March 28, 2008

Mortgage Brokerages and Administrators Errors & Omissions Insurance Guidelines

The following guidelines set out the minimum requirements for mortgage brokerage and mortgage administrator Errors and Omissions (E&O) insurance policies with fraud endorsement, approved by the Superintendent for licensing purposes.

Upon receipt of the appropriate Insurer acknowledgement and undertaking that the policy will be interpreted in accordance with the terms of all the minimum requirements set out in this document, the Superintendent may accept a proposed policy as proof that a brokerage or administrator has complied with the requirement.

1. The word “insured” includes everyone engaged by the insured in connection with his or her work preformed for the insured firm in, including licensed mortgage brokers and agents who the brokerage authorizes to trade or deal mortgages on the brokerage’s behalf, contract employees and former employees.

2. The assignment clause of the policy ensures that the legal representatives of the insured are covered in the event of the insured’s bankruptcy, insolvency, competency or death automatically, without notice and at no extra charge as long as the policy is in place.

3. The policy covers an Ontario licensed mortgage brokerage and/or mortgage administrator for all acts arising from the business of trading, dealing and/or administering mortgages as defined under the Mortgage Brokerages, Lenders and Administrators Act

4. The policy covers all claims, subject to standard exclusions, made during the term of the policy for acts occurring at any previous time, providing the insured had no prior knowledge. The policy will not impose a retroactive date exclusion.

5. An automatic minimum 12 month extended reporting period (ERP) will be provided if the insurer cancels or refuses to renew the policy. However, if the named insured cancels or does not renew its policy and does not replace it with another policy, the extended reporting period may be reduced to 60 days.

   The acceptance by the insured of another policy with a different carrier relieves the insurer of any obligation it may have to provide an ERP.

   If the ERP is triggered, it will be provided at no extra charge to the name insured or to his legal representatives, as the case may be.

6. Where the terms of the policy conflict with any applicable statutes, the policy is amended to comply with the applicable statute.

7. The insurance coverage must be sufficient to pay a minimum of $500,000 in respect of any one occurrence involving the brokerage and $1 million in respect of all occurrences during a 365 day period involving the insured brokerage and/or administrator.

8. The insurer will provide defense for all claims covered by the policy, including groundless allegations.

9. Notice to the insurer of a claim should be made by the brokerage/administrator, or by anyone, including FSCO, should the brokerage/administrator be unable or unwilling to report a claim.

10. Injured third parties will have a direct right of action against the insurer under the policy, without affecting the insurers right to adjudicate the claim in accordance with the policy's term and conditions and the right of the insurer's right of action against the insured.

11. The insurer is the first payer on claims to injured third parties and will collect the deductible directly from the insured if a deductible applies.

12. Incidents which might lead to a potential claim must be notified to the insurer during the policy term and will be covered under the policy in place when the incident was reported, even if the claim is made after the expiry date of the policy.

13. Regarding the "Fraud" endorsement:

    a. The policy certificate will include additional coverage for loss resulting from fraudulent acts and will operate to protect the public within the minimum limits required for the Errors and Omissions policy (i.e. up to $500,000 per claim/ $1,000,000 in the aggregate, including the insured's obligation for deductible amounts). The insurer will have the right to subrogate against the insured.

    b. Claims under the endorsement may be made in the same manner as claims made under the policy, including notice of claim to the insurer and a direct right of action for injured third parties.

14. The policy contains an endorsement that stipulates the Superintendent must be given written notice of any cancellation prior to expiry date of such policy and the notice of cancellation will not become effective until 30 days after the receipt of such notice by the Superintendent.

Additionally, the written confirmation received from the Insurer must contain several acknowledgements and undertakings, namely:

- The Insurer must acknowledge that at no time will any policy issued fall short of the standards set out in the minimum requirements set out in the minimum requirements above, including and acknowledgement that the FSCO endorsement will be automatically added to every policy issued.

- The Insurer must undertake that all interpretations of any policy term will never produce a result that is less than the minimum requirements set out in this letter and will always be deemed to result in an interpretation in accordance with at least the appropriate minimum requirements.

- The Insurer must acknowledge that, subsequent to approval of its policy by FSCO, the Insurer will not make or cause to be made any material changes limiting, restricting or reducing the coverages in its policy in any respect without prior notice to, and the approval of FSCO.

WE HEREBY ACKNOWLEDGE RECIEPT OF THE REQUIREMENTS AND AGREE WITH ALL THE MINIMUM REQUIREMENTS AS SET OUT ABOVE.

Signature: ________________________ Date: ______________________

Position: ________________________

Insurer: ________________________