



THE FIDUCIARY INSTITUTE OF SOUTH AFRICA



Code of Ethics and of Professional and Responsible Conduct

Statement of Ethical Principles

As professionals in the fiduciary industry in South Africa, we undertake to uphold the following principles in all our business actions and relationships, while accepting that our conduct in our personal actions and relationships should similarly reflect these same principles to support our commitment thereto.

We believe that our commitment to ethical, professional and responsible conduct is built on a commitment to two broad principles: **Integrity** and **Diligence**.

Integrity requires complete honesty, fairness, objectivity, independence of thought and behaviour and an avoidance of, or proper behaviour with regard to, conflicts of interest.

Diligence requires knowledge, competence, confidentiality and personal financial stability.

Every member of the Fiduciary Institute of South Africa is bound by and is committed to uphold these principles in general and through adherence to the specific provisions of this code. This is the cornerstone of all our dealings with our clients, each other, our employers, all levels of government and the South African public at large.

Definitions

In this Code the following words shall have the following meanings without derogating from the ordinary meanings of such words unless such ordinary meanings are in conflict with the meanings below:

“client” means any person or trust with whom the member enters or is about to enter into a business relationship in which the member will supply fiduciary services to such person trust in the member’s capacity as a fiduciary professional for the member’s own account or in the scope of his/her employment with a fiduciary services provider;

“member” means natural person who has qualified to be recognised as a member of the Institute and is listed in the membership records of the Instituted and also any juristic person or trust in the event that the Institute confers membership on juristic persons or trusts;

“employer” means any natural or juristic person or trust that employs natural persons in an employer/employee relationship;

“fiduciary professional” means any natural person who has satisfied the knowledge and experience requirements to be recognised as such and is rendering fiduciary services for own account or is employed by a juristic person or a trust to render fiduciary services;

“fiduciary services” means any service in which the member or his/her employer acts in a fiduciary capacity, including but not limited to will drafting, administration of estates, curatorships and trusteeships

“fiduciary services provider” means any person or trust who renders fiduciary services;

“Institute” means the Fiduciary Institute of South Africa;

“person” means any natural or juristic person;

Code of Conduct

1. Integrity

Members should take cognisance of the fact that clients and other interested parties will always expect them to be totally honest, fair and trustworthy to the extent that it should not be necessary for anyone to verify with another independent party, anything a member says or does.

Difference of opinion is always possible, but in the true spirit of integrity any member should not do or say anything unless he/she truly believes that and will in similar circumstances do or say at least the same with regard to his/her own affairs.

Members owe a solemn duty to uphold the integrity and honour of the fiduciary profession and to encourage and foster respect for it through their conduct.

1.1. Honesty

1.1.1. No member shall communicate knowingly in any way anything which is not the truth to any client, employer or other party with a legitimate interest in the duties of the member.

1.1.2. No member shall refrain knowingly from communicating any information to any client, employer or other party with a legitimate interest in such information in circumstances where a duty exists to communicate such information to such party or where such information will have a material influence on decisions that such party is to take with regard to matters that fall within the scope of

the member's role as a fiduciary professional. Exceptions, although not an exhaustive list, to this paragraph are:

1.1.2.1. No member is required to waive his/her common law right to silence in circumstances where he/she may incriminate him/herself by supplying the information;

1.1.2.2. No member is required to supply information in circumstances where to do so will be in breach of any other requirement of this code, in the absence of a legal duty to supply such information.

1.1.3. No member shall cause any misleading advertising or promotional activity about his/her or his/her employer's business to be published or conducted.

1.2. Fairness

1.2.1. A member shall always be completely fair in any comparison of services or products, and fees charged by the member or his/her employer and any other supplier of such services or products.

1.2.2. A member who becomes aware of unfair actions by any other member should bring the matter to the attention of the relevant structures of the Institute.

1.2.3. In any instance where a client or other party communicates allegations to a member about behaviour by another member which may be in breach of this code, the member to whom such communication is addressed should:

1.2.3.1. Notify the party who communicates the allegations that it is inappropriate for the member to react without having heard

the other side (the *audi alteram partem* rule of natural justice); and

1.2.3.2. Point out to such party that allegations of such a nature should be communicated to the relevant structures of the Institute.

1.3. Objectivity

1.3.1. A member shall not give any opinion in connection with any matter relating to such member's duties to any client or other interested party without taking all reasonable steps to remove any unwarranted bias in favour of the member or his/her employer or against any other member or other party or institution. This does not preclude any member from communicating information that is factually correct and relevant to the situation.

1.3.2. A member shall not refrain from communicating information that is factually correct and relevant to the situation and which the member should reasonably foresee may have a material influence on a decision to be taken by any client or other interested party solely because it may cast a negative light on the member or his/her employer.

1.4. Independence of thought and behaviour

1.4.1. A member shall always evaluate all facts and circumstances with regard to the affairs of a client with the best interests of the client as the determining influence. Such evaluation shall be done independently and may not be unduly influenced by any existing policy adopted by the member or his/her employer which may be detrimental to, or not in the best interests of, the client.

1.4.2. The requirement in 1.4.1 shall not be interpreted to mean that a member may not make use of any service or product which the member or his/her employer supplies in fulfilling his/her fiduciary duty towards the client, provided that the client will, all factors taken into account, be in a comparable or better position than if such service or product had not been made use of.

1.5. Conflicts of interest

1.5.1. A member shall conduct all professional affairs in a manner that avoids any conflict of interest, or any appearance of a conflict of interest. Whilst the Institute cannot prescribe to members how they should arrange their personal lives, it is recommended that members extend this principle to their personal affairs.

1.5.2. A member should take all reasonable steps to foresee possible areas and scenarios where a conflict of interest could arise.

1.5.3. A member shall not use any information that is not publicly available to invest in any venture that is or may be a client, borrower, or supplier of the member or his/her employer, or share such information with any party that is or may be connected to the member or his/her employer, unless it is legally permissible to do so.

1.5.4. A member shall, immediately when he/she becomes aware of a conflict or potential conflict of interest, notify all interested parties of his/her interest in the matter that leads to the conflict or potential conflict of interest. This paragraph shall not be interpreted in such a way that it removes any member's right to consult his/her employer before making the existence of the conflict or potential conflict of interest known to interested parties.

1.5.5. No member who is in the employ of another person or institution shall secretly act in competition with such employer.

2. Diligence

Members owe it to their profession and themselves to display the highest levels of competence in all their actions by:

- Ensuring that they possess the necessary knowledge in any given situation or identifying when and to what extent they need to enlist the assistance of specialists in any field;
- Applying their mind appropriately to the facts and circumstances of the matter at hand;
- Taking all appropriate and reasonable steps to ascertain all the relevant facts and circumstances of the matter at hand;
- Displaying a total commitment to the confidential treatment of all information obtained as a result of their actions in connection with the affairs of their clients and taking all reasonable steps to ensure the confidentiality of all such information;
- Doing everything necessary to ensure their personal financial stability.

2.1. Knowledge

2.1.1. A member shall take all steps necessary to ensure that he/she possesses the level of knowledge and skill required from a person in a fiduciary capacity.

2.1.2. A member shall, once it becomes clear that he/she lacks knowledge or skills demanded by changing circumstances in any field of the

fiduciary capacity in which the member is acting at the time, take all the necessary steps to acquire the necessary knowledge or skills, or acquire the services of a specialist in the particular field in good time.

2.1.3. A member should promote the continual development of the body of knowledge particular to the fiduciary industry by making use of the structures of the Institute and by communicating case studies to other members and contributing to publications whenever possible.

2.2. Competence

2.2.1. A member shall at all times apply his/her mind appropriately to all problems, questions and decisions faced with in the course of performing his/her duties.

2.2.2. A member shall take all reasonable steps to gather all relevant information to base any decision on or to solve any problem with regard to the affairs of a client.

2.3. Confidentiality

2.3.1. A member shall not reveal any information about the affairs of a client to anybody not legally entitled to such information.

2.3.2. A member shall take all reasonable precautions to ensure that no information about the affairs of a client is revealed to anybody not legally entitled to such information.

2.3.3. A member shall not reveal or make use of any information about the affairs of any party to any business relationship with a client or any information about the affairs of his/her employer or any client or supplier of his /her employer without the express consent of the

party involved, unless such information is already a matter of public record.

2.4. Personal financial stability

2.4.1. A member shall avoid any activity that will cause or may create the impression of personal financial instability such as, but not limited to, excessive gambling, excessive indebtedness or excessive speculation.

2.4.2. A member shall avoid personal debts to anybody who may have an influence on any decisions the member has to take in the course of his/her duties.