

NHB(ND)/DRS/**Pol-No.25**/2008

July 14, 2008

TO ALL REGISTERED HOUSING FINANCE COMPANIES (HFCs)

Dear Sir,

**GUIDELINES FOR RECOVERY AGENTS ENGAGED BY
HOUSING FINANCE COMPANIES**

Of late, it has been observed that several banks and Housing Finance Companies (HFCs) are engaging the services of recovery agents for the recovery of their dues from customers. While this has its inherent advantages, this trend is not without its share of potential complaints and customer dissatisfaction arising out of possible extreme measures likely to be adopted in some cases. The number of disputes and litigation against banks/financial institutions engaging recovery agents in the recent past has shown an increasing trend. The adverse publicity in this regard poses a serious reputation risk for the financial sector as a whole. A need is, therefore, felt for adoption of policy, practices and procedures regarding the engagement of recovery agents by the HFCs.

2. In this regard, the Bank had prepared a draft discussion paper on Guidelines for Recovery Agents of HFCs. This was prepared on the lines of the Draft Guidelines issued by the Reserve Bank of India for engaging of Recovery Agents by commercial banks. Based on the responses received, NHB has formulated guidelines for engaging Recovery Agents by the HFCs, which are placed as Annexure for adoption by the HFCs with approval of their respective Boards.

Please acknowledge receipt.

Sd/-

(R.Bhalla)

General Manager

Department of Regulation & Supervision

Encl: a/a

GUIDELINES FOR ENGAGING RECOVERY AGENTS BY HOUSING FINANCE COMPANIES

In view of the rise in the number of adverse reports about questionable practices resorted to by recovery agents in the recent past, it is felt that there is an urgent need to review the policy, practice and procedures being followed in the use of recovery agents by Housing Finance Companies (HFCs). Accordingly, NHB has decided to issue the following guidelines for adoption by all HFCs. HFCs, as principals, are responsible for the actions of their agents. Hence, they should ensure that their agents engaged for recovery of their dues should strictly adhere to these guidelines and instructions, including the Fair Practices Code for HFCs, while engaged in the process of recovery of dues.

'Agent' for the purpose of these guidelines would include agencies engaged by the HFCs and the agents/ employees of the concerned agencies.

It is expected that HFCs would, in the normal course ensure that their own employees also adhere to the above guidelines during the loan recovery process.

2. ENGAGEMENT OF RECOVERY AGENTS

HFCs should have a due diligence process in place for engagement of recovery agents, which should be so structured to cover, among others, individuals involved in the recovery process. HFCs should also ensure that the agents engaged by them in the recovery process carry out verification of the antecedents of their employees, which may include pre-employment police verification, as a matter of abundant caution and HFCs may decide the periodicity at which re-verification of antecedents should be resorted to.

3. TRAINING OF RECOVERY AGENTS

(i) HFCs should ensure that, among others, the recovery agents are properly trained to handle with care and sensitivity, their responsibilities, in particular aspects like hours of calling, privacy of customer information, etc.

(ii) In this context, the Reserve Bank of India has requested the Indian Banks' Association to formulate, in consultation with Indian Institute of Banking and Finance (IIBF), a certificate course for Direct Recovery Agents with minimum 100 hours of training. Once the above course is introduced by IIBF, HFCs should ensure that over a period of one year all their Recovery Agents undergo the above training and obtain the certificate from the above institute. Further, the service providers engaged by HFCs should also employ only such personnel who have undergone the above training and obtained the certificate from the IIBF.

(iii) Keeping in view the fact that a large number of agents throughout the country may have to be trained, other institutes / HFC's own training colleges may provide the training to the recovery agents duly ensuring that there is uniformity in the standards of training. However, every agent will have to pass the examination conducted by IIBF all over India.

4. INTIMATING BORROWERS ABOUT RECOVERY AGENTS

(i) To ensure due notice and appropriate authorization, HFCs should inform the borrower the details of recovery agency firms / companies while forwarding default cases to the recovery agency.

(ii) Further, in some of the cases, the borrower might not have received the details about the recovery agency due to refusal / non-availability / avoidance. To ensure identification, it would be appropriate if the agent also carries a copy of the notice and the authorization letter from the HFC along with the identity card issued to him by the HFC or the agency firm / company. Where the recovery agency is changed by the HFC during the recovery process, in addition to the HFC notifying the borrower of the change, the new agent should carry the notice and the authorization letter along with his identity card.

(iii) The notice and the authorization letter should, among other details, also include the telephone numbers of the relevant recovery agency. HFCs should ensure that there is a tape recording of the content / text of the calls made by recovery agents to the customers, and vice-versa. HFCs may take reasonable precaution such as intimating the customer that the conversation is being recorded, etc.

(iv) Up to date details of the recovery agency firms / companies engaged by HFCs may also be posted on the HFC's website.

5. INCENTIVES TO RECOVERY AGENTS

Stiff targets or high incentives may induce recovery agents to use intimidatory and questionable methods for recovery of dues. HFCs are, therefore, advised to ensure that the contracts with the recovery agents do not induce adoption of uncivilised, unlawful and questionable behaviour or recovery process.

6. METHODS FOLLOWED BY RECOVERY AGENTS

A reference is invited to Paragraph 6 of Circular No. NHB (ND)/DRS/POL-No-16/2006 dated September 5, 2006 regarding Guidelines on Fair Practices Code for HFCs. In terms of these guidelines, all the members of the staff or any person authorised to represent the HFC in collection or/and security repossession should follow the guidelines set out, such as:

- a) Customer would be contacted ordinarily at the place of his / her choice and in the absence of any specified place at the place of his / her residence and if unavailable at his / her residence, at the place of business / occupation.
- b) Identity and authority to represent the HFC should be made known to the customer at the first instance.
- c) Customer's privacy should be respected.
- d) Interaction with the customer shall be in a civil manner
- e) HFCs' representatives shall contact customers between 0700 hours and 1900 hours, unless the special circumstances of the customer's business or occupation require otherwise.
- f) Customer's request to avoid calls at a particular time or at a particular place shall be honoured as far as possible.
- g) The time and number of calls and contents of conversation should be documented.
- h) All assistance should be given to resolve disputes or differences regarding dues in a mutually acceptable and in an orderly manner.
- i) During visits to customer's place for dues collection, decency and decorum should be maintained.
- j) Inappropriate occasions such as bereavement in the family or such other calamitous occasions should be avoided for making calls /visits to collect dues.

7. TAKING POSSESSION OF PROPERTY MORTGAGED TO HFCs

(i) It has been observed by the Hon'ble Supreme Court that we are governed by rule of law in the country and the recovery of loans or seizure of assets could be done only through legal means. It is emphasised in this context that HFCs may rely only on legal remedies available under the relevant statutes while enforcing security interest without intervention of the Courts. In this context, it may be mentioned that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the Security Interest (Enforcement) Rules, 2002 framed thereunder have laid down well defined procedures not only for enforcing security interest but also for auctioning the movable and immovable property after enforcing the security interest.

(ii) Where HFCs have incorporated a re-possession clause in the contract with the borrower and rely on such re-possession clause for enforcing their rights, they should ensure that the re-possession clause is legally valid, complies with the provisions of the Indian Contract Act in letter and spirit, and ensure that such repossession clause is clearly brought to the notice of the borrower at the time of execution of the contract. The terms and conditions of the contract should be strictly in terms of the disclosed Recovery Policy and should contain provisions regarding (a) notice period before taking possession (b) circumstances under which the notice period can be waived (c) the procedure for taking possession of the security (d) a provision regarding final chance to be given to the borrower for repayment of loan before the sale / auction of the property (e) the procedure for giving repossession to the borrower and (f) the procedure for sale/auction of the property.

8. USE OF FORUM OF LOK ADALATS

The Honourable Supreme Court has also observed, inter alia, that loans, personal loans, credit card loans and housing loans with less than Rs.10 lakhs can be referred to Lok Adalats. HFCs are encouraged to use the forum of Lok Adalats for recovery of housing loans with less than Rs.10 lakh as suggested by the Honourable Supreme Court.

9. UTILISATION OF CREDIT COUNSELLORS

HFCs should have in place an appropriate mechanism to utilise the services of credit counsellors for providing suitable counselling to the borrowers where they become aware that the case of a particular borrower deserves sympathetic consideration.

10. COMPLAINTS AGAINST THE HFC / ITS RECOVERY AGENTS

(i) Complaints received by NHB regarding violation of the above guidelines and adoption of abusive practices followed by recovery agents of HFCs would be viewed seriously. Supervisory action could be attracted when the High Courts or the Supreme Court pass strictures or impose penalties against any HFC or its Directors/ Officers/ agents with regard to policy, practice and procedure related to the recovery process.

(ii) Where a grievance/complaint has been lodged, HFCs should not forward cases to recovery agencies till they have finally disposed of any grievance/complaint lodged by the concerned borrower. However, where the HFC is convinced, with appropriate proof, that the borrower is continuously making frivolous / vexatious complaints, it may continue with the recovery proceedings through the Recovery Agents even if a grievance/complaint is pending with them. In cases where the subject matter of the borrower's dues might be *sub judice*, HFCs should exercise utmost caution, as appropriate, in referring the matter to the recovery agencies, depending on the circumstances.

(iii) Each HFC should have a mechanism whereby the borrowers' grievances with regard to the recovery process can be addressed. The details of the mechanism should also be furnished to the borrower while advising the details of the recovery agency as at item (iii) above.

11. PERIODICAL REVIEW, MONITORING AND CONTROL

HFCs engaging recovery agents are advised to undertake a periodical review of the mechanism to learn from experience, to effect improvements, and to bring to the notice of the NHB suggestions for improvement in the guidelines.

12. GENERAL

1. HFCs should, at least on an annual basis, review the financial and operational condition of the service providers to assess their ability to continue to meet their outsourcing obligations.

Such due diligence reviews, which can be based on all available information about the service provider should highlight any deterioration or breach in performance standards, confidentiality and security, and in business continuity preparedness.

2. HFCs should have in place a management structure to monitor and control its outsourcing activities. It should ensure that outsourcing agreements with the service providers contain provisions to address their monitoring and control of outsourced activities.

3. Regular audits by either the internal auditors or external auditors of the HFC should assess the adequacy of the risk management practices adopted in overseeing and managing the outsourcing arrangement, the HFC's compliance with its risk management framework and the requirements of these guidelines.

4. In the event of termination of the agreement for any reason, this should be publicized so as to ensure that the customers do not continue to deal with that service provider.

5. HFCs should constitute a Grievance Redressal Machinery within the company and give wide publicity about it through electronic and print media. The name and contact number of designated grievance redressal officer of the HFC should be made known and widely publicised. The designated officer should ensure that genuine grievances of customers are redressed promptly without involving delay. It should be clearly indicated that HFC's Grievance Redressal Machinery will also deal with the issue relating to services provided by the outsourced agency.

5.1 Generally, a time limit of 30 days may be given to the customers for preferring their complaints / grievances. The grievance redressal procedure of the HFC and the time frame fixed for responding to the complaints should be placed on the HFC's website.

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