Mortgage Broker e-Info Newsletter
Issue 10

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.

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Inside this issue:

Mortgage Brokerages must follow disclosure rules to ensure their clients can make informed decisions

Disclosure Requirements Under the MBLA Act and Regulations

Disclosure requirements under the new Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLA Act) and regulations are similar to those already prescribed under the old Mortgage Brokers Act. The new disclosure requirements add a small number of new criteria that will help ensure that borrowers, lenders and investors have the information they need to make informed decisions and understand mortgage transactions.

Required Disclosures

Under the MBLA Act and regulations, licensees are required to disclose:

- The role of the Mortgage Brokerage.
- The number of lenders on whose behalf the Mortgage Brokerage has acted during the past fiscal year, and whether the Brokerage was a lender.
- Material risks of the mortgage.
- The Mortgage Brokerage's relationships with borrowers, lenders and investors.
- Potential conflicts of interest.
- Information required by the Disclosure Form (*Investor/Lender Disclosure Statement for Brokered Transactions*) for lenders and investors.
- Information required by the Disclosure Form (*Renewal Form*) for lenders involved with mortgage renewals.
- If information is based on an estimate.
- The Mortgage Administrator's relationship with borrowers.
- Information about the cost of borrowing.
- Mortgage Brokerage, Broker and Agent licence information.
- Whether the Mortgage Brokerage was unable to verify the identity of another party in the transaction.
- Fees and other remuneration payable by others to the Mortgage Brokerage, Broker or Agent.

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- Fees and other remuneration payable by the Mortgage Brokerage or Administrator to others.
- If the Mortgage Brokerage has reason to doubt the borrower's legal authority to mortgage a property.
- If the Mortgage Brokerage has reason to doubt the accuracy of the mortgage application and supporting documents.
- Whether a mortgage was previously in default.

For more details on these duties, refer to Ontario Regulations 187/08, 188/08 and 189/08.

Use plain language: To help ensure borrowers, lenders and investors understand the written disclosure, all information must be written in plain language and be presented in a brief, clear and logical manner.

Timing of disclosure: Provide disclosure (unless the context requires otherwise) at least two business days before the occurrence of specific events. For more details, refer to Regulation 188/08 - Mortgage Brokerages: Standards of Practice, or the Compliance Checklist for Mortgage Brokerages, Brokers and Agents.

If the borrower consents in writing, the disclosure may be provided any time before the mortgage instrument is signed. If the lender or investor consents in writing, their disclosure may be made no later than one day before the events described in section 36 of Ontario Regulation 188/08.

Principal Brokers: Ensure the Mortgage Brokerage's policies and procedures comply with disclosure requirements.

Disclosing Potential Conflicts of Interest

A potential conflict of interest arises whenever the Mortgage Brokerage, Broker, Agent or Administrator has an incentive to put his/her/its interests ahead of the interests of the borrower, lender or investor.

When faced with a possible conflict of interest situation, ask yourself these two questions:

- Would the mortgage product offered be different if a potential conflict of interest did not exist?
- Would it appear to a reasonable and informed third party that the Mortgage Brokerage, Broker, Agent or Administrator had an incentive to not act in the best interest of the borrower, lender or investor?

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. It should be written in a plain, brief and clear 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 receipt of this disclosure.

- **Step 5** – Provide a copy of the acknowledgement to the borrower, lender or investor, and retain a copy for the Mortgage Brokerage's files.

Disclosing Material Risks

What are the risks to the borrower?

- **Step 1** – Think about the risks that long-term debt creates for the borrower.
    - What financial problems can occur?
    - Consider the life events that can affect risk.
- **Step 2** – Provide the borrower a written document outlining the risks.
    - Use plain language that is clear, concise and logical.
- **Step 3** – Give the borrower the written disclosure and provide an explanation.
    - Ensure the borrower understands the mortgage being offered.

What are the risks to lenders and investors?

- **Step 1** – Think about the risks to the lender or investor.
    - Risks for lenders and investors are similar to risks of other long-term lending or investing.
- **Step 2** – Provide the lender/investor a written document outlining the risks.
    - Use plain language that is clear, concise and logical.
- **Step 3** – Give the lender/investor the written disclosure and provide an explanation.
    - Ensure the lender/investor understands the risks.

Duty Regarding Suitability of a Mortgage

Duty regarding suitability of a mortgage product for a client

Mortgage Brokerages are required to take reasonable steps to present a suitable mortgage product to a client, having regard to the needs and circumstances of the borrower, lender or investor, as the case may be.

What makes a mortgage product suitable for a client?

A suitable mortgage or investment in a mortgage does not expose the client to undue risk. The Mortgage Brokerage must:

- **Step 1 -** Determine the client's needs and circumstances.
    - Ask the right questions.
    - Consider the whole picture of needs and circumstances.
- **Step 2 -** Know your mortgage products.
    - Understand the range of mortgage products available in the marketplace.
- **Step 3** – Keep documentation in the client's file.
    - To prove you've taken reasonable steps to ensure suitability, include documentation in the client's file.

Online Resources

For more details on disclosure requirements, consult the following resources on FSCO's website:

- compliance checklists,
- Ontario Regulation 188/08 - Mortgage Brokerages: Standards of Practice, and
- FSCO's webinar recording on disclosure of potential conflicts of interest.

Webinar Recordings

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