

An order that is made regarding a licence holder reflects a situation at a particular point in time. The status of a licence holder can change. Readers should check the current status of a person's or entity's licence on the [Licensing Link](#) section of FSCO's website. Readers may also wish to contact the person or entity directly to get additional information or clarification about the events that resulted in the order.



REGARDING the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c.29 (the "Act"), in particular sections 7, 19, 21, 38 and 39

AND REGARDING Mi Tierra Realty Inc.

INTERIM ORDER TO SUSPEND LICENCE
and
NOTICE OF PROPOSAL TO REVOKE LICENCE
and
NOTICE OF PROPOSAL TO IMPOSE ADMINISTRATIVE
MONETARY PENALTY

Mi Tierra Realty Inc. was issued a mortgage brokerage license on June 23, 2008, under the Act.

INTERIM ORDER TO SUSPEND LICENCE

Section 19(1) of the Act provides that the Superintendent of Financial Services ("Superintendent") may, in appropriate circumstances, revoke a mortgage brokerage licence. Section 21 of the Act provides that where the Superintendent proposes to revoke a licence, the Superintendent shall give written notice of the proposal to the mortgage brokerage, including reasons for the proposal. A notice of proposal to revoke Mi Tierra Realty Inc.'s licence is set out below.

Section 19(3) of the Act provides that, if in the Superintendent's opinion the interests of the public may be adversely affected by any delay in the revocation of a licence as result of the steps required by section 21, the Superintendent may, without notice, make an interim order suspending the licence and may do so before or after giving the notice required by section 21.

In the Superintendent's opinion, the interests of the public may be adversely affected by any delay in the revocation of Mi Tierra Realty Inc.'s licence for the following reasons:

1. Mortgage brokerages are required to have errors and omissions ("E&O") insurance pursuant to section 7(4) of the Act and section 42 of Regulation 188/08;
2. The Superintendent has approved a number of insurers for providing E&O coverage to brokerages under the Act. The list can be found at:
http://www.fSCO.gov.on.ca/english/licensing/MB_EOinsurance.asp;
3. The Superintendent conducted an audit and found that Mi Tierra Realty Inc. does not have E&O coverage from one of the approved providers;

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Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto
ON M2N 6L9

4. The Superintendent requested further information from Mi Tierra Realty Inc. regarding Mi Tierra Realty Inc.'s E&O coverage in light of the Superintendent's findings as follows. All contacts with the brokerage or its representatives were to an email address, mailing address and telephone number provided by the brokerage or its representatives and on file:
 - a. By email sent on November 26, 2008. The email stated that an email response was required by December 3, 2008. The response was to include a detailed explanation of the reasons for the lack of E&O coverage; supporting insurance or other documentation, if any; and the amount of business conducted by the brokerage since July 1, 2008;
 - b. By registered letter dated December 12, 2008. The letter stated that a written response was required by December 31, 2008. The letter also indicated that the response must include the information set out in the preceding paragraph;
 - c. By telephone call to Mi Tierra Realty Inc. on January 22, 2009. Personnel of the Financial Services Commission of Ontario on the Superintendent's behalf spoke with a representative of the brokerage.
5. Mi Tierra Realty Inc. did not provide the response as required by the above communication;
6. Mi Tierra Realty Inc. does not have the required E&O insurance and has thereby contravened a requirement established under the Act;
7. E&O insurance is a statutorily-mandated measure to protect the public against potential errors and omissions committed by a brokerage and its brokers and agents. The absence of E&O insurance during any period in time puts the public directly at risk of not being able to recover for losses arising from errors and omissions occurring during that period;
8. As long as the licence is not suspended, Mi Tierra Realty Inc. continues to be authorized to deal or trade in mortgages with the public;
9. Accordingly, the Superintendent is of the opinion that the public is at risk and will continue to be at risk until Mi Tierra Realty Inc.'s licence is suspended or Mi Tierra Realty Inc. obtains E&O insurance;
10. Further, the Superintendent has reasonable grounds to believe that Mi Tierra Realty Inc. is no longer suitable to be licensed, because the brokerage's past conduct shows the brokerage to be ungovernable. Failure to respond to the regulator is a breach of the Act and demonstrates ungovernability;
11. For all of the above reasons, the Superintendent is of the opinion a delay in the revocation of Mi Tierra Realty Inc.'s licence would adversely affect the public interest.

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ORDER

It is ordered that Mi Tierra Realty Inc.'s licence is immediately suspended, pursuant to section 19(3) of the Act.

During the suspension Mi Tierra Realty Inc. is not authorized to carry on the business of dealing in mortgages in Ontario or in the business of trading on mortgages in Ontario, to deal in mortgages in Ontario or trade in mortgages in Ontario.

Pursuant to section 17(3)(b) of the Act, the licences of all mortgage brokers and agents authorized by Mi Tierra Realty Inc. to deal in mortgages or trade in mortgages on its behalf are also suspended.

The Interim Order takes effect immediately and will remain in effect until the expiry of the period for requesting a hearing about the Superintendent's Notice of Proposal (15 days after the Notice is received, or deemed to have been received). If Mi Tierra Realty Inc. requests a hearing before the Financial Services Tribunal ("Tribunal"), the Superintendent may extend the interim order until the proposal is finally determined.

Pursuant to sections 48(4) and 49(1) and (2) of the Act, every person who fails to comply with an order made under this Act is guilty of an offence and every individual convicted of an offence under the Act is liable to a fine of not more than \$100,000 or imprisonment for a term of not more than a year or both a fine and imprisonment. Every corporation convicted of an offence under the Act is liable to a fine of not more than \$200,000.

Pursuant to section 48(5) of the Act, every director or officer of a corporation that commits an offence under this Act who directed, authorized, assented to, acquiesced in or participated in the commission of the offence, or who failed to take reasonable care to prevent the corporation from committing the offence, is guilty of an offence, whether or not the corporation is prosecuted or convicted.

Section 48(6) provides that every partner of a partnership and every individual who is a member of the directing body of an entity, other than a person or partnership, who directed, authorized, assented to, acquiesced in or participated in the commission of an act or omission by the partnership or entity which, if committed by a person, would be an offence under the Act, is guilty of an offence.

NOTICE OF PROPOSAL TO REVOKE LICENCE

TAKE NOTICE THAT pursuant to sections 19 and 21 of the Act, the Superintendent is proposing to revoke Mi Tierra Realty Inc.'s mortgage brokerage licence, because Mi Tierra Realty Inc. is contravening or failing, or has contravened or failed, to comply with the requirement to maintain E&O insurance in a form approved by the Superintendent. The Superintendent also believes that Mi Tierra Realty Inc. is no longer suitable to be licensed because the past conduct of a director or officer of the Mi Tierra Realty Inc. affords reasonable grounds for the belief that the business of the brokerage will not be carried on in

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accordance with the law and with integrity and honesty; and because a director or officer of Mi Tierra Realty Inc. made a false statement or provided false information to the Superintendent with respect to the brokerage's application for a licence. The reasons for the proposal to revoke the licence will be served with this Notice.

AND TAKE NOTICE THAT section 21(3) of the Act provides that the mortgage brokerage may request a hearing before the Tribunal in respect of this Notice **within 15 days** after this Notice is received, or deemed to have been received. The request for a hearing shall be in writing (Form 1, Request for Hearing, sent to you along with this Notice) and shall be mailed or delivered:

TO: Financial Services Tribunal,
14th floor
5160 Yonge Street, Box 85
Toronto ON M2N 6L9

Attention: Registrar

Fax: 416.226.7750

AND TO: Superintendent of Financial Services
Senior Manager, Licensing
Licensing and Marketing Conduct Division
5160 Yonge Street, Box 85
Toronto ON M2N 6L9

If you do not request a hearing or do not make the request in accordance with section 21(3), section 21(7) of the Act provides that the Superintendent may carry out the proposal to revoke the licence.

If you request a hearing, section 21(4) of the Act provides that the Tribunal may, by order, direct the Superintendent to carry out the proposal, with or without changes, or substitute its opinion for that of the Superintendent and the Tribunal may impose such conditions as it considers appropriate in the circumstances.

At the hearing, the good character, propriety of conduct or competence of the officers or directors or the partners or the proprietor of the brokerage may be in issue.

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure of the Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22. The Rules of Practice and Procedure are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416.590.7294, or toll free at 1.800.668.0128 ext. 7294.

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NOTICE OF PROPOSAL TO IMPOSE
AN ADMINISTRATIVE MONETARY PENALTY
PURSUANT TO SECTIONS 38 and 39 OF THE ACT

Section 38 of the Act provides that an administrative penalty may be imposed under section 39 for either of the following purposes: 1. To promote compliance with the requirements established under the Act; 2. To prevent a person or entity from deriving, directly or indirectly, any economic benefit as a result of contravening or failing to comply with a requirement established under the Act.

The Act provides at section 39(1) that the Superintendent may in appropriate circumstances, impose an administrative penalty. Section 39(2) of the Act provides that where the Superintendent proposes to impose an administrative penalty, the Superintendent shall give written notice of the proposal, including details of the contravention or failure to comply, the amount of the penalty and the payment requirements.

TAKE NOTICE THAT pursuant to section 39 of the Act, the Superintendent is proposing to impose an administrative penalty on Mi Tierra Realty Inc. **in the amount of \$1000.00**. The Superintendent is satisfied that Mi Tierra Realty Inc. is contravening or not complying with or has contravened or not complied with a requirement under the Act, namely the requirement to have E&O insurance pursuant to section 7(4) of the Act and section 42 of Regulation 188/08. The details of the contravention or failure to comply will be served with this Notice. •

AND TAKE NOTICE THAT sections 39(2) and 39(5) of the Act provides that the mortgage brokerage may request a hearing before the Tribunal in respect of this Notice **within 15 days** after this Notice is received, or deemed to have been received. The request for a hearing shall be in writing (Form 1, Request for Hearing) and shall be mailed or delivered to the Tribunal at the address provided above, and to the Superintendent of Financial Services, Senior Manager, Licensing, at the address provided above.

If you do not request a hearing or do not make the request in accordance with section 39(5), section 39(7) of the Act provides that the Superintendent may carry out the proposal to impose an administrative penalty. If so, the Superintendent will issue an Order imposing an administrative penalty, which will be payable within 30 days of receipt of the Order or such longer time as may be specified in the Order. You will also receive information as to where and how to make your payment.

If you request a hearing, section 39(6) of the Act provides that the Tribunal may, by order, direct the Superintendent to carry out the proposal, with or without changes, or substitute its opinion for that of the Superintendent.

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure of the Financial Services Tribunal.

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You may be furnished with further or other particulars in respect of any matter herein or in respect of any other matter, including further grounds to suspend the licence or to impose an administrative penalty.

DATED at Toronto, Ontario, *February 17*, 2009.



Robert Christie
Superintendent of Financial Services

TO: Mi Tierra Realty Inc.
398 Horsham Ave.
Toronto ON M2R 1G9

Attention: Mr. Julio Manfrini, Principal Broker

AND TO: Swapna Chandra
Financial Services Commission of Ontario
5160 Yonge Street, Suite 1700
Toronto ON M2N 6L9
Tel: # (416) 590-2022
Fax: # (416) 590-7556