

Business Tips for Members

Record Keeping

- Keep thorough and contemporaneous records of all interactions with clients, including file notes of conversations, instructions given and copies of emails sent and received.
- Keep copies of all completed application forms, including unsuccessful ones
- Keep screen dumps of any electronically submitted applications.

Safeguards

- Ensure that clients are encouraged to obtain independent legal or financial advice, and do not recommend or refer the client to lawyer or accountant associated with you or from whom you receive a referral commission.
- Ensure that that client completes the income declaration section of the application form themselves. If you complete it for them, make sure they initial or sign those parts of the application form that they may later allege were not specifically made known to them – for example, income declaration, purpose of the loan, early repayment fee, deferred application fee, commissions.

Caveats

- Do not ever put a caveat on the security to secure your fees.

MFAA Code

- Have a good working knowledge of the MIAA Code of Practice, particularly appropriateness of loan to the needs of the client and making enquiries necessary to determine client's ability to repay loan.

Disclosure to client

- Fully disclose and explain commissions and fees and charges to client.
- When letter of offer/loan agreement is received, check to see whether fees and other terms of the loan differ from what was previously conveyed to the client by the broker.
- Where there is a difference in fees and other terms of loan, make sure client is made aware of these. For example, lender decides that, based on client's scenario, the loan product offered will be different from the one discussed by the broker with the client previously. Client should be asked to acknowledge (in a note) that this was brought to their attention.

Monitor progress

- Monitor progress of loan application and keep client advised of all delays, particularly if they might impact on settlement, cause client to pay default interest to vendor for delayed settlement, lose their deposit or force client to take out a more expensive bridging loan.
- Explain to consumers any potential problems with their loan e.g. a loan may not be approved due to mortgage insurer's requirement that they won't cover units over 6 floors high in certain areas.
- Where client has been tardy in providing documentation or explanations that are required to settle loan, make request in writing, follow up and warn client of consequences of non-receipt.

Client contact

- Manage consumers' expectations by following up with regular phone calls or emails.
- Do be accessible to your clients and return their calls promptly; even if there have been no new developments.

Complaint resolution

- Implement an internal dispute resolution process for your clients (see www.creditombudsman.com.au), and have one person as point of contact for client.
- Genuinely attempt to resolve a client's complaint internally.
- Provide consumers with a brochure explaining what COSL can do for them if this ever becomes necessary.
- Ensure that any contractors you have are members of COSL.

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Proceed with extreme caution

Asset lends may be appropriate in certain circumstances, but when they have some of the following characteristics, you should proceed with extreme caution and consider not doing the deal:

- Client's home taken as security
- Term of the loan may be too short for client to realistically repay – eg. 24 month loan
- Client has poor credit history
- Age, mental capacity and physical infirmity of the client (this can be a problem even in non-asset lend scenarios)
- Circumstances of the client –not sophisticated, not well-educated, poor financial literacy or non-English speaking
- Someone has undue influence over the client's financial affairs – eg. child, spouse (this can be a problem even in non-asset lend scenarios)
- Very high gearing involved
- Loan provides no or negligible benefit to client – for example, there is unlikely to be any benefit to the client where the loan proceeds are for a friend or relative
- Ability to repay loan "verified" by an accountant associated with the broker or lender
- Lender's lending policy not followed – for example, documents requiring execution have not been signed or provided; information required has not been sighted or produced
- Statement of income without verification (low doc)
- Statement as to affordability to repay, without verification (no doc)
- Little or no regard for client's ability to make repayments
- Critically, lender prepared to lend on the strength of the security alone.

Asset lends can be a problem whether or not the loan is regulated. There have been recent Court decisions that have found both regulated and unregulated loans to be "unjust". Also, the fact that the borrower has an ABN would not be enough to persuade COSL that the loan was for business purposes (ABNs can be applied for over the internet and takes about 15 minutes to obtain.)

Furthermore, the fact that a borrower may have been complicit in providing false information to the broker or lender does not mean that the broker or lender is "off the hook". A letter or declaration from the borrower stating that they can afford to make the repayments or a statement from a borrower that they were given the opportunity to seek independent advice but elected not to take it, will not be enough to prevent the loan from being found unjust.

If you would like more information on membership of the Credit Ombudsman Service, please call us on **02 9273 8455** or email members@cosl.com.au