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## UNETHICAL LENDING PRACTICES FLAGGED

By [Chris Kennedy](#) on 5 August 2011 [0 comments](#)

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Some lenders have been taking advantage of regulatory loopholes to either recommend clients start up a self-managed super fund (SMSF) or obtain a declaration of business purposes to circumvent the National Consumer Credit Protection (NCCP) Act, according to industry sources.

CPA Australia has formally advised its members that some lenders are seeking declarations from accountants that the purpose of a loan or lease will be predominately for business use, which helps a lender form a view that the loan is outside the requirements of the NCCP Act.



CPA Australia has advised all its members not to provide such a declaration, and if they do they should make rigorous enquiries beforehand.

"You can assist your client in the lending process by providing them upon request, a statement on their financial position or other factual information about your client's finances which you can verify," the guidance states.

CPA Australia financial planning technical adviser Keddie Waller said the requests for false declarations were most likely to come from smaller lenders and pertain to vehicle loans.

A false declaration may have legal ramifications and in turn affect a member's professional indemnity insurance, CPA Australia stated.

chief executive Phil Naylor said a false declaration would represent a straight breach of the Act, and he would be horrified if such things were happening.

"One of the things the NCCP Act was designed to do was to overcome those false business declarations that were made to indicate that the loan was for business purposes when it wasn't," he said.

SMSF Loans director Craig Morgan said there was absolutely no question that some brokers and 'property spruikers' were crossing the line and advising people to establish an SMSF to invest in property.

To make people aware that it can be done is fine, but when someone without an Australian Financial Services Licence (AFSL) suggests an SMSF or explains how to establish one in order to help someone afford a property, that is completely inappropriate, Morgan said.

He added that it was an interesting grey area, because under the Corporations Act an SMSF is not a financial product. But to set one up and buy a property, the client would have to roll over their superannuation, which enters into financial advice territory, he said.

"If not wholly illegal, and certainly [the Australian Security and Investments Commission] is taking a dim view of it, it's inappropriate that an unqualified person starts telling people what they should be doing with their superannuation," he said.

Naylor said the MFAA had asked brokers to exercise caution in these areas, because they involve different risks and risk appetites - and unless brokers have an AFSL, they are treading in very dangerous territory. He recommended those without an AFSL steer clear of discussing SMSFs altogether.