



Financial Services
Commission
of Ontario

Commission des
services financiers
de l'Ontario

Disclosure and Managing the Disclosure of Conflicts of Interest



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 Outcome**
- **Disclosure of Conflict of Interest**
 - What is Conflict of Interest?
 - Identifying a Conflict of Interest
 - MBLA Act and Regulations
 - Disclosure of potential conflicts of interest
 - Disclosure of brokerage's relationships
 - Disclosure of fees
 - Clarity of disclosure
 - Deadline for disclosures
 - Steps to Take



Webinar Overview (cont'd)

- **Management of Disclosure of Conflict of Interest**
 - Responsibilities of the Principal Broker
 - Disclosure
 - Training brokers and agents
 - Compliance
- **Approach of the Regulator**
- **Your Next Steps**
- **Other Resources**
- **Conclusion**



Desired Outcome

- **Disclosure of conflicts of interest is intended to:**
 - Enable borrowers, lenders and investors to assess if a brokerage, administrator, broker or agent may be putting their own interests ahead of those of the client.



What is Conflict of Interest?

Where the brokerage, administrator, broker or agent has or appears to have an incentive to place their own interests ahead of the interests of the borrower, lender or investor.



Identifying a Conflict of Interest

- **Ask yourself:**
 - Would the mortgage product offered be different if a conflict of interest did not exist?
 - Would it appear to a reasonable and informed third party that the brokerage, broker, agent or administrator had an incentive to act other than in the best interest of the borrower, lender or investor?



MBLA Act and Regulations

- **Disclosure of potential conflicts of interest**
(*Standards of Practice for Brokerages* regulation, sec. 27)
 - Any conflict of interest of a brokerage, or its brokers/agents, must be disclosed in writing by the brokerage.
 - The disclosure must be acknowledged in writing by the borrower, lender or investor.



MBLA Act and Regulations

- Similar disclosure requirements exist for conflicts of interests of administrators under the *Standards of Practice for Administrators* regulation, sec. 20.



MBLA Act and Regulations

- **Disclosure of brokerage's roles** (*Standards of Practice for Brokerages* regulation, sec. 18)
 - The brokerage must disclose in writing to a prospective borrower/lender information about its role, i.e. whether/when it is representing:
 - the lender, not the borrower;
 - the borrower, not the lender;
 - both the lender and borrower, not giving preference to the interests of either.



MBLA Act and Regulations

- Similar disclosure requirement exists for administrators to disclose in writing to a lender/investor, the relationship, if any, with each borrower under the *Standards of Practice for Administrators* regulation, sec. 19.



MBLA Act and Regulations

- **Disclosure of brokerage's relationship with lenders** (*Standards of Practice for Brokerages* regulation, sec. 19)
 - The brokerage shall disclose in writing to the borrower the number of lenders on whose behalf the brokerage has acted.
 - Indicate if the brokerage itself was a lender.



MBLA Act and Regulations

- **Disclose upon request of the borrower, in writing:**
 - If the brokerage was a lender of more than 50% of the total number of mortgages and mortgage renewals completed by the brokerage.
 - The name of a lender, if any, that had more than 50% of the total number of mortgages and mortgage renewals completed by the brokerage.



MBLA Act and Regulations

- **Disclosure of fees, etc.** (*Standards of Practice for Brokerages regulation, sec. 21, 22, 23*)
 - Brokerage must disclose in writing to the borrower that it has received, may receive, or will receive, a fee, incentive, remuneration or any other benefit, from another person or entity, directly or indirectly.



MBLA Act and Regulations

- The brokerage must also disclose the basis for calculating any fee/remuneration, the nature of any other benefit, the identify of the other person/entity and any incentive payable to a broker/agent.
- Amounts do not need to be disclosed.
- Disclosure must be acknowledged in writing by the borrower.



MBLA Act and Regulations

- Similar disclosure requirement exists for administrators under the *Standards of Practice for Administrators* regulation, sec. 15, 16 and 17.



MBLA Act and Regulations

- **Clarity of disclosure** (*Standards of Practice for Brokerages* regulation, sec. 33)
- Written disclosures and acknowledgements must be expressed:
 - in plain language that is brief and clear;
 - in a manner that readily conveys the information to be disclosed, e.g. any conflict of interest.
- Similar disclosure requirement exists for administrators under the *Standards of Practice for Administrators* regulation, sec. 21.



MBLA Act and Regulations

- **Deadline for disclosures to borrowers**
(*Standards of Practice for Brokerages* regulation, sec. 35)
- Written disclosure must be provided no later than two business days before the mortgage commitment or mortgage instrument is signed (whichever is earlier).
- Time requirement can be reduced to anytime before the mortgage instrument is signed, with written consent from the borrower.



MBLA Act and Regulations

- **Deadline for disclosures to lenders and investors**
(*Standards of Practice for Brokerages* regulation, sec. 36)
- Written disclosure must be provided no later than two business days before the earliest of the five events described in section 36.
- Time requirement can be reduced to one day upon receipt of written consent from the lender or investor.
- Similar disclosure requirement exists for administrators under the *Standards of Practice for Administrators* regulation, sec. 22.



Steps to Take for Disclosure of Conflicts of Interest

- Step 1:** Determine whether a perceived or actual conflict of interest situation exists.
- Step 2:** If so, disclose in writing the actual or perceived conflict of interest in a plain, clear and brief manner. If in doubt, make the disclosure.
- Step 3:** Be willing to explain the actual or potential conflict of interest to your client.
- Step 4:** Have your client acknowledge in writing the conflict of interest within legislated timelines.
- Step 5:** Provide a copy of the acknowledgement to the client and retain a copy for the brokerage's file.



Management of Disclosure of Conflicts of Interest

Brokerages are required to comply with the law

- Principal Broker is ultimately responsible for managing disclosures affecting the brokerage and its brokers and agents.



Responsibilities of the Principal Broker

Disclosure of conflicts of interest, roles and relationships

- Ensure disclosure requirements are developed and incorporated in the brokerage's policies and procedures.



Responsibilities of the Principal Broker

- What are examples of potential conflicts of interest that may exist?



Responsibilities of the Principal Broker

Compliance regarding conflicts of interest

- Ensure that any contravention of the law and/or policies and procedures are properly dealt with.



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 to detect and monitor disclosure requirements within the organization.
- FSCO's role is to ensure the industry is complying with its legal requirements.
- **TIP:** When in doubt, disclose the potential conflict of interest to the client.



Your Next Steps

1. Do you know what your obligations are under the MBLA Act for disclosing conflicts of interest?
2. Have you made arrangements for training your brokers and agents on disclosure requirements?
3. How do you intend to document disclosure of conflicts of interest?
4. When in doubt, disclose the potential conflict of interest.



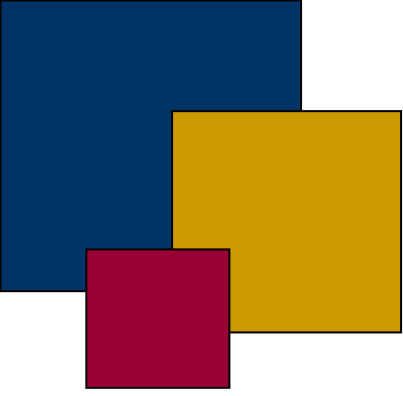
Other Resources

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



Conclusion

The disclosure of a potential or actual conflict of interest is intended to enable borrowers, lenders and investors to make informed decisions.



Questions and Answers



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Thank You