



October 13, 2009

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*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).*

## Updates on Enforcement and Compliance

The Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA) has now been in effect for more than one year. As the mortgage brokering industry is now licensed and familiar with the MBLAA and regulations, the Financial Services Commission of Ontario (FSCO) has shifted its focus to compliance and enforcement of the MBLAA and regulations.

### How Does FSCO Know if the Industry is Complying with the MBLAA?

FSCO has many ways of determining if mortgage brokerages, administrators, brokers and agents are following the MBLAA and regulations. Since July 1, 2008, FSCO's compliance activities have included the following:

- An errors and omissions insurance audit of all licensed mortgage brokerages in Ontario.
- An education audit of all mortgage agents with conditional licences.
- Investigations of mortgage brokerages, brokers and agents suspected of non-compliance with the MBLAA.
- Compliance field visits of 130 mortgage brokerages.
- Investigations of complaints from the public and other licensees.
- Compliance sweeps of the industry's ads, public relations materials and websites.
- Reviews of Annual Information Returns, financial statements, licensing applications and other records.

Based on the outcome of these compliance activities, to date FSCO has taken the following enforcement action against mortgage brokerages, administrators, brokers and agents:

- Issued Notices of Proposal to refuse, suspend or revoke licences, and/or refuse the surrender of licences;
- Sent out warning notices and letters of caution;
- Ordered administrative monetary penalties;
- Imposed conditions on licences; and
- Prosecuted individuals and businesses that have not complied with the law.



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## Enforcement Action Regarding the 2008 Annual Information Return Filings

For the 2008 calendar year, 94.7 per cent of all mortgage brokerages and administrators filed an Annual Information Return (AIR). However, 17.4 per cent of brokerages and administrators were not compliant with this filing requirement, as they either filed after the March 31, 2009 deadline, or they did not file at all.

Since filing an AIR is a statutory reporting requirement, FSCO took a progressive approach to regulatory action against mortgage brokerages and administrators that missed the filing deadline:

- Warning notices were issued to 120 brokerages and six administrators, advising that they filed late.
- Letters of caution were issued to 14 brokerages that filed very late. They were advised that the letters would remain on the brokerage's record for five years.

FSCO has kept track of which mortgage brokerages and administrators have not filed their 2008 AIRs. Since filing an AIR is a requirement for all mortgage brokerages and administrators under Ontario Regulation 193/08 and section 29 of the MBLAA, FSCO will take enforcement action against non-filers.

## Update on FST Hearings Relating to Errors and Omissions Insurance

### Background on 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 are meeting the requirement to carry errors and omissions insurance with extended coverage for fraudulent acts, through an approved insurance provider.

As part of its regulatory activities, FSCO conducted an audit of all licensed mortgage brokerages to verify if they had the required errors and omissions insurance coverage. Based on the outcome of this audit, FSCO issued Interim Orders to suspend the licences of 91 mortgage brokerages for failing to have errors and omissions insurance. Along with these Interim Orders, these mortgage brokerages were served with Notices of Proposal to revoke their licences and impose an administrative monetary penalty of \$1000.

### Recent Activities Relating to the Errors and Omissions Insurance Audit

After these Interim Orders, Notices of Proposal and administrative monetary penalties were issued, 57 mortgage brokerages requested hearings before the [Financial Services Tribunal](#) (FST) – the independent, decision-making body that conducts hearings under the MBLAA.

The following chart provides a summary of the enforcement activities that have taken place as of September 21, 2009.

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*View FSCO's [frequently asked questions](#) to learn more about Annual Information Returns*

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*To learn more about the errors and omissions insurance requirements, visit [FSCO's website](#)*

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Enforcement Activity	Number
Interim Order to suspend a mortgage brokerage licence	91
Notice of Proposal to revoke a mortgage brokerage licence and impose an administrative monetary penalty	91
Non-contested administrative monetary penalties (no FST hearings were requested)	34
FST hearings:	
• held	20
• cancelled/withdrawn	11
• settled by Minutes of Settlement	1
• adjourned	1
• to be held/scheduled	24
Total requested FST hearings	57
Administrative monetary penalties that were ordered as of September 21, 2009, subsequent to a hearing request	23

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To view full orders from FST hearings, visit FSCO's [Monitoring and Enforcement Online](#) web page

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### Administrative Monetary Penalties That Were Ordered

As of September 21, 2009, the Superintendent has issued 57 orders totalling approximately \$51,000 in administrative monetary penalties. These orders cover 34 cases where no FST hearings were requested, as well as 23 cases where administrative monetary penalties were ordered subsequent to a request for a FST hearing. In the majority of these cases, the mortgage brokerages were ordered to surrender their licences and pay a \$1000 administrative monetary penalty. There were nine cases where the FST ordered reduced penalties, because additional relevant information was disclosed at the hearing.

### How Administrative Monetary Penalties are Determined

[Ontario Regulation 192/08](#) governs the amount of administrative monetary penalties for contraventions of the MBLAA and regulations. When determining the amount of a penalty, the Superintendent only considers the following criteria:

1. The degree to which the contravention or failure was intentional, reckless or negligent.
2. The extent of the harm or potential harm to others resulting from the contravention or failure.
3. The extent to which the person or entity tried to mitigate any loss or to take other remedial action.
4. The extent to which the person or entity derived, or reasonably might have expected to derive, directly or indirectly, any economic benefit from the contravention or failure.
5. Any other contraventions or failures to comply with a requirement established under the MBLAA, or with any other financial services legislation of Ontario, or of any jurisdiction during the preceding five years by the person or entity.

### What This Means to You

- FSCO will continue to take enforcement action against licensees that fail to comply with the MBLAA and regulations.

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See sections 38 and 29 of the MBLAA and [Ontario Regulation 192/08](#) for more information on administrative monetary penalties

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- If FSCO contacts you to request information for an audit or compliance check, make sure you promptly provide the requested information. It is not acceptable to ignore these requests – your co-operation is required under the law.
- It is critical to keep your contact information (e.g., your e-mail address and mailing address) current in Licensing Link, as it will ensure you receive all communications and requests from FSCO. Remember, the law requires you to update your contact information or licensing status in Licensing Link. You must notify FSCO of any changes to your contact information within five days.
- If FSCO issues an Interim Order, Notice of Proposal or administrative monetary penalty against you or your business, you should attempt to resolve the issue by contacting FSCO. A lot of time may be saved by taking this step, as you may be able to reach an agreement with FSCO without attending a FST hearing.

To learn more about FSCO's enforcement activities, visit [Monitoring and Enforcement Online](#).

## The Education and Experience Exemption Ends for Real Estate Brokers

When the MBLAA went into effect on July 1, 2008, real estate brokers who wished to conduct mortgage brokering activities were required to obtain a mortgage agent or broker licence under the MBLAA.

As a transition measure, the MBLAA provided a mortgage broker education and experience exemption to those real estate brokers who were registered with the Real Estate Council of Ontario (RECO) as of June 30, 2008, and who applied for a mortgage broker licence before July 1, 2009. Under this exemption, real estate brokers could apply for a mortgage broker licence without having to obtain 24 months of experience as a mortgage agent, and without completing the mortgage agent or broker education course and exam.

On July 1, 2009 the mortgage broker education and experience exemption ended. Under the MBLAA, this exemption cannot be extended. Real estate brokers are now required to meet all licensing requirements for a mortgage broker licence.

To learn about the mortgage broker licensing requirements, read FSCO's web page on [Becoming Licensed as a Mortgage Broker](#).

## Reminder about Participating in Contests and Incentive Programs

It is important to understand that participating in a contest or incentive program can create potential conflicts of interest for mortgage brokerages, administrators, brokers and agents.

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*As of July 1, 2009, real estate brokers need to meet all licensing requirements for a mortgage broker licence*

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### What is a conflict of interest?

A conflict of interest arises when a mortgage brokerage, administrator, broker or agent has, or appears to have, an incentive to place its/his/her own interests ahead of the interests of the borrower, lender or investor.

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*For a summary of the requirements in the MBLAA and regulations, refer to FSCO's [Compliance Checklists](#)*

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FSCO is aware of the contests and incentive programs that are available to the mortgage brokering industry. If you plan to participate in a contest or incentive program, you should ensure you are complying with the requirements in the MBLAA and regulations. This includes:

- Making your client's interests your primary obligation.
- Ensuring that a potential lender's mortgage is suitable for your client.
- Disclosing your eligibility for potential remuneration, such as monetary compensation, points, finder's fees, prizes, trips, etc.

Your mortgage brokerage's principal broker is ultimately responsible for managing disclosures affecting the brokerage, and its brokers and agents. (The same responsibility applies for mortgage administrators.) However, you still need to make sure you disclose any potential conflicts of interest to your client.

If you are unfamiliar with the disclosure requirements in the MBLAA and regulations, you should:

- Remember that the introduction of the MBLAA resulted in new rules and requirements for the mortgage brokering industry. As a result, you may need to act differently than you have in the past.
- Review FSCO's [Compliance Checklists](#).
- Watch [FSCO's webinars](#) on disclosure of potential conflicts of interest, as well as disclosure of suitability and risks to borrowers, lenders and investors.

## FSCO's Mortgage Agent Education Audit

FSCO is conducting an audit of all individuals who have conditional mortgage agent licences, to verify if they successfully completed an approved mortgage agent course by June 30, 2009.

If you are a principal broker and your mortgage brokerage employs one or more individuals with conditional mortgage agent licences, FSCO will request information from you, under the authority of section 29(2) of the MBLAA.

You should expect to receive an information package by mail in early October 2009. It will include a letter, frequently asked questions and two forms that you will need to complete and send back to FSCO *no later than October 28, 2009*.

### Renewal of Licences

March 31, 2010 is the first renewal date for mortgage broker and agent licences. Individuals with conditional mortgage agent licences will be asked to demonstrate compliance. These agents will need to provide FSCO information that confirms they have met the mortgage agent education requirement, before they are able to renew their licences. FSCO may take enforcement action if an agent fails to comply with this requirement.



## Mortgage Brokerages Need to be Aware of Record Keeping Requirements

All mortgage brokerages should be familiar with the record keeping requirements that are detailed in [Ontario Regulation 188/08](#). To help brokerages comply with this regulation, a summary of the requirements is provided below.

### Required Financial Records

Each mortgage brokerage is required to maintain complete and accurate records of the following:

- Financial records for all mortgage brokering activities in Ontario. (These financial records must distinguish between deemed trust funds and other assets.)
- Every mortgage application, instrument and renewal agreement that is received or arranged by the brokerage.
- Mortgage brokerage agreements on dealing or trading in mortgages and mortgage lending.
- All documents and written information that are given to or received from a borrower/lender/investor, or any other person/entity.

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*Mortgage brokerages need to be familiar with their record keeping requirements*

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### Security and Retention

A mortgage brokerage must:

- Take adequate precautions to guard against falsification of records or improper access to clients' personal information.
- Retain all records for at least six years after the expiry/term of the mortgage, if they relate to the purchase, sale, trade or renewal of mortgages in Ontario.
- Retain all records for at least six years from the date of the application, if the transaction is not placed or taken.
- Store all records at its main office in Ontario. (The brokerage's main office should include records for all of its business locations.)
- Inform FSCO if it is storing its records at a different location. (Electronic records do not need to be stored at the brokerage's main office if they can be quickly retrieved.)
- Ensure that it can retrieve its electronic records during the six year period they need to be retained.

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*The record keeping requirements for mortgage brokerages are detailed in Ontario Regulation 188/08*

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### Best Practices

Each mortgage brokerage should follow best business practices, which include:

- Having business documents that confirm the existence of the business entity that is engaged in mortgage activities (e.g., business licences, articles of incorporation, etc.)
- Keeping signed copies of all applications, agreements and commitment letters.
- Ensuring all financial records are supported by payments, bank transactions, tax assessments, investment income, employment agreements and tenancy agreements.
- Having records (in print or electronic formats) that are easily accessible and that can be easily reproduced in print format.



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## Highlights from the 2008 Annual Information Returns

FSCO has compiled the information that was reported by mortgage brokerages and administrators in their 2008 Annual Information Returns (AIRs). These AIRs provide information on the mortgage activities that were conducted from July 1 to December 31, 2008, for each brokerage's or administrator's unique business. This information provides a snapshot of the mortgage brokering industry in Ontario. For your interest, highlights of the findings are provided below:

- 31 per cent of brokerages and 93 per cent of administrators used trust accounts in 2008.
- Four per cent of brokerages and 30 per cent of administrators syndicated mortgages.
- One per cent of brokerages and nine per cent of administrators have arranged securitization facilities or made securitization sales.
- 54 per cent of brokerages and administrators stored all of their records electronically.
- Mortgage brokerages reported that they placed the following types of mortgages in 2008:
  - residential (62 per cent)
  - commercial (35 per cent)
  - construction (21 per cent)
  - reverse (one per cent)
  - other (three per cent)
- 15 per cent of brokerages have placed more than 50 per cent of their business with one lender (this can include the brokerage itself).
- Eight per cent of brokerages have funded mortgages with their own money.
- Three per cent of brokerages and seven per cent of administrators are currently being sued, or have been sued, for professional negligence or misconduct.
- One per cent of brokerages had complaints made against them that were based in whole or part, on fraud, theft, deceit, misrepresentation, forgery or other similar conduct.

## Future Newsletters

- compliance tips
- update on FSCO's compliance field visits
- licence renewals and fees



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ISSN 1913-519X



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