



Financial Services
Commission
of Ontario

Commission des
services financiers
de l'Ontario

Duty to Ensure Product Suitability and Duty to Disclose Risks



A Few Notes Before We Get Started

- **Minimum Screen Resolution - 1024 x 768**
- **How to Ask Questions**
 - Type in your question in the “Question” field
 - Send an email to infosessions@fSCO.gov.on.ca
- **When and How Questions Will be Answered**
- **Webinar Recording**



Webinar Overview

- Desired Outcomes
- Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLA Act) and regulations covered in this webinar:
 - Duties regarding suitability of a mortgage or mortgage investment for a borrower, lender or investor.
 - Duties to disclose material risks of a mortgage or mortgage investment to a borrower, lender or investor.
 - Other duties to the borrower, lender or investor.
- Conclusion



Desired Outcomes

Borrowers, lenders and investors making informed decisions

- A mortgage brokerage must:
 - Take reasonable steps to present a suitable mortgage product, having regard to the needs and circumstances of the borrower, lender or investor.
 - Disclose material risks in writing, using plain language that is brief and clear.



MBLA Act & Regulations

Disclosure of Material Risks



MBLA Act & Regulations

- **Duty to disclose material risks** (*Mortgage Brokerages: Standards of Practice* regulation, sec. 25)
 - Disclose risks in writing of each mortgage or mortgage investment that is presented for consideration to a borrower, lender or investor.
 - Obtain written acknowledgement of the disclosure.
 - Not applicable if a lender or investor is a member of a designated class of lenders and investors.



Disclosure of Material Risks

- **Step 1: Think about what risks the mortgage product creates for the borrower, lender or investor.**
 - What risks are:
 - associated with the long-term?
 - similar to other long-term lending or investment products?
 - associated with different types of mortgages?



Disclosure of Material Risks

- **Step 2 – Inform the borrower, lender or investor of risks in writing and provide an explanation.**
 - Ensure the borrower, lender or investor understands the risks associated with the product presented.
 - Make it easy to understand.
 - Use plain language that is clear, concise and logical.



Disclosure of Material Risks

- **Step 3 – Get a written acknowledgment from the borrower, lender or investor.**



Disclosure of Material Risks

- What are examples of material risks that you would disclose about a mortgage product to a borrower, lender or investor?



MBLA Act & Regulations

**Suitability of a Mortgage Product for
a Borrower, Lender or Investor**



MBLA Act & Regulations

- **Duty regarding suitability of a mortgage for a client**
(*Mortgage Brokerages: Standards of Practice* regulation, sec. 24)
 - Take reasonable steps to ensure a mortgage or investment in a mortgage:
 - is suitable with regard to the client's needs and circumstances.
 - will not create undue risk for the borrower, lender or investor.
 - Not applicable if your client is a mortgage brokerage or financial institution.



What Makes a Mortgage Product Suitable?

Determine the borrower's needs and circumstances

- Know your client – ask the right questions.
- A suitable mortgage or investment does not expose the borrower, lender or investor to undue risk.
- Does it fit the borrower's, lender's or investor's risk tolerance?



What Makes a Mortgage Product Suitable?

What are “reasonable steps”?

- Step 1 - You must disclose your role to a prospective borrower or lender.
- Step 2 - Ask the right questions to determine the client’s needs and circumstances.
- Step 3 - Think about what makes the mortgage product suitable for that client.
- Step 4 - Document your activities.



What Makes a Mortgage Product Suitable?

Know your mortgage products

- Understand the range of products that are available to you for your clients.
- If you do not have adequate expertise for the client's needs, you can:
 - network through your brokerage
 - co-broker
 - make a referral



What Makes a Mortgage Product Suitable?

- What are examples of factors you consider for suitability of a mortgage product for a borrower, lender or investor?



MBLA Act & Regulations

Other Duties



MBLA Act & Regulations

- **Duty to verify a client's identity** (*Mortgage Brokerages: Standards of Practice* regulation, sec. 10)
 - Take reasonable steps to verify the identity of each borrower, lender and investor to whom a mortgage or investment is presented for consideration.



MBLA Act & Regulations

- **Duty to verify the other party's identity** (*Mortgage Brokerages: Standards of Practice* regulation, sec. 11)
 - If you present a mortgage to a:
 - **borrower**, verify the identity of the **lender**.
 - **lender**, verify the identity of the **borrower**.
 - **investor**, verify the **identity of other investors**.



MBLA Act & Regulations

- **Duty to disclose cost of borrowing to borrowers**
(*Cost of Borrowing and Disclosure to Borrowers* regulation)
 - Disclosure must be written in plain language and be clear, concise and logical.



MBLA Act & Regulations

- **Duty to disclose cost of borrowing to borrowers (cont'd)**
 - **As of January 1, 2009**, provide cost of borrowing disclosure at least two business days before the earliest of the following:
 - The day the borrower makes a payment (other than a disbursement).
 - The day the borrower enters into a mortgage agreement.
 - The day the borrower incurs any obligation in relation to the mortgage.
 - **Before January 1, 2009**, it is 72 hours before the borrower is asked to sign a commitment or enter into the mortgage.



MBLA Act & Regulations

- **Additional disclosure duties: term and other mortgages** (*MBLA Act, sec. 24 and 25*)
 - Disclose all terms and conditions.
 - Specify if a portion of the cost of borrowing (COB) is rebated and, if so, how it is calculated.
 - Disclose the charges and penalties for failure to pay a mortgage at maturity, or failure to pay an installment when due.



MBLA Act & Regulations

- **Additional disclosure duties: term and other mortgages (cont'd)**
 - Disclose the charges to the borrower upon entering the agreement.
 - Disclose the borrower's rights and obligations.



Role of the Principal Broker

- **Ensures compliance with the Act and regulations**
 - Ensures the suitability of all mortgage products presented.
 - Makes sure there are appropriate risk disclosures for all mortgage products presented.
 - Ensures there is proper verification of identities of the parties involved in transactions represented by the brokerage.



Approach of the Regulator

- It is the responsibility of each brokerage, and particularly its principal broker, to ensure that an effective compliance program is in place.
- Compliance program should detect and monitor suitability and risk disclosure requirements within the organization.



Approach of the Regulator

- FSCO's role is to ensure the industry is complying with its legal requirements.



Your Next Steps

1. Do you know what your obligations are under the MBLA Act for ensuring suitability and disclosing material risks?
2. Have you made arrangements for the training of your brokers and agents on these requirements?
3. How do you intend to ensure suitability is achieved and documented disclosure of material risks requirements are met?



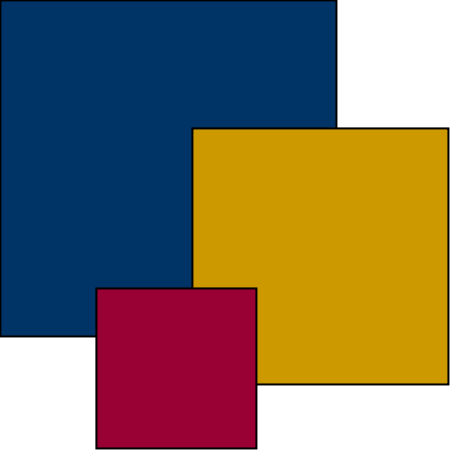
Other Resources

- FSCO Website: www.fSCO.gov.on.ca
- Compliance Checklists
- Mortgage Broker e-Info Newsletter
- MBLA Act and Regulations
- Industry Associations

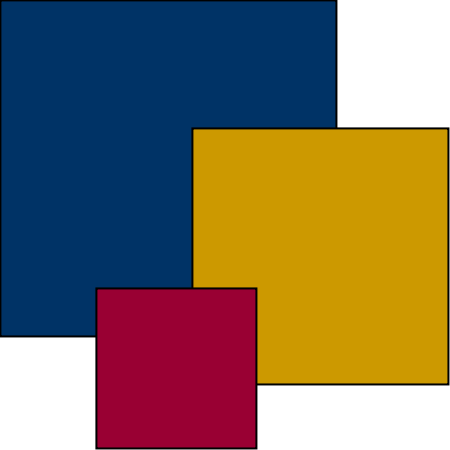


Conclusion

- Ensuring the suitability of a mortgage or mortgage investment and the disclosure of material risks is intended to enable borrowers, lenders and investors to make informed decisions.



Questions and Answers



Duty to Ensure Suitability and Disclosure of Risks

Thank you