



The Mortgage Broker e-Info Newsletter is produced and distributed by the Financial Services Commission of Ontario (FSCO). It provides updates on Ontario's Mortgage Brokerages, Lenders and Administrators Act, 2006, regulations and requirements.

All licensed mortgage brokerages, administrators, brokers and agents in Ontario automatically receive this Newsletter from FSCO via the e-mail address provided in Licensing Link.

For more information, or to access past issues of this Newsletter, visit FSCO's website at www.fSCO.gov.on.ca.

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Important Information for the Mortgage Brokering Industry

This issue of the Mortgage Broker e-Info Newsletter provides important information for licensees on the following topics:

- the Superintendent's upcoming new rules on electronic service and delivery, and mandatory electronic filings, which apply to all licensees in the mortgage brokering industry;
- a consultation on a continuing education policy for the mortgage brokering industry;
- an update on FSCO's 2010 errors and omissions insurance audit;
- how to surrender a mortgage brokerage licence;
- an important reminder for brokerages that handle borrowers' funds;
- legislation changes that affect individuals or entities that wish to conduct mortgage business in Saskatchewan; and
- FSCO's role regarding inquiries and complaints under the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA).

The Superintendent's Electronic Service and Delivery and Filing Rules

The Superintendent intends to publish a new Electronic Service and Delivery Rule that will apply to the mortgage brokering industry in 2011. At the same time, a new Mandatory Electronic Filings Rule will replace the existing [Superintendent's Rule – E-filing a Mortgage Brokerage or Administrator Annual Information Return](#).

The Electronic Service and Delivery Rule is intended to facilitate the full transition to an electronic communication system. It will authorize the Superintendent to serve or deliver notices, statements, and other records issued by the Superintendent by sending them to your e-mail address.



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The rule formalizes the Superintendent's established practice of using e-mail as the primary method of communicating important information to you.

The Mandatory Electronic Filings Rule will update and replace the existing [Superintendent's Rule – E-filing a Mortgage Brokerage or Administrator Annual Information Return](#). The new mandatory filings rule will require certain information to be filed with the Superintendent electronically. No changes will be made to the existing electronic filing process for annual information returns (AIRs).

You should read and understand these rules once they are finalized and published, as they will:

- authorize the electronic delivery and service of documents and information issued by the Superintendent to licensees' e-mail addresses;
- deem such delivery or service to be effective on the day it is sent; and
- explain how to e-file mortgage brokerage and administrator AIRs.

You are reminded that under Ontario Regulations 187/08, 188/08 and 189/08 made under the MBLAA, all mortgage brokerages, administrators, brokers and agents are required to maintain a valid e-mail address.

You should check [Licensing Link](#) to verify that you have provided FSCO your current e-mail address. (Under Ontario Regulation 193/08, you are required to notify FSCO within five business days if there is any change in your contact information.) If your e-mail address or other contact information has changed, you are responsible for updating the information via the Licensing Link website.

You should maintain and regularly check your e-mail account. You should also read all e-mails that are sent to you by FSCO. In order to manage the information that is sent to you, most FSCO e-mails identify information items and/or actions items.

To make sure you receive e-mails from FSCO, ensure that your e-mail programs and/or antivirus or anti-spam filters are not blocking e-mail addresses that end with "@fSCO.gov.on.ca".

These new rules will be published on the [Superintendent's Rules web page](#) once they are finalized in early 2011.

Consultation on a Continuing Education Policy

FSCO recently released a consultation paper about mandatory continuing education (CE) for the mortgage brokering industry in Ontario.

By establishing mandatory CE, FSCO aims to improve the Ontario mortgage brokering sector's compliance rates by increasing awareness of the rules and the importance of complying with them, and to improve consumer protection without imposing unnecessarily onerous requirements on licensees.

FSCO has established five key principles for the new CE policy:

- 1) FSCO will not provide CE directly, but will determine the content, timing and frequency of CE programs. Programs will be provided by organizations that have existing experience in providing education courses.
- 2) FSCO will work to implement CE requirements that are compatible with those in other provinces, to promote inter-provincial labour mobility.

The Superintendent intends to publish new rules on electronic service and delivery, and mandatory electronic filings in early 2011.

FSCO recently released a consultation paper about mandatory continuing education for the mortgage brokering industry in Ontario.



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- 3) FSCO will not require licensees to duplicate CE training they have already completed through professional associations, educational institutions or commercial organizations, if certain criteria are met by the education provider.
- 4) CE must be easily accessible to licensees through the Internet, by correspondence, and perhaps also in a classroom setting, or some combination of these approaches.
- 5) CE programs must be administratively efficient for FSCO, CE providers and licensees.

Visit [FSCO's website](#) to learn more about errors and omissions insurance requirements and the 2010 audit.

The consultation paper is available on [FSCO's website](#) and can be e-mailed to interested parties on request. All industry stakeholders, including licensees, the public, educators and other regulators, are invited to provide written comments within a 60-day period by mail, e-mail or fax.

FSCO's 2010 Errors and Omissions Insurance Audit

In October 2010, FSCO conducted an audit to verify that all licensed mortgage brokerages are meeting the legal requirement to carry errors and omissions insurance with extended coverage for fraudulent acts, as required under the MBLAA.

This was FSCO's second errors and omissions insurance audit. This second audit was needed as the first audit revealed that 30 per cent of brokerages did not maintain the errors and omissions insurance required by law. This high rate of non-compliance has a direct impact on the fees that all licensees pay.

As with the 2008 errors and omissions insurance audit, FSCO collected data from insurance providers and contacted those brokerages that did not appear to have the required insurance in place.

FSCO will take enforcement action against any brokerages that did not have an approved form of errors and omissions insurance in place when the audit took place in October 2010. This may include imposing an administrative monetary penalty and/or revoking the brokerage's licence.

FSCO staff are now creating a report about this audit. Once the report is finalized, the information will be shared with the mortgage brokering industry through this newsletter and FSCO's website.

For more information about errors and omissions insurance, refer to the following web pages:

- [Errors and Omissions Insurance Requirements](#)
- [FSCO's 2008 Errors and Omissions Insurance Audit](#)
- [FSCO's 2010 Errors and Omissions Insurance Audit](#)
- [Frequently Asked Questions](#)

How to Surrender a Mortgage Brokerage Licence

If you want to surrender your mortgage brokerage's licence, the MBLAA requires you to obtain the approval of the Superintendent.

To surrender a mortgage brokerage licence, please follow the steps below:

- 1) Contact FSCO by e-mail at elicense@fSCO.gov.on.ca to request a Surrender Declaration Form.
- 2) Complete the Surrender Declaration Form and return it to FSCO.
- 3) Respond to any requests from FSCO for additional information.



Please note the following:

- Your mortgage brokerage licence remains in effect until you receive written approval of your Surrender Declaration from FSCO. Until that occurs, you must comply with all licence requirements, including maintaining errors and omissions insurance and filing an annual information return.
- If you are the principal broker of a licensed brokerage that will no longer be conducting mortgage business and want to transfer to another brokerage, the brokerage's licence must be surrendered unless another principal broker is appointed as your replacement.

Reminder About Handling Borrowers' Funds

Mortgage brokerages receive money from lenders, investors and borrowers from time to time. Under the MBLAA, funds that are received from lenders, investors and borrowers are deemed to be trust funds, and must be held in trust by the brokerage until they are disbursed.

It has come to FSCO's attention that some lenders may be returning funds to mortgage brokerages without clearly identifying them as borrower refunds. It is the brokerage's responsibility to ensure that trust funds are deposited in the brokerage's trust account, and not its general account. If a brokerage is not certain about the purpose of any funds that it receives, it should promptly contact the lender to find out.

The proper method for handling borrower refunds from lenders or investors must be documented by brokerages in their policies and procedures manuals. Brokerages also need to exercise reasonable due diligence when deciding how the funds will be treated.

Brokerages that do not treat or hold these types of funds appropriately, and/or that fail to have policies and procedures on handling these funds, could be in contravention of the MBLAA and regulations. To avoid non-compliance, brokerages should ensure they are familiar with the MBLAA and [FSCO's Compliance Checklists](#), which provide a summary of the standards of practice (Ontario Regulation 188/08) and reporting requirements (Ontario Regulation 193/08) under the MBLAA.

Legislation Changes in Saskatchewan

If you plan to conduct mortgage business in Saskatchewan, you should be aware that on October 1, 2010 Saskatchewan implemented its new Mortgage Brokerages and Mortgage Administrators Act and Mortgage Brokerages and Mortgage Administrators Regulations. All mortgage broker licences in Saskatchewan expired when the old Mortgage Brokers Act was replaced by the new Act on October 1, 2010.

To obtain a mortgage brokerage or administrator licence in Saskatchewan, or to learn more about the legislation changes, visit the website of the Saskatchewan Financial Services Commission at www.sfsc.gov.sk.ca/financial/mbma.shtml.

If your brokerage handles borrowers' funds, make sure it has policies and procedures for handling these types of funds.

If you plan to conduct mortgage business in Saskatchewan, make sure you understand the legislation changes that took place on October 1st.



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FSCO's Role Regarding Inquiries and Complaints under the MBLAA

FSCO's Licensing and Market Conduct Division investigates complaints about contraventions of the MBLAA and regulations. Below is a summary of FSCO's role regarding inquiries and complaints, and advice for licensees about handling complaints:

- FSCO is responsible for regulating business practices and conduct, including prosecution of offences, of mortgage brokerage/administrator/broker/agent licensees in Ontario. In addition to violations of the MBLAA, some conduct or convictions for business activities that are not regulated by FSCO can lead to suitability hearings on whether the business or individual should be licensed, or continue to be licensed under the MBLAA.
- FSCO is not involved in fraud investigations under the Criminal Code of Canada, but does investigate the suitability of mortgage brokers and agents who may have been involved in, or been convicted of, fraud or other similar offences.
- The Superintendent may investigate any matter that comes within the scope of the MBLAA from a compliance perspective. However, in some cases FSCO may choose not to investigate a matter that is also being pursued through the courts/mediation/arbitration, whether or not court proceedings have already begun. FSCO may defer a review of a related complaint, pending the completion of the court or alternative dispute resolution process, so that it does not duplicate the work of the courts. FSCO may also rely on the determination of facts by a court or other proceedings in its investigative process.
- FSCO encourages licensees to contact legal experts if they require legal advice or recommendations. If legal assistance or advice is needed, it is the licensee's responsibility to obtain it.
- To ensure compliance with the law, licensees may wish to seek legal advice about their contracts, incentive programs, new product offerings, business plans, advertising, or public relations materials.
- Disputes about contractual or commercial arrangements, commission payments, conditions of employment, etc. should be handled directly by the parties involved in the dispute. This includes disputes about any claims, collecting payments or costs they have incurred.
- As an impartial government regulatory body, FSCO cannot recommend or endorse any particular service providers (e.g., accounting firms, credit rating services, etc.).

Future Newsletters

- annual information returns
- report on FSCO's 2010 errors and omissions insurance audit
- public relations requirements for social media
- mortgage brokerages and independent contractors



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