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The Mortgage Broker e-Info Newsletter provides updates on the implementation of Ontario's new Mortgage Brokerages, Lenders and Administrators Act, 2006, regulations, and new education requirements for mortgage brokers and agents.

The Newsletter is produced and distributed by the Financial Services Commission of Ontario (FSCO).

Preparing for the New Regulations that Go into Effect on January 1, 2009

On January 1, 2009, several new regulations that cover standards of practice, reporting requirements, cost of borrowing, and administrative penalties will go into effect. In order to be compliant with the [Mortgage Brokerages, Lenders and Administrators Act, 2006](#) (MBLA Act) and regulations, Mortgage Brokerages and Administrators need to meet the new business requirements starting January 1, 2009, along with others that are already in effect.

Annual Information Return

An important part of the new mortgage broker legislation is the requirement to report specific information to FSCO on an annual basis. [Ontario Regulation 193/08](#) lists the reporting requirements under subsection 29(1) of the MBLA Act for Mortgage Brokerages and Administrators.

By March 31st of each year, every Mortgage Brokerage and Administrator must provide FSCO's Superintendent a completed Annual Information Return Form (AIR Form) for the previous year.

The AIR Form, which needs to be completed online, is designed to collect information from Mortgage Brokerages and Administrators about their business practices, internal controls, and market conditions. The information will be used to assist FSCO in its risk assessment and oversight of Mortgage Brokerages and Administrators.

As the Principal Broker is responsible and accountable for the Mortgage Brokerage's compliance, the AIR Form must be signed by the Principal Broker. Prior to submitting the AIR Form, please ensure the form is carefully reviewed for accuracy and that the Principal Broker has signed the attestation.

It is important to remember that providing false, misleading or incomplete information on the AIR Form is an offence under the MBLA Act, and may provide sufficient grounds to revoke a licence, result in prosecution, or lead to other regulatory sanctions.



Investor/Lender Disclosure and Renewal Form

Representatives of the Independent Mortgage Brokers Association (IMBA) and the Canadian Association of Accredited Mortgage Professionals (CAAMP) are working on developing new forms to replace the current [Renewal Form](#) and [Investor/Lender Disclosure Statement for Brokered Transactions](#). Mortgage Brokerages and Administrators can continue using the existing forms on FSCO's website until the new forms become available in 2009.

Replacement for Form B

In the near future, FSCO plans to release a replacement for [Form B - Report of Public Accountant to the Financial Services Commission of Ontario](#).

Cost of Borrowing Disclosure

Each Mortgage Brokerage is required to provide borrowers with a disclosure statement that contains required information on the cost of borrowing. A Mortgage Brokerage can develop its own form, or it may choose to use one of the *Cost of Borrowing Disclosure Forms* currently being developed by the Mortgage Brokerage industry associations and vendors.

Audited Financial Statements for Mortgage Administrators

Each Mortgage Administrator must provide FSCO with the following documents within 90 days of its fiscal year end:

- Audited financial statements for the year prepared in accordance with the Generally Accepted Accounting Principles, as set out in the *Handbook of the Canadian Institute of Chartered Accountants* and audited by a licensed public accountant.
- The auditor's report on books, records and accounts of the Mortgage Administrator for the year.
- The auditor's report about the Mortgage Administrator's trust account, as well as assets and liabilities under administration for the year.

Important Notes:

- The auditors' reports about the books, records and accounts, including the Mortgage Administrator's trust account, must be prepared by the same person who audits the financial statements for the year, in accordance with section 3(3) of [Ontario Regulation 193/08](#).

Information on Other Matters

- **Establishing a trust account:** Notify FSCO within five days of establishing a trust account.
- **Location of records:** Notify FSCO if your Mortgage Brokerage or Administrator keeps records at a location other than its principal place of business in Ontario, and specify where the records are kept.



Reporting Other Changes

Mortgage Brokerages, Administrators, Brokers and Agents must notify and provide particulars to FSCO within five days of the following changes:

- A change of address for your principal place of business or any other office that is open to the public for service.
- If any offices in Ontario are opened or closed.
- A change in your mailing address, e-mail address, telephone number, fax number or other contact information.
- A change in a Director, Officer, Partner or Principal Broker.
- If a Mortgage Broker or Agent is no longer authorized to act on behalf of your Mortgage Brokerage.

Mortgage Brokerages and Administrators must immediately notify FSCO if their errors and omissions insurance coverage is cancelled or not renewed.

Under the MBLA Act, Mortgage Administrators must have a financial guarantee of at least \$25,000.

Unimpaired working capital (excess funds once current liabilities are deducted from current assets) is an acceptable financial guarantee, unless an arrangement has been otherwise approved by the Superintendent. Administrators should note that assets falling under general security agreements will not be considered unimpaired for the purpose of this guarantee; remaining funds must not be subject to any known charges or claims.

The Administrator must maintain the requisite level of unimpaired working capital at all times, or immediately notify FSCO if the level falls below the minimum required amount or the requirements under the approved arrangement are not met.

Administrative Penalties for Non-Compliance

Sections 38, 39 and 40 of the MBLA Act give FSCO's Superintendent the power to impose administrative penalties in cases where a person or entity has not complied with the requirements under the MBLA Act and regulations.

The main purpose of administrative penalties is to encourage compliance with regulatory requirements. Section 38 of the MBLA Act states the reasons for which a penalty can be imposed — namely to promote compliance, and to prevent a licensee from deriving economic benefit for non-compliance. Administrative monetary penalties are also alternative penalties to more complex legal processes involving tribunals and quasi-judicial procedures, such as cease and desist actions.

Mortgage Brokerages, Brokers and Agents who are not in compliance with the MBLA Act are subject to the penalties described in this newsletter.



There are two kinds of administrative penalties — summary (fixed) and general (variable). Fixed penalties are set out in [Ontario Regulation 193/08](#), which specifies the penalty amount for each contravention of the reporting requirements in that regulation. The penalties range from \$500 to \$1000 for Mortgage Brokerages or Administrators, depending on what section of the regulation was contravened, and are \$250 for Mortgage Brokers or Agents.

Variable penalties may be imposed, up to \$10,000 for Mortgage Brokers or Agents or \$25,000 for Mortgage Brokerages or Administrators, at the discretion of the Superintendent. Variable penalties may be imposed for contravening any other provisions under the MBLA Act (i.e. other than reporting requirements). The Superintendent will consider factors such as the degree to which the contravention was intentional, reckless or negligent; the extent to which others were harmed or potentially harmed; and any mitigating circumstances, in determining the amount.

Both fixed and variable administrative penalties may be imposed along with a Compliance Order or other regulatory measures.

Webinar Recordings

If you are a Principal Broker you need to ensure that your Mortgage Brokerage and all of its Mortgage Brokers and Agents comply with the Act and regulations.

If you did not get a chance to attend FSCO's Webinars for Principal Brokers, you can now access them online. Visit [FSCO's website](#) to access the following webinar recordings:

- [Webinar # 1 - Disclosure of Potential Conflicts of Interest](#)
- [Webinar # 2 - Disclosure of Suitability and Risks to Borrowers, Lenders and Investors](#)
- [Webinar # 3 - Requirements for Supervising Mortgage Brokers and Agents](#)



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