

FSRA Code of Conduct Consultation Response - MPC / CMBA Ontario

September 21, 2020

Thera Medcof
Senior Manager, Policy,
Financial Services Regulatory Authority
5160 Yonge Street, 16th Floor,
Toronto, ON M2N 6L9

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Dear Ms. Medcof:

Thank you for providing the Canadian Mortgage Brokers Association – Ontario and Mortgage Professionals Canada with the opportunity to review FSRA’s proposed Mortgage Broker Code of Conduct.

About Us

The Independent Mortgage Brokers Association of Ontario took the business name Canadian Mortgage Brokers Association – Ontario in 2016 to join with the other provincial CMBA associations and the national CMBA association. CMBA Ontario furthers the interests of brokers and agents by promoting the industry and uniting it in ethical practice.

Mortgage Professionals Canada (MPC) is the national mortgage industry association representing over 12,000 individuals and 1,000 companies, including mortgage brokerages, lenders, mortgage insurers, and industry service providers. Approximately 60% of MPC’s membership work or operate their businesses in Ontario.

Both our associations are dedicated to maintaining a high standard of industry ethics, consumer protection, and best practices. On behalf of our members, CMBA Ontario and MPC jointly offer the following comments for consideration

General comments

Both CMBA Ontario and MPC believe adoption of an industry wide code of conduct is worthwhile and would simplify our respective expected standards of practice and conduct for membership eligibility. Unifying our associations’ code with the regulator(s) also ensures we are each supporting publicly our respective activities ensuring consumer protections and adherence to the code. We understand that this code is initially expected to be implemented in Ontario, with FSRA making a formal announcement of its introduction, with subsequent conversations and proposed national adoption through the regulatory authority of other provincial regulators and registrars (for simplicity, collectively referred to as regulators throughout the rest of this submission) within the Mortgage Brokers Regulatory Counsel of Canada (MBRCC). We are supportive of the adoption of a national code.

Enforcement Must Remain with the Regulator

Each of our respective boards of directors indicated a concern with the potential expectation of FSRA, and eventually other regulators across Canada, of our associations' role in enforcement of the code. We would appreciate clarity regarding this. As associations, we are not empowered with the ability to revoke licenses or place education or alteration of practice requirements in place for mortgage brokers. We also lack any investigative body status, making our own investigations into allegations of reaches of a code of conduct difficult or practically impossible.

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In practice, if either of our associations were to receive a complaint about the conduct of one of our members today, our initial default action would be to attempt to contact the member and resolve the issue to the satisfaction of the consumer directly, providing the complaint is not an accusation of a criminal activity. Our experience has generally taught us that often the issue is a simple miscommunication and issues have been rectified quickly. In instances where the member is unable to fulfill the desired outcome of the consumer, and where the consumer is not satisfied with the explanation given by the member through a facilitated discussion, it is at that point we advise the consumer to discuss the issue with the regulator. In instances of criminal activity allegations, given our lack of investigative power and the potential to prejudice a complainant's case if we notified the member, we would direct these individuals immediately to the regulator.

Our concern is one of potential liability for our organizations. If either association were to expel a member or revoke membership privileges due to a breach of the code of conduct, and subsequently the regulator were to find the complaint not well founded, the former member now likely has a right of action against the association for professional defamation. As such, it is important to state that both associations would follow the decision of the regulator regarding any complaint investigated. If the regulator were to revoke or suspend an individual's license, the associations would follow suit and revoke or suspend membership eligibility. If the individual is permitted to retain their license, they would also be permitted to retain their membership status with our organizations.

Code Should Include Language Specific to Inclusion or Anti-Racism and Discrimination

Both CMBA Ontario and MPC believe the code should include a paragraph specifically addressing discrimination and racism as unacceptable conduct. MPC staff drafted proposed suggestions below, however, we defer to the staff at FSRA to conduct a scan of equivalent industry codes and source and recommend language it deems appropriate. These drafts are provided for demonstrative purposes only.

Discrimination: Licencees shall not, when acting in a professional capacity, discriminate or participate in the discrimination against any person based on age, gender, race, religion, sexual orientation, political beliefs, citizenship, marital status, family status, disability or any additional ground protected by law. This commitment applies to all interactions with individuals doing business with the licensee.

Racism: Licencees shall not, when acting in a professional capacity, participate in the racial discrimination against any person. Racial Discrimination, as defined by the Ontario Human Rights Commission, includes any action, intentional or not, that has the effect of singling out persons based on their race, and imposing burdens on them and not on others, or withholding or limiting access to benefits available to other members of society.

Comments Specific to the Proposed Code Language

Proposed Language	Working Group Comments
<p>1. Compliance/Outcomes Licencees must comply with the letter of legislative / regulatory requirements. Their conduct should reflect industry best practices and achieve the outcomes intended by these requirements.</p>	Best practices is undefined. Perhaps amend to require adherence to this code, and regulatory/legislative requirements
<p>2. Accountability Licensees must act in a responsible / accountable manner, taking reasonable steps to ensure they exercise care, due diligence and sound judgement in providing their products and services.</p>	No concerns
<p>3. Honesty Licencees must conduct their activities in a truthful, clear and transparent manner, not misleading, hiding or obscuring material information, but rather ensuring it is fairly presented.</p>	Amend the word <u>fairly</u> to <u>accurately</u>
<p>4. Competency Licencees must develop and maintain the skills, knowledge and aptitudes necessary for their business activities, and should decline to act when they are unable to provide products / services in accordance with this Code.</p>	Amend the words <u>must</u> and <u>should</u> to align with regulations and legislation. Must where required by re/leg, should when not.
<p>5. Suitability Licencees must provide only recommendations for products / services that are suitable for their client(s), having a sound understanding of how the products / services being recommended match the disclosed circumstances of their client(s).</p>	Include the word <u>disclosed</u>

Proposed Language	Working Group Comments
<p>6. Disclosure Licencees must disclose all material information necessary to make informed decisions in a clear, transparent, truthful and timely manner to all applicable parties in a transaction. This disclosure is required for transactions completed in traditional or digital format. Where there is no format or timing for disclosure required by regulation, industry best practices should be adopted to ensure consumers receive required disclosures in a clear, transparent, truthful, complete and timely manner.</p>	<p>Include the word <u>complete</u></p>
<p>7. Management of Conflicts of Interest Licencees must identify and disclose in writing (or in an electronic form that is saved and capable of being produced in written form) actual or potential/perceived conflicts of interest to all applicable parties in a mortgage transaction. They should have documented strategies for managing such conflicts.</p>	<p>No concerns</p>
<p>8. Security and Confidentiality Licencees must protect the personal information of financial services consumers and use it only for the purpose for which it was collected.</p>	<p>No concerns</p>
<p>9. Stewardship Licencees should act with integrity and respect. They must not engage in any act or omission that would bring disrepute to the industry.</p>	<p>No concerns</p>
<p>10. Co-operation with Regulators Licencees must co-operate with mortgage brokering regulators. They should report possible violations of laws, regulations or this Code to the appropriate regulator and must not retaliate against those who make such reports.</p>	<p>No concerns</p>

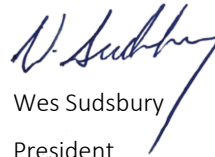
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Thank you for the opportunity to review the draft and provide comments.

Sincerely,



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