROCEDURES

1. Definitions

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

- 1.1 **"Association"** means the Mortgage Origination Institute of South Africa;
- 1.2 **"Code of Practice"** or **"Code"** means the Code of Practice as promulgated by the Exco from time to time;
- 1.3 **"Constitution"** means the Constitution of the Association;
- 1.4 **"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;
- 1.5 **"Consumers"** 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 Mortgage Origination Industry;
- 1.6 **"Corporate Member"** means a person admitted to corporate membership of the Association;
- 1.7 **"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;
- 1.8 **"Disciplinary Rules"** means the Disciplinary Rules as promulgated by the Association from time to time in terms of the Constitution;
- 1.9 **"Exco"** means the Executive Committee of the Association from time to time;
- 1.10 **"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" and who is authorised by that Corporate Member to resolve complaints against that Corporate Member in terms of the Association's internal dispute resolution ("IDR") procedures, 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 deal with the relevant complaint;

- 1.11 "**IDRP's**" means these Internal Dispute Resolution Procedures, as amended by the Exco from time to time;
- 1.12 "**Industry**" means the Mortgage Origination Industry in South Africa;
- 1.13 "**Loss**" means Loss as defined in Rule XX of the Ombudsman Rules;
- 1.14 "**Member**" means any person entered into the register of members of the Association from time to time and includes a Corporate Member;
- 1.15 "**Ombudsman**" means the person for the time being and from time to time appointed to and occupying the position of Ombudsman pursuant to the Constitution;
- 1.16 "**Ombudsman Rules**" means the rules, initially made and promulgated by the Association, and thereafter and from time to time, as amended by the Ombudsman Committee for the purposes of the Ombudsman Service.

2. **Introduction**

- 2.1 The Association is committed to establishing and maintaining the highest standard of internal and external dispute resolution procedures for the Industry.
- 2.2 The Constitution and the Code of Practice requires that, as a condition of membership of the Association, its Members are subject to the Ombudsman Rules. The Ombudsman operates as an external dispute resolution scheme for the Industry in relation to complaints and disputes between Consumers who have suffered a Loss, and Members. The rules governing the handling of complaints and disputes under the Ombudsman are dealt with in the Ombudsman's Rules.
- 2.3 The Constitution and the Code of Practice further requires that Members are also subject to the IDRPs. The IDRPs are aimed at ensuring that Consumers feel no hesitation in making a complaint about a Member's conduct and provision of Mortgage Origination services to that Consumer, directly to the Corporate Member concerned. Additionally, the Association believes that it is essential that the Consumer is able to identify and deal with an officer of the Corporate Member concerned who has the ability, authority and training to properly hear the Consumer's complaint and to give a substantive response to it.
- 2.4 The Exco in accordance with the Constitution promulgates the following IDRPs.

3. **Who has to comply with the IDRPs?**

Every Member must comply with these IDRPs.

4. **Who can make use of these IDRPs?**

4.1 Every Consumer may make use of these IDRPs and when such a Consumer does so, the Member who is the subject of the complaint must comply with them.

4.2 A Member must not charge any fee in respect of a Consumer's complaint that is made pursuant to these IDRPs.

5. **Commitment to IDRPs**

5.1 Every Corporate Member must appoint an Internal Dispute Resolution Manager ("IDRM") who must be:

5.1.1 a manager or other officer or senior staff member of a Corporate Member; or

5.1.2 the Member in any other case.

5.2 The Corporate Member must appoint as IDRM a person who:

5.2.1 has sufficient experience in relation to the Industry and the business and products of the Corporate Member so as to adequately understand the Complainant's complaint; and

5.2.2 has written authority from the Corporate Member to make decisions about the Complainant's complaint which are binding on the Corporate Member.

5.3 The Corporate Member must ensure that at all times there is one or more replacement IDRM who meets the criteria for appointment of IDRM as stated above and who is able to act in place of the IDRM as may be required in particular circumstances, including those circumstances where the complaint made by the Consumer relates to the IDRM, thus conflicting the IDRM out of handling the complaint.

5.4 The IDRM does not have to have dispute management as the only responsibility, but could be an additional role fulfilled by an existing staff member, who has dispute resolution management experience, skills and training. In the case of a sole proprietor, the Member may serve as the IRDM.

6. Awareness of IDRPs

- 6.1 Corporate Members must ensure that at all times all of their staff who deal with or receive, or are likely to deal with or receive, Consumer disputes or complaints are aware of the identity of the IDRM and each replacement IDRM.
- 6.2 Corporate Members must ensure that all of their staff who deal with or receive, or are likely to deal with or receive, a Consumer complaint are given training and written instructions:
 - 6.2.1 about how to refer a Consumer who wishes to lodge a complaint to the Member's IDRM or, when relevant the replacement IDRM; and
 - 6.2.2 what Consumer details to record if the Member's IDRM or replacement IDRM, as the case may be, is for any reason unavailable (this information to include as a minimum the Consumer's name, telephone number and description of the transaction or service to which the Consumer's complaint relates) and the staff member(s) of the Corporate Member with whom the Consumer interacted.

7. Complaints Handling

- 7.1 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 IDRM.
- 7.2 During the first interaction between the IDRM and the Consumer regarding a complaint, the IDRM must refer the Consumer to the Disciplinary Rules and to these Internal Dispute Resolution Procedures and, on request from the Consumer, provide a copy of these Internal Dispute Resolution Procedures and Disciplinary Rules to the Consumer.
- 7.3 A Corporate Member must always ensure that its IDRM has the written authority to determine and respond to any complaint made by a Complainant.
- 7.4 The IDRM must ensure that a Complainant is treated courteously when making a complaint to a Member and interacting with the Member thereafter in relation to such complaint.
- 7.5 An IDRM 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.

- 7.6 A Corporate Member must post information publicising the IDRM and the Ombudsman on the Member's website, if the Member has one.
- 7.7 A Corporate Member must resolve a complaint from a Complainant within 30 days from the date that the Complainant complains to its IDRM or to one of its staff members, whichever is the earlier, which resolution must be committed to writing and accepted in writing by such Complainant within such 30 day period, failing which the IDRM must refer the complaint to the Ombudsman for determination in the format prescribed from time to time by the Exco and/or the Ombudsman, failing which the Complainant may make such referral.
- 7.8 The IDRM will be responsible to receive and log complaints from any Consumer, record the nature of the complaint, explain the grievance resolution procedure to the Complainant, advise the Complainant as to when a reply can be expected (no more than 30 days from the date of the complaint), request the Complainant to provide documentation to support the complaint, attempt to resolve the dispute to the satisfaction of the Complainant (with written confirmation by the Complainant of the satisfactory resolution) and then record in writing the resolution, or lack thereof.
- 7.9 Whether or not the Complainant is satisfied with the resolution of the complaint, which arose from a breach of the Code and / or the Constitution and / or the IDRPCs, the Complainant will still have the right to refer such disciplinary breach to the Disciplinary Tribunal for investigation and possible disciplinary action against the errant Member.
- 7.10 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 additional charges or the withdrawal of any applications for mortgage finance.
- 7.11 A Corporate Member must always respond in writing to the Ombudsman, whenever possible, within 30 days (but in any case promptly) after receipt by a Corporate Member of a written complaint against that Corporate Member and/or a staff member of the Corporate Member referred by the Ombudsman to that Corporate Member for response.

8. Method of making complaint

- 8.1 A Consumer's complaint need not be in writing and may be presented to a Member by any reasonable means, for example, letter, telephone, electronically (including by e-mail) or in person to the IDRM investigating the Consumer's complaint.

- 8.2 The IDRМ must have the Corporate Member’s written authority to access any and all documents and records of information (including computer systems) of the Corporate Member as may be necessary to properly investigate the Consumer’s complaint.

9. **Timeliness**

- 9.1 A Member must promptly provide a written acknowledgement of receipt of a Consumer’s complaint, unless the Consumer’s complaint is otherwise resolved in the meantime.
- 9.2 A Corporate Member may request from the Consumer, further particulars of his/her complaint and/or copies of relevant documentation in the Complainant’s possession.
- 9.3 A Corporate Member must ensure that a written substantive response and proposed resolution is given to a Complainant’s complaint as soon as possible, but within 30 days after receipt of such complaint, failing which the IDRМ must inform the Consumer of the reasons for the delay and of the Consumer’s right to refer the complaint to the Ombudsman.
- 9.4 A Corporate Member will have substantially responded to a complaint if the Corporate Member:
- 9.4.1 accepts the complaint and, if appropriate, offers redress to the Complainant;
or
 - 9.4.2 offers redress to the Complainant without accepting the complaint; or
 - 9.4.3 rejects the complaint.

10. **Written response to Complainant**

- 10.1 A Corporate Member must give a written response to a complaint and must give reasons for reaching a particular decision on the complaint that adequately address the issues that were raised in the complaint. Where practical, a Member’s response must refer to applicable provisions in the Code and/or the Constitution.
- 10.2 Where a Member’s written response to a Complainant and / or redress offered is accepted by the Complainant, such acceptance must be recorded in writing.

11. Remedies

Where a Corporate Member offers redress to a Complainant, that redress may be non-financial as well as, or instead of, financial.

12. Publicity for the IDRM

12.1 Every Corporate Member must, in the Corporate Member's initial correspondence with a Consumer, identify the Member's IDRM and provide his/her direct telephone contact number and e-mail address (if applicable).

12.2 A Corporate Member who maintains an internet web site must provide details on the web site of the name, contact telephone numbers and e-mail address of the IDRM.

13. Providing assistance to Consumers

A Corporate Member must provide a written authority and instruction to the Corporate Member's IDRM to provide such assistance to a Consumer as may be reasonable in the circumstances to enable that Consumer to make a complaint.

14. Data collection

14.1 A Corporate Member who is the subject of a Consumer's complaint must keep such data concerning the complaint in such form and manner as the Corporate Member thinks fit and that will enable analysis according to:

14.1.1 type of complainant;

14.1.2 subject of complaint;

14.1.3 outcome of complaint; and

14.1.4 timeliness of response.

14.2 To enable a Corporate Member to identify any systematically recurring problems, the Corporate Member must so far as practical and relevant, classify complaints according to the particular nature of the complaint and the provision of the Code and/or Constitution alleged by the Consumer to have been breached.

14.3 Subject to legal constraints including constraints as to defamation and privacy, a Member must on reasonable written request make available to the Ombudsman, data collected in respect of Consumer unresolved complaints.

15. **Review**

Every Member should at least annually review its complaints resolution systems to ensure that they are operating effectively.