



*The Mortgage Broker e-Info Newsletter provides updates on Ontario's Mortgage Brokerages, Lenders and Administrators Act, 2006 and regulations.*

*The Newsletter is produced and distributed by the Financial Services Commission of Ontario (FSCO). For more information, visit FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca).*

April 1, 2009

## The Enforcement Issue

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An important duty of a licensed mortgage brokerage, administrator, broker or agent, is to comply with the requirements of the [Mortgage Brokerages, Lenders and Administrators Act, 2006](#) (MBLA Act). Since the principal broker is the chief compliance officer for his/her mortgage brokerage, he/she is responsible for ensuring that the mortgage brokerage and all of its brokers and agents comply with the MBLA Act and regulations. This responsibility starts with screening licensing applicants and continues after a mortgage broker or agent is licensed.

### FSCO's Enforcement Activities

As the regulator of the mortgage brokering industry in Ontario, the Financial Services Commission of Ontario (FSCO) may initiate a review based on information that is obtained from various sources, including information in a licensing application, or from complaints against specific businesses or individuals.

Based on the outcome of a review, the Superintendent may take enforcement action against an individual or business. Enforcement action may include:

- a Notice of Proposal to refuse, suspend, amend or revoke a licence, and/or to refuse the surrender of a licence,
- a letter of caution,
- an administrative monetary penalty,
- imposing conditions on a licence, and
- prosecution.

### Notices of Proposal

Before issuing an order to refuse, suspend, amend or revoke a licence, or imposing conditions, following an investigation, FSCO's Superintendent will issue a Notice of Proposal giving reason for the proposal. Where the public might be adversely affected by a delay in making an order, an Interim Order to suspend a licence may be made.



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Since the MBLA Act went into effect on July 1, 2008, FSCO has conducted 68 investigations regarding the suitability of individuals who applied for mortgage broker or agent licences. In addition, there have been two investigations involving unlicensed mortgage brokerage activities.

As of March 31, 2009, FSCO has issued 26 Notices of Proposal, to either deny an application for a licence, or revoke an existing mortgage broker or agent licence.

### Letters of Caution

In some instances, the Superintendent may determine that issuing a Letter of Caution to a person who engaged in some form of minor misconduct will address the misconduct, without the necessity of a formal proceeding. In some cases, a Letter of Caution may also be issued pending the outcome of an investigation that may result in other enforcement action.

Since July 1, 2008, FSCO has issued 170 Letters of Caution to mortgage brokers and agents concerning their obligation to fully disclose information to the Superintendent when requested, including in an application form. The Letters of Caution remain on file with FSCO for five years. If any similar activities occur within this time frame, FSCO may issue a Notice of Proposal to suspend or revoke the licence.

### Financial Services Tribunal Hearings

Applicants that receive a Notice of Proposal to deny, suspend, amend or revoke a licence may request a hearing before the [Financial Services Tribunal](#) – the independent, decision-making body that hears appeals from decisions and reviews proposed decisions from FSCO's Superintendent.

As of March 31, 2009, the Financial Services Tribunal has issued eight decisions regarding Notices of Proposal to refuse or revoke licences. In seven cases, the Financial Services Tribunal has instructed the Superintendent to carry out his proposal to refuse or revoke a licence, or to issue a licence that is subject to specific conditions.

### Errors and Omissions Insurance is a Requirement

Under Ontario Regulations 188/08 and 189/08, all mortgage brokerages and administrators are required to carry errors and omissions insurance with extended coverage for fraudulent acts. If a mortgage brokerage's or administrator's errors and omissions insurance coverage is cancelled or not renewed, FSCO must be immediately notified by the principal broker. Not meeting the insurance requirement is a serious offence. Mortgage brokerages and administrators without errors and omissions insurance are subject to enforcement action, including licence suspension or revocation.

### FSCO's Errors and Omissions Insurance Audit

As the regulator of the mortgage brokering industry in Ontario, FSCO has a duty to ensure that all licensed mortgage brokerages and administrators are meeting the requirement to carry errors and omissions insurance with extended coverage for fraudulent acts through an approved insurance provider.

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*To learn more about the  
Financial Services Tribunal  
visit their website at  
[www.fstontario.ca](http://www.fstontario.ca)*

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*Errors and omissions  
insurance is a requirement  
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As part of its regulatory activities, FSCO conducted an audit to verify if all mortgage brokerages had the required errors and omissions insurance. After insurance information was collected from the approved errors and omissions insurance providers, FSCO determined that a large number of mortgage brokerages did not have the required insurance coverage.

FSCO has issued Interim Orders to suspend the licences of 91 mortgage brokerages for not having errors and omissions insurance coverage. Along with the Interim Orders, these mortgage brokerages were served with Notices of Proposal to revoke their licences and impose an administrative monetary penalty of \$1000.

When a mortgage brokerage’s licence is suspended, neither the brokerage nor the brokers and agents authorized by the brokerage can conduct mortgage business in Ontario.

To learn more about these interim suspension orders visit [FSCO’s Monitoring and Enforcement Online web page](#).

If you have a question about errors and omissions insurance, view [FSCO’s Frequently Asked Questions web page](#).

### FSCO’s Enforcement Actions as of March 31, 2009

Investigations of mortgage brokerages/ brokers/agents	Letters of Caution	Notices of proposal to refuse/revoke a broker/agent licence	Interim suspension order of brokerage licence	Notice of proposal to revoke a mortgage brokerage licence	Notice of proposal to impose an administrative monetary penalty	Financial Services Tribunal hearings
70	170	26	91	91	91	8

## The Role of the Principal Broker in the Licensing Process

Under the MBLA Act, each mortgage brokerage must appoint a principal broker to act as its chief compliance officer.

### Screening Candidates

In this role, one of the principal broker’s main responsibilities is to recommend candidates for mortgage broker and agent licences. To ensure that the mortgage brokerage only recommends suitable candidates to FSCO, the principal broker should:

- ensure due diligence in the selection and interview process
- follow good business practices
- be familiar with FSCO’s [Suitability Assessment Principles for Mortgage Broker and Mortgage Agent Licence Applicants](#)
- independently verify the candidate’s education and work experience
- contact the applicant’s references and/or make inquiries of other common business associates
- use sound interviewing and screening practices to confirm the identity of an applicant
- obtain supporting documentation where appropriate
- confirm the candidate’s identity by checking government issued photo identification and documents
- consider obtaining a recent photo of all applicants for identification purposes
- retain copies of all records and documents in the brokerage’s files for audit purposes



- review industry notices/information that suggest hiring tips and pitfalls
- watch for “red flags”, such as:
  - the inability to verify the candidate’s previous work experience or education
  - the candidate’s former brokerage is out of business
  - the candidate’s former brokerage has no record of him/her

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*Principal brokers should thoroughly check all mortgage broker and agent applications*

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Principal brokers should thoroughly check all mortgage broker and agent licence applications before submitting them to FSCO. When the candidate’s application is reviewed, particular attention should be given to the answers to the background questions. By submitting an application, the principal broker is confirming that the mortgage brokerage has taken reasonable steps to ensure the candidate is suitable for licensing.

### After an Application is Submitted

After a mortgage broker or agent application is submitted to FSCO in Licensing Link:

- The online licensing system, Licensing Link, will check the application for completeness.
- A Canadian Police Information Centre Criminal Record Synopsis (“CPIC check”) will automatically be conducted on each applicant.
- The results of the “CPIC check” and any “yes” answers will be reviewed by FSCO staff.
- Education and experience declarations will be reviewed to ensure the applicant has the necessary qualifications. (Note: principal brokers must retain supporting documentation for audit purposes.)
- Any supplementary information is also reviewed by FSCO.

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*Visit [Monitoring and Enforcement Online](#) for the latest statistics and information on FSCO’s enforcement activities against mortgage brokerages, administrators, brokers and agents*

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If an applicant fails to disclose specific information that is later identified through a CPIC check, FSCO will require the principal broker to confirm that the mortgage brokerage wishes to continue with the broker or agent application. If the principal broker advises FSCO not to continue with the application, FSCO will stop its review of the application and consider it to be withdrawn.

FSCO staff will contact the principal broker:

- if there are any questions about the information provided in the application
- if any information is missing
- if further clarification is required
- if there are any concerns about the applicant’s suitability

### Online Resources for Principal Brokers

All principal brokers are encouraged to be familiar with *FSCO’s Checklist for Screening Mortgage Broker/Agent Applications* (available in [Issue 7 of FSCO’s Mortgage Broker e-Info Newsletter](#)) and to stay up-to-date on FSCO’s prosecution activities, decisions and regulatory activities by reviewing [FSCO’s Monitoring and Enforcement Online web page](#).



## Preventing Fraudulent Activities

FSCO recently received a number of complaints from mortgage brokerages regarding fraudulent activities by their mortgage agents, who were fraudulently accessing clients' credit information without proper authorization.

The mortgage brokering industry's reliance on personal information to complete mortgage transactions makes it a target for individuals who wish to gain access to personal information for the purpose of engaging in criminal activities.

Mortgage brokerages must be diligent in their efforts to screen applicants and structure their business practices to minimize the risk to the public. In addition to the screening practices noted in this newsletter, FSCO recommends that principal brokers:

- restrict access to credit information systems during the probationary period
- monitor the activities of a new mortgage agent or broker
- establish a mentoring program
- check websites for updates on criminal activity within the industry
- review [FSCO's Monitoring and Enforcement Online web page](#) regularly
- restrict access to confidential information
- monitor credit system usage for unusual activities
- limit a new employee's access to the brokerage's online mortgage applications until the brokerage is comfortable with his/her conduct
- immediately report any breaches of the Privacy Act to the brokerage's information provider, the [Office of the Privacy Commissioner of Canada](#), and FSCO's Market Conduct Analysis Section
- notify FSCO's Licensing Unit and update Licensing Link to terminate a mortgage broker or agent



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*To update contact information for an officer, director or partner, log on to [Licensing Link](#)*

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## Listing Officers, Directors and Partners

The MBLA Act requires all mortgage brokerages to provide FSCO with a list of its officers, directors and/or partners. This includes any officers, directors or partners who are no longer active in the brokerage's business.

Mortgage brokerages can update information on their officers, directors and/or partners by initiating a declaration form in FSCO's online licensing system, [Licensing Link](#).

It is a contravention of the MBLA Act to not submit a declaration for these individuals. Mortgage brokerages who are found to be in contravention of the MBLA Act may be subject to enforcement action.



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## FSCO's Upcoming Field Visits

In March 2009, FSCO selected a sample of mortgage brokerages to visit, in order to determine whether they are in compliance with the MBLA Act.

If your mortgage brokerage is selected for an onsite inspection, FSCO staff will contact your principal broker to arrange a field visit.

During your field visit, FSCO will:

- Assess the measures your mortgage brokerage has taken to implement the requirements found in [Ontario Regulation 188/08 - Mortgage Brokerages: Standards of Practice](#).
- Review aspects of your brokerage's compliance with the sections of that regulation that deal with public relations, duties in particular transactions, and managing the mortgage brokerage.

FSCO may also review the supporting evidence used to provide the declarations for licensing eligibility and any confirmation made during the application process.

These inspections are intended to assist mortgage brokerages in meeting their compliance obligations under the MBLA Act and regulations. However, failure to comply with the standards of practice is an offence, and FSCO will take appropriate enforcement action where warranted, as authorized under the MBLA Act.

If your mortgage brokerage has not been selected, you will not be notified. However, your mortgage brokerage and all its brokers and agents are still required to be in compliance with the MBLA Act and regulations.

## Future Newsletters

- Updates on modified forms
- Annual information returns for mortgage brokerages and administrators
- New reporting requirements for mortgage administrators
- New frequently asked questions
- Mortgage resources for consumers



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