



Professional People Professional Service

New Zealand Mortgage Brokers Association

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Membership Rules

Code of Ethics and Standards

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Please Note:

Information contained in this document is authorised by and to be read in conjunction with, the Constitution of the New Zealand Mortgage Brokers Association.

These are the rules of the New Zealand Mortgage Brokers Association as determined by the Committee of the Association in accordance with the Constitution

1.MEMBERSHIP CRITERIA

Definition of a ‘mortgage broker’

A mortgage broker is an individual person, who acting independently of any lending institution in the normal course of business may make application for mortgage funding on behalf of and at the request of a client,

Membership Categories

As provided for in Clause 4 of the Constitution the following categories of membership apply

A) Standard

- Individual Mortgage Brokers (Provisional/Full Membership)
- Commercial/Rural Brokers (Provisional/Full Membership)

B) Associate

- Individuals who are directly involved in the Mortgage Broking industry but are not a practising Mortgage Broker. To include Directors, General Managers, Finance and Business Managers of mortgage broking operations. To be an Associate Member, all active mortgage brokers operating within the Associate Members business (either as owner/employee/contractor), must be Full or Provisional Standard Members.

C) Affiliate - includes Banks, Valuers and other industry related professionals as agreed by the committee from time to time

Approval of Membership

The committee has absolute discretion to approve or decline any application for any membership category.

Status of Membership – Provisional/Full

All applicants who are accepted for membership shall become Provisional Members of the Association. The term of the Provisional Membership is at the sole discretion of the Committee of the Association and generally is for a minimum period of six months from the date that the Committee of the Association approves such application during which period the applicant must meet the requirements of Full membership as set down by the committee from time to time. Full Association membership may be granted subject to full satisfaction of the prevailing membership requirements. Every application for membership shall be subject

to such conditions as maybe made from time to time by the elected Committee of the Association. These conditions shall include and not be limited to the following:

A. Conditions of Standard Membership –

• Individual Members

- 1) Application for membership must be made on the Association application form. Three references are to be provided (one of which is to be a recognised Lender)
- 2) The applicant must have relevant and current experience in the mortgage industry and be involved in the arranging of residential mortgages (evidence to be provided to and accepted by the committee)
- 3) An advertisement of intended full membership must, prior to full membership being granted appear in an appropriate major daily paper relative to the applicant's area of operation under public notices and a notice shall be circulated to all lending institutions. The cost of advertisements shall be at the cost of the broker, and in a format approved by the Association.
- 4) The member must have a current policy of a minimum of \$1,000,000 comprehensive professional indemnity insurance from an insurer approved by the committee to cover any Legal Liability arising out of any negligent act, error or omission in the capacity as a mortgage broker.
- 5) Where the member uses their own application form the Disclosure Declaration a copy of the Disclosure Declaration is to be provided to the Committee of the Association for approval.
- 6) To be eligible for membership of the Association, brokers must be able to demonstrate that they represent a minimum of six different recognised residential lending institutions (Three of which are to be Affiliate members of the Association).
- 7) The Applicant's subscription fee must be attached with the application for provisional membership. In the event of decline of membership the subscription fee previously paid will not be refunded.
- 8) All members must abide by the Association's Rules and Constitution.
- 9) Application for membership is made on the understanding that the Committee may, at its discretion decline membership without reason being given to the applicant or apply conditions to their membership.
- 10) The member must have successfully completed and passed the Associations training and accreditation programme within the six months provisional period. Otherwise evidence must be provided that the member has undertaken and passed an alternative pre approved training programme.
- 11) Full Standard Individual Members will promote themselves as mortgage brokers and display the Associations logo.

- 12) **Exceptions:** Where an application for membership does not comply in all respects, the committee may, in certain circumstances and subject to its unanimous agreement approve full membership.
- 13) Full standard members may promote themselves as Accredited Members and display the Associations logo as desired, subject to **D) Special Membership Conditions 4. Display of NZMBA Logo.)**
- 14) Members must fully disclose to clients the source of all commission payments received with respect to the client's financing transactions or the provision of any ancillary services associated with the transaction.

• **Commercial/Rural Members**

- 1) The applicant must have relevant and current experience in the mortgage industry and be involved in the arranging of commercial/rural mortgages (evidence to be provided to and accepted by the Board). That at any such time that they do become involved in arranging residential mortgages in the normal course of business, they then have to fulfil the requirements for Individual membership. A statement is to be signed by the applicant to this effect.
- 2) To be eligible for membership of the Association, brokers must be able to demonstrate that they represent a minimum of six different commercial/rural lenders, who they place business with (Three of which are to be Affiliate members of the Association and mainstream lenders),
- 3) Full Standard Commercial/Rural Members will promote themselves as Commercial/Rural brokers and display the Associations logo.
- 4) With the exceptions of clauses 2,6,10 and 11 of Standard Members - Individual all conditions of A. Standard Members – Individual also apply to Commercial/Rural members.

B. Conditions of Associate Membership

- 1) The member must be operating in the mortgage broking industry but not practicing as a mortgage broker (evidence to be provided to and accepted by the committee). That at any such time that they do become a practicing broker then they have to fulfil the requirements for Standard Membership. A statement is to be signed by the applicant to this effect.
- 2) The Mortgage brokers who work for the company, with who the Associate Member is associated, must be Standard Members of the Association.
- 3) With the exceptions of clauses 2,3,4,6,10,11 and 13 of Standard Members - Individual all other conditions of Standard Membership apply

Amendment agreed by NZMBA Committee, 25 May 2006

It was agreed by the NZMBA Committee on 25 May 2006 to allow under the Associate membership category, members to join as corporations. In order to join the NZMBA as a “Corporate Member” the following definition would apply:

1. The broker firm must have a head office structure i.e. Plan NZ.
2. The broker firm must be a company involved in the mortgage broking industry **but not directly practicing as a mortgage broker** – examples would be Plan NZ or Mortgage Link’s head office.
3. Such a firm may join as an Associate Corporate Member. This allows up to three individuals (e.g. head office staff) under one Corporate Associate Membership.
4. The cost of Corporate Membership should be \$1,000 plus one advertising levy for a maximum of three individuals to join, together with one vote per Associate Membership.
5. Should a corporate have more than three individuals who wished to join the NZMBA, and then the cost would rise to \$2,000 plus one advertising levy for a maximum of seven individuals, together with one vote per Associate Membership.

C. Conditions of Affiliate Members

- 1) Affiliate members must be industry related and may be an individual, a non-incorporated entity or an incorporated company and
- 2) Must abide by the Code of Ethics and Standards of the Association

Amendments agreed by NZMBA Committee, 16 March 2005

Applicant must have relevant and current experience in the mortgage Industry, must be involved in writing residential mortgages and must display a sound working knowledge of that market.

Applicant must have a current policy of a minimum of \$1,000,000 comprehensive professional indemnity insurance from an insurer approved by the committee to cover any legal liability arising out of any negligent act, error or omission, in the capacity of a mortgage writer.

Applicant must use the NZMBA’s approved Authority and Declaration and the Personal Disclosure Statement documents. The number of lenders they write business with must be clearly disclosed to the customer.

The Association’s application fee, which is the same as that of a full standard member, must be attached to the application for provisional membership. In the event that membership is declined, this fee is not refundable.

Applicant must abide by the NZMBA Rules, Code of Ethics and Standards and Constitution. Failure to comply may result in disciplinary action.

Affiliate members, under this category, are not be entitled to use the NZMBA's logo for advertising purposes in the normal course of their business. This provision does not preclude them from displaying the NZMBA logo on any of the Association's material or documentation provided to customers and potential customers. Affiliate members are able to disclose that they are an 'Affiliate Member' of the Association in their Personal Disclosure Statement.

Application for membership is made on the understanding that the Applicant must comply in all respects (other than demonstrating that they represent a minimum of six lenders) with the requirements of full standard membership of the Association. The Committee may, at its discretion, decline membership or apply conditions to their membership.

The NZMBA's requirements in relation to Provisional Membership apply to all applicants. Applicants must successfully complete and pass the NZMBA's approved pre requisite training and accreditation programme and, prior to completing their Provisional Membership period, take out an advertisement in a major daily newspaper relative to the applicant's area of operation under the public notices section. The cost of the advertisement is to be met by the Applicant and the advertisement will be in a format approved by the Association.

Members must disclose fully to clients the source of all commission payments received with respect to the clients financing transactions or the provision of any ancillary services associated with the transaction.

Amendment agreed by NZMBA Committee, 25 May 2006

It was agreed by the NZMBA Committee on 25 May 2006 to allow under the Affiliate membership a new category of membership entitled "Broker Support" people. The Rules of the Broker Support Category in the Affiliate Membership category of the NZMBA are:

1. The person must not give advice to clients on matters such as loan structure and lender options. (Advice will be defined under regulation and this definition; will reflect the new regulations, when settled e.g. advice on the suitability of a loan structure or home loan product to a client).
2. The person must not be promoted or seen as a "mortgage broker" or adviser.
3. The person must work for an NZMBA standard member: individual mortgage broker (see Constitution 4.1.(a)) This means the NZMBA standard members: individual mortgage broker must be fully paid up, have met all ongoing accreditation requirements and not be a provisional member.
4. The person may assist the mortgage broker with collection and gathering of application information. If the broker support person comes into direct contact with a client or member of the public they must make it known to that person(s) that they are not a qualified mortgage broker and that they are assisting a named mortgage broker.
5. The annual fee has been set at \$100 pa and there is no joining fee.

6. The application must be sponsored, supported and signed by the individual mortgage broker that the broker support person works for. There is no credit check required at this stage.

D. Special Membership Conditions

1. Tied Arrangements

A broker operating in contravention of the Definition of a 'mortgage broker' will be considered operating under a Tied Arrangement and membership of the Association may be terminated at the sole discretion of the Committee of the Association.

2. Charging of Fees – Standard Members - Individual

In the normal course of the members business of arranging residential mortgages, members must not:

- a) Charge non-refundable up front fees that are not performance based.
- b) Charge further up front fees that are not performance based or not related in amount to the amount of the mortgage facility, either as part of the original financing transaction or as part of a mortgage maintenance programme. That is a programme where the broker/consultant undertakes to monitor the client's progress using promoted debt minimisation techniques.
- c) Restructure or refinance a clients mortgage/finances without due consideration to the clients best interests as can be determined by a cost/benefit analysis of alternatives (for the client) in the market at that time.
- d) Advertise a free service if the client is being charged on a cost recovery basis.

- Standard Members - Commercial/Rural

In the normal course of the members business of arranging commercial/rural/business mortgage facilities, any non-refundable fees that are charged must be agreed between parties prior to making application for finance and represent fair and reasonable value

3. Provision of Insurance and Other Services

Member brokers must fully disclose the receipt of commissions received either direct from the provider of the product (such as the insurance company) or, if an intermediary is involved, from that intermediary (such as a specialist insurance broker).

4. Conditions of Display of NZMBA Logo

- a) Full Standard Members - Individual will display the logo on personal stationery and marketing material. Display of the logo must include the words "Accredited Member".

- b) Full Standard Members -Commercial/Rural Members will display the logo on personal stationery and marketing material. Display of the logo must include the words “Accredited Member”.
- c) Associate Members may display the logo on personal stationery and marketing material. Display of the logo must include the words “Associate Member”.
- d) Affiliate Members may display the logo on personal or business entity stationery and marketing material. Display of the logo must include the words “Affiliate Member”.
- e) For a business/trading entity to promote itself as a Member and to display the logo the following conditions apply:

All active mortgage brokers operating under the name of the business/trading entity must be Standard Members, Full or provisional, of the Association.

- f) **Provisional members are permitted to use logo tagged “Provisional Members”.** Changed at NZMBA Executive meeting 7th December 2004, Minute Item 18.

5. **Disciplinary Procedure for Incorrect Display of NZMBA Logo**

Members that allow the display of the NZMBA logo in contravention of **D) Special Membership Conditions clause 4 will be in breach of the** Membership Rules of the New Zealand Mortgage Brokers’ Association.

2. DISCIPLINARY PROCEDURES

The Committee has the power to appoint a disputes and disciplinary committee. Such committee is to comprise two committee members and an independent person, who in the opinion of the chairperson has the appropriate qualifications to hold enquiries into all matters, questions and disputes. Such enquiries shall be conducted in such manner as the committee may deem proper and may be held:

- i) At its absolute discretion and on its own motion
- ii) At the written request of any person, members or otherwise who in the opinion of the chairperson have cause to raise such matters, questions and disputes

The Disciplinary Committee shall be responsible for:

- 1) The hearing of complaints and/or disputes or at its discretion reviewing the activities of any member that are brought to the attention of the Association
- 2) The hearing of appeals from decisions
- 3) Recommending any appropriate disciplinary measures to the Committee of the Association where a breach of the Rules or Constitution has occurred.

The Process

The disciplinary procedure will be determined by the appointed committee and advised to the parties prior to the commencement of any investigation.

Within 30 days of receiving the recommendations of the disciplinary committee the committee may, if a breach of the Rules or Constitution has occurred, impose any one or more of the following penalties:

- i) Impose any fine not exceeding \$5,000 on the Member; funds received from fines will be applied to the general funds of the association for the benefit of its Members
- ii) Suspend the membership of the Member
- iii) Terminate the Member's membership
- iv) Remove the name of a Member from the Register
- v) Advise all members, lenders, and industry professionals of the termination of the member and to publish an advice in one or more appropriate major daily newspapers in the Public Notices section
- vi) Impose such conditions on the members membership relating to the conduct of the members practice
- vii) The Committee may require the Member to reimburse the Association for any costs, charges and expenses incurred by the Association or Disciplinary Committee as a result of any complaint against the said member.

3. TERMINATION OF MEMBERSHIP

Termination of Membership of the Association may occur in the following manner:

- 1) By the committee in accordance with these rules
- 2) By the member voluntarily

To voluntarily terminate membership, members must:

- Give notice to the Committee, in writing, to the effect that they wish to retire or resign from the Association, and
- Have no outstanding complaints of disciplinary hearings lodged against them, and
- Have no outstanding debts due to the Association
- On termination of membership, the member shall cease to use, advertise, or promote that they are a member of the Association. The member will return all certificates and promotional material to the Association immediately.

Outstanding Complaints or Disciplinary Hearings

No member may retire or resign from the Association if:

- Any complaint is lodged against the member, whether before or after the giving of the notice of resignation, but prior to the resignation becoming effective
- Any disciplinary hearing is commenced against the member (whether Before or after the giving of the notice of resignation)

Any notice of retirement or resignation where a member is the subject of either or both of the above two events shall not take effect until:

- The hearing of an complaint or disciplinary proceedings has been disposed of, and
- Any resulting action disciplinary measure, fine or penalty has been imposed.

No notice of retirement or resignation shall take effect until all subscriptions; fines, penalties, levies and other payments due to the Association have been paid.

On termination of membership, the member shall cease to use, advertise, or promote that they are a member of the Association. The member will return all certificates and promotional material to the Association immediately.

4. CODE OF ETHICS & STANDARDS

Introduction

The rules governing the professional conduct of members of the Association shall be those contained in the Code of Ethics and Standards of the Association and read in conjunction with the Rules and Constitution of the Association. Provided that the Committee may from time to time amend the said Code of Ethics and Standards in such manner as it thinks fit, but no such amendment shall bind any member of the Association until notice thereof has been given.

Those who offer their skills and knowledge to others have responsibilities and obligations to those who rely on, and are affected by their work.

This Code provides a minimum level of business practice for various activities that form part of the service of offering advice to, and arranging mortgages for clients and potential clients.

The Code expresses the Association's recognition of it's the responsibility of its members to clients, lenders, colleagues and the public.

This Code of Ethics and Standards applies to all members of the New Zealand Mortgage Brokers Association.

1) Ethics

Integrity

Members shall be open, honest and sincere in all dealings

Objectivity

Members shall be impartial and free from conflicts of interest. Members shall be fair and not allow prejudice or bias to override their objectivity.

Competence

Members have a duty to maintain a high standard of professional competence in all dealings.

Due Care and Responsibility

Members should conduct their business at all times with due care and in a proper and responsible manner refrain from any conduct which might bring themselves and/or the Mortgage Broking Industry into disrepute.

Confidentiality

Members should respect the confidentiality of information acquired in the course of their work and should not disclose such information to a third party without specific authority unless there is a legal duty to disclose. All information provided is to be for the specific use intended

2) Standards

- i) Members shall not deny equal professional services to any person for reasons of race, colour, religion, sex, handicap, age, family status or national origin nor shall they be party to any other such discrimination.
- ii) Members at all times are to avoid exaggeration, misrepresentation or concealment of pertinent facts relating to any transaction they may be involved in.
- iii) Members shall operate their business in a professional and 'businesslike' manner.
- iv) Every member has a duty to maintain their knowledge and skills at a level required to ensure that the member's clients receive competent service based on up-to-date knowledge and practice.
- v) Members shall not undertake to provide specialised professional services outside their field of competence unless they engage the assistance of someone who is fully competent in that service. Any persons engaged to provide such assistance shall be identified to the client and their contribution to the assignment shall be set forth.
- vi) Members shall fully abide by such laws and regulations as are applicable to the mortgage broking industry.
- vii) Members have a duty to observe and maintain independence and objectivity in the conduct of their business at all times
- viii) Members must inform clients and lenders of the nature of any business connections, interests or affiliations which might impair the objective quality of their services or be considered a conflict of interest.
- ix) Members shall disclose all relevant information required to Adequately assess any loan applications put forward for consideration.

- x) Members shall disclose such relevant information that may be required to be made available under any statute or act.
- xi) Members shall disclose to the Association, within (14) days, details of any Agency termination or any other matters of an ethical or legal nature which in any way are likely to affect their standing with NZMBA.
- xii) A member shall not disclose any information that has been obtained in the course of providing services to clients unless such disclosure is made with the knowledge and consent of the client, or the member is required to do so by operation of law.
- xiii) A member shall not improperly use for the member's own benefit, or permit to be used for the benefit of others, any information that has been obtained, or knowledge, which has been gained, in the course of providing services to clients.
- xv) Members shall ensure that all advertising and promotion is accurate and is not misleading.