



FSCO Licence Number: 11616

POLICIES & PROCEDURES MANUAL

2017

Please review this section in detail. Take your time. It is written in plain English, and you will be asked to sign a certification that you have read, reviewed, and understood the information contained in this Manual. This acknowledgement will be renewed once per year, and will be kept in your personnel file.

This Policies & Procedures manual contains all of the critical Policies & Procedures, as well as the Code of Ethics, which are designed to govern how all of our Mortgage Brokers/Agents of ProFunding Financial Services Inc. will conduct their day-to-day business. If you have a question about how to conduct your business, chances are the answer is contained in this Manual.

It has been presented in five sections. Section One covers the process of handling an application, dealing with the file, responsibilities of the Broker/Agent to the client/lender/brokerage, file management, and fraud awareness, duties, and client suitability. Section Two is the Underwriting Guidelines with room for your own notes. Section Three contains our Human Resources, Consumer Complaints, Advertising, and Business Conduct Policies, and all related Procedures for each sub-section. Section Four is an overview, with examples, of forms that may be used in the daily practice of mortgage broking. Section Five contains the complete MBLAA, 2006, and the accompanying Rules & Regulations.

These Policies were developed in order to provide an equitable environment for all Mortgage Brokers/Agents, and to ensure that our business is conducted according to all applicable rules and regulations contained in employment legislation and the *Mortgage Brokerages, Lenders, and Administrators Act, (2006)* and its Regulations. A complete copy of the *Act* and relevant Regulations are available from the Principal Broker, in case you ever need to refer to them.

It is extremely important that these Policies & Procedures are followed as described herein. Failure to follow them can lead to:

- Reputational Risk to our Brokerage, the Principal Broker, yourself, and your fellow Brokers/Agents;
- Legal Risk to the same entities above in the form of civil actions and, in some cases, police investigations and criminal charges; and
- Business Risk in the form of financial and regulatory penalties levied against this Brokerage, the Principal Broker, and yourself, up to and including the termination of our Brokerage Licence and your Broker or Agent Licence by the Financial Services Commission of Ontario.

It is the policy of ProFunding Financial Services Inc. to implement Policy and Procedural guidelines so as to govern the supervision and outline the business and behavioural activities expected of its Brokers/Agents in their conduct with the public in accordance to the *MBLAA, 2006* and accompanying Rules and Regulations.

It is, therefore, **extremely important** that you follow the Policies & Procedures as outlined in this Manual. If you have any questions whatsoever about any of them, please ask the General Manager or Principal Broker/Compliance Officer. Failure to do so may result in severe penalties and disciplinary action up to, and including, termination of your contract with this Brokerage. Always remember the **cardinal rule** as it applies to the conduct of your business: *If you suspect something is wrong, or if your intuition tells you something isn't quite right, chances are **there is something wrong**.* In all cases like this, consult with the Principal Broker for guidance or advice on how to handle the situation.

Disclaimer and Limitation of Liability – *This manual has been designed as a generic document for Mortgage Brokerages that concentrate on Residential Brokering. If your brokerage, ProFunding Financial Services Inc., participates in or specializes in any of the below outlined areas, it is advisable that your manual be modified to accommodate those areas of expertise.*

Areas that should require further in-depth clarification and brokering guidance are:

- *Syndicated Mortgage sales or Investments*
- *Reverse Mortgages*
- *Construction and Draw Mortgages*
- *Leveraged Investments*

It is recommended that if this Brokerage is involved in any of the above, then a clause or a complete section be added addressing that particular area's uniqueness. We recommend it should be crafted by a professional in that area.

You assume all responsibility and risk with respect to your use of this CMBA Policies & Procedures Manual (the Manual), which is provided "as is" without warranties, representations or conditions of any kind, either express or implied, including without limitation, all content and materials, and functions and services provided, all of which are provided without warranty of any kind, including but not limited to warranties concerning the availability, accuracy, completeness or usefulness of content or information, uninterrupted access, and any warranties of title, non-infringement, merchantability or fitness for a particular purpose. We do not warrant that this Manual or the content and material of the information made available thereby will be timely, secure, uninterrupted or error-free, that defects will be corrected. The use of this Manual is at your sole risk and you assume full responsibility for any costs associated with your use of this Manual. We will not be liable for any damages of any kind related to the use of this Manual. In no event will we, or our affiliates, our or their respective content or service providers, or any of our or their respective directors, officers, agents, contractors, suppliers or employees be liable to you for any direct, indirect, special, incidental, consequential, exemplary or punitive damages, losses or causes of action, or lost revenue, lost profits, lost business or sales, or any other type of damage, whether based in contract or tort (including negligence), strict liability or otherwise, arising from your use of, or the inability to use, or the performance of, this Manual or the content or material or functionality, even if we are advised of the possibility of such damages. Certain jurisdictions do not allow limitation of liability or the exclusion or limitation of certain damages. In such jurisdictions, some or all of the above disclaimers, exclusions, or limitations, may not apply to you and our liability will be limited to the maximum extent permitted by law.

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1.1 Code of Ethics

1.1.1 Introduction

The Code of Ethics described below is not meant to be all-inclusive, but rather to serve as a guide for the Mortgage Brokers/Agents of ProFunding Financial Services Inc.

A Code of Ethics is defined as a written set of guidelines issued by an organization to its workers and management to help them conduct their actions in accordance with its primary values and ethical standards. This Code reflects the level of professionalism that ProFunding Financial Services Inc. demands of all its Mortgage Brokers/Agents.

By adopting this Code and putting it into daily practice, you build the strongest of foundations for long-term success within this industry.

1.1.2 Behaviours and Attitudes

At ProFunding Financial Services Inc., we believe that Mortgage Agents and Mortgage Brokers are professionals assisting our clients in getting the right borrowing products and educating them on how to manage their cash-flow while paying down debt on a schedule that meets their lifestyle.

In order to be successful on this path, there are professional behaviours and ethical attitudes that consumers, the regulator, and the industry expect of Mortgage Brokers/Agents:

- Honesty
- Integrity
- Professionalism
- Knowledge
- Competency
- Law-Abiding
- Respectful of Privacy
- Empathetic
- Cooperative
- Collaborative
- Accurate
- Confident
- Trustworthy
- Reliable
- Straightforward
- Non-Discriminatory
- Compliant
- Efficient

This is by no means a complete list of attitudes and behaviours, but should reflect the attitudes and behaviours of the Mortgage Brokers/Agents of ProFunding Financial Services Inc.

1.1.3 Ethical Standards

Mortgage Brokers/Agents of ProFunding Financial Services Inc. shall conduct their activities with honesty, integrity and professionalism, ensuring that they are knowledgeable in the areas of the mortgage industry in which they participate. Furthermore, Mortgage Brokers/Agents of ProFunding Financial Services Inc. shall at all times act in compliance with this Code of Ethics, viewing this Code as a *minimum standard* of professional behaviour, in addition to developing and executing sound business practices.

1.1.4 Fees and Charges

A Mortgage Broker/Agent of ProFunding Financial Services Inc. must not ever take advantage of the Borrower's situation by charging fees that are more than is reasonable given the circumstances of the transaction, or attempt to complete a mortgage transaction where the cost of borrowing grossly exceeds the cost of borrowing currently available to like Borrowers for a similar transaction.

1.1.5 Duty to Protect

Mortgage Brokers/Agents of ProFunding Financial Services Inc. shall use their best efforts to protect all parties to a mortgage transaction and the public against fraud, misrepresentation, unethical practices or other violations of this Code of Ethics or the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and its Regulations (hereafter referred to as the *MBLAA, 2006*).

1.1.6 Fraud Identification

Mortgage Fraud is defined by Criminal Intelligence Service Canada (CISC) as the deliberate use of mis-statements, misrepresentations or omissions to fund, purchase or secure a loan. Simply put, Mortgage Fraud is any scheme designed to obtain mortgage financing under false pretences, such as using fraudulent or stolen identification or falsifying income statements and/or supporting documents. The life cycle of a mortgage transaction begins when you make initial contact with the Client, and ends when the mortgage you have placed ceases to exist with the Lender with whom you placed the mortgage.

There is no statute of limitations regarding fraud, in the sense that fraudulent activity can be detected and prosecuted long after the transaction has been completed.

There are three main types of Mortgage Fraud in Canada – Fraud for Criminal Activity, Fraud for Profit, and Fraud for Shelter.

Fraud for Criminal Activity occurs when the intent is to secure a property for the purposes of conducting criminal activity on the premises. Marijuana grow-ops and motorcycle gang clubhouses are just two examples of this type of fraud.

Fraud for Profit occurs when the intent is to directly profit financially from the performance of the fraudulent action. Title fraud and value fraud using inflated property value and straw buyers are typical forms of this type of fraud. The Brokerage should take reasonable steps to verify the Borrower's legal authority to mortgage the property.

The third (and most common) type of fraud is Fraud for Shelter. This occurs when a Client misrepresents one or more material facts regarding their financial situation in order to gain a

mortgage for the purposes of their own residential needs. Misstating employment, income or providing phony down payment documentation such as altered account statements or bogus gift letters are common methods used by borrowers to obtain mortgages for which they do not qualify.

It is rarely possible to determine the motive when fraud/misrepresentation is detected at the application stage. For this reason, treat all instances of misrepresentation seriously. It is important for you to remember that **fraud is fraud, regardless of the reason**. While there may be extenuating circumstances around the situation, be aware that if you suspect a Client is being dishonest with you during the mortgage process, you must perform additional due diligence to assure yourself of the validity of the information prior to deciding to continue to deal with them.

Turning a blind eye to fraud is also a commission of fraud. Under no circumstances should a Broker or Brokerage continue to act for a Borrower or other party suspected of committing fraud or materially misrepresenting application information, or omitting fraudulent facts or information pertaining to the Application.

Immediately terminate the relationship with the Borrower, Lender or Investor if you have reasonable grounds to believe that the mortgage is unlawful or contains material misrepresentation of application information. Document your suspicions and retain all materials on file. Report to the Principal Broker for further instruction, such as to advise the Lender and/or other appropriate parties under the circumstance.

1.1.7 Borrower Conduct (O. Reg. 188/08 s.12, 13)

A Mortgage Broker/Agent of ProFunding Financial Services Inc. should immediately terminate their relationship with a Borrower if:

- The Borrower instructs them to do anything that would contradict their duty as outlined in section 1.1.5 above;
- The Borrower instructs the Mortgage Broker/Agent to do anything that contravenes the *MBLAA, 2006* or this Code; or
- The Mortgage Broker/Agent becomes aware during the course of the transaction that the Borrower has knowingly provided false information designed to mislead the Mortgage Broker/Agent, Lender, or other party to the transaction.

1.1.8 Disclosure

Mortgage Brokers/Agents of ProFunding Financial Services Inc. shall disclose to all appropriate parties of a mortgage transaction, in the prescribed form and within the period as required under the *MBLAA, 2006* (O. Reg. 191/08 s.7), all fees payable by the Borrower (O. Reg. 188/08 s.30 (9)), all

referral fees (O. Reg. 188/08 s.22), or fees of a similar kind by whatsoever name receivable by the Mortgage Broker/Agent (O. Reg. 188/08 s.21).

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall not provide services to a Borrower where the Mortgage Broker/Agent has or may acquire a direct or indirect financial interest in the mortgage transaction, unless the Mortgage Broker/Agent discloses such interest, clearly and truthfully, to the Borrower (O. Reg. 188/08 s.27).

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall disclose to the Borrower, in a clear and truthful manner, all real or perceived conflicts of interest prior to the processing of any mortgage transaction.

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall disclose to the Borrower any referral fees paid by the Mortgage Broker/Agent to any third-party (O. Reg. 188/08 s.22).

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall disclose any other information not specifically identified here as required by the *MBLAA, 2006*, in a timely manner as prescribed by the *MBLAA, 2006*.

1.1.9 Confidentiality

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall hold in strict confidence any information arising from the professional relationship concerning the business and affairs of their Client, and shall not divulge that information unless the Mortgage Broker/Agent is expressly authorized by the Client or required by law to do so.

The Mortgage Broker/Agent of ProFunding Financial Services Inc. will take all reasonable and necessary steps to protect the confidentiality of the Borrower's personal information. This includes (but is not necessarily limited to) secure handling of all hardcopy client files through the storage of such files in locking storage cabinets or an area with lockable, restricted access. The Mortgage Broker/Agent will also ensure the establishment of password-protected access to any laptop or desktop computer containing personal client data.

A Mortgage Broker/Agent of ProFunding Financial Services Inc., acting for more than one party to a transaction, shall not act to the detriment of any one of the parties by withholding material information from the other party or parties.

1.1.10 Competence

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall endeavour to stay informed regarding the *MBLAA, 2006*, regulations, proposed legislation, other relevant laws, and other essential facts relevant to public policies related to the services they provide.

When a Mortgage Broker/Agent of ProFunding Financial Services Inc. is unable to render service in accordance with the standards required in this Code of Ethics, the Mortgage Broker/Agent shall decline to provide said service.

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall provide timely service and respond on a timely basis to inquiries from any or all participants in a mortgage transaction.

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall act with their best efforts to ensure that the disclosure of information to the Borrower and the preparation of documentation is true, plain, and not misleading (O. Reg. 191/08 s.6 (4)).

1.1.11 Member Competition

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall not criticize a competitor Mortgage Broker/Agent or Brokerage unfairly, nor refer to another Mortgage Broker/Agent or Brokerage in a disparaging manner. The Mortgage Broker/Agent shall act fairly and respectfully with any other Mortgage Broker/Agent or Brokerage with whom they encounter in the course of their duties.

1.1.12 Co-operation with Provincial Regulatory Bodies

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall co-operate with any investigation by the Financial Services Commission of Ontario (FSCO) (2006, c. 29, s.30 & 30 (6)), the Canadian Mortgage Brokers Association of Ontario (CMBA), any other applicable regulatory body, or similar agency responsible for governance of the mortgage brokerage industry or individuals dealing with mortgages. Co-operation may include providing access to copies of all documents (2006, c29, s. 31 (5)) and answering all questions relevant to the investigation, unless prevented from doing so by law, or under instructions by legal counsel.

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall testify, when requested to do so by an authorized representative of an applicable legal entity, at any hearing involving another Mortgage Broker/Agent or Brokerage.

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall not obstruct an investigation, including withholding or concealing documents, information, or attempting to influence the information or evidence that a potential witness might provide at any investigation of a Mortgage Broker/Agent or Brokerage. The Mortgage Broker/Agent shall not submit false or misleading information to an investigator or any authorized committee involved in such an investigation.

In the event any investigation is ever launched against you while your licence is/was held by this brokerage, you must notify the Principal Broker immediately.

1.1.13 Advertising

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall apply, set, and maintain standards of honesty, truth, accuracy, fairness and propriety in advertising and shall comply with the Canadian Code of Advertising Standards, as well as the policies and procedures of this brokerage, which deal with advertising and marketing, to ensure compliance with the *MBLAA, 2006* (O. Reg. 188/08 s.5, 6, 7, 8). All advertising must be approved by the Principal Broker or their designate **before** publication or other use.

1.1.14 Discrimination

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall not, when acting in a professional capacity, discriminate or participate in discrimination against any person on the basis of race, creed, gender, or sexual orientation, and shall adhere to the Ontario Human Rights Code, as it applies to their business.

1.1.15 Laws and Regulations

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall conduct their activities in full compliance with all federal, provincial and municipal laws and regulations. Any conduct by a Mortgage Broker/Agent that results in a violation of any criminal or civil code is deemed unethical.

1.1.16 Questionable Activities

The Mortgage Broker/Agent of ProFunding Financial Services Inc. shall report to the Principal Broker any activities that could be deemed contrary to the Act, whether that person is employed by ProFunding Financial Services Inc. or otherwise. ProFunding Financial Services Inc. will report such activities to the Superintendent.

1.2 Standards of Practice - Introduction

The remainder of this Manual covers all areas relating to the processing of mortgage applications, information to be included in all mortgage files, your conduct as a Mortgage Broker/Agent of ProFunding Financial Services Inc., and your duties and responsibilities under the *Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA, 2006)* and its Regulations, as they relate to the overall conduct of your business.

Included in Section Five is a complete copy of the *MBLAA, 2006* for your reference. We have undertaken to ensure this entire manual covers all areas of the *Act* and its Regulations in plain English; however, it is still **highly recommended** that you read the *Act* and its Regulations for yourself as well as the Frequently Asked Questions pertaining to Mortgage Brokerage practising available on the FSCO website: www.fSCO.ca/en/mortgage/Pages/licensing_faq.aspx

You should have a copy of both the Client Agreement Form and Client Risk Profile Form printed for your reference as you read the following sections of this manual.

1.3 General Business Practices

1.3.1 Role of the Brokerage

ProFunding Financial Services Inc. and all Mortgage Brokers/Agents licensed under our firm, have a defined role in relation to Borrowers and Lenders for every mortgage transaction we conduct (O. Reg. 188/08 s.26). While we must exercise due diligence with respect to all areas of a transaction, ProFunding Financial Services Inc. is usually acting **on behalf of the Borrower**. Regardless of whether we are dealing with a financial institution, private lender or consortium, or a non-bank lender, we have a legal responsibility to act on behalf of the Borrower, unless we are only acting on behalf of the Investor in the case of private mortgages.

It is important to note that our role as acting for the Borrower does not excuse us from acting responsibly and exercising our fiduciary responsibility at all times regarding information we provide to Lenders, the accuracy of that information, or our due-diligence in the prevention of fraud. In this sense, we also act on behalf of the Lender, ensuring their policies, procedures, and requirements are met when conducting transactions with Borrowers.

Where this circumstance becomes most important is when we are dealing with Private Lenders that are not members of the Designated Class of Lenders under the *MBLAA, 2006* (O. Reg. 188/08 s.2). In these cases, we have to represent both the interests of the Lender (determining if the investment is suitable) and the Borrower (determining if the mortgage is suitable) (O. Reg. 188/08 s.24). We will go into greater detail later in this manual under Section 1.5 Suitability and Disclosure to Borrowers.

The *MBLAA, 2006* specifically states that **you may not act for a borrower or lender if you believe a mortgage is unlawful** (O. Reg. 188/08 s.12). We must remain vigilant, at all times, to ensure all transactions are conducted with the utmost honesty and integrity, and that we always obey the *Act*, its Regulations, and the Law.

1.3.1.1 Where It Is Suspected A Mortgage Is Unlawful

Under no circumstances may you or the Brokerage act for a borrower, lender or investor if you have reasonable grounds to believe that the mortgage is unlawful or contains material misrepresentation of application information. Immediately report your suspicions to the Principal Broker for further instruction, document the same, and advise the lender and/or other appropriate parties.

The Principal Broker and/or Compliance Officer should consider the following to determine an appropriate course of action:

- What is the strength of the proof provided?
- What is the potential impact of the incident?

- Has the application been submitted/approved/funded?
- Is it a single incident or is the borrower or other party likely to try again at another lender and/or with another broker?
- Does the incident potentially involve assistance from parties other than the borrower?
- Does the incident appear to be “fraud for shelter” or part of an organized criminal scheme involving multiple properties and different lenders?

The Principal Broker should consider the nature, seriousness, scope and impact of the incident.

Possible actions include, in the order of severity:

- Take no action;
- Request additional information or supporting documentation from the borrower;
- Decline to proceed with the transaction;
- Report the matter to the lender(s);
- Report the matter to the mortgage insurers (fraud@cmhc.ca; fraudwatch@canadaguaranty.ca, stopfraud@genworth.com);
- Report the matter to the provincial mortgage broker governing body (i.e. FSCO);
- Report the matter to the appropriate provincial industry regulatory body (e.g. Law Society of Upper Canada, Real Estate Council of Ontario, Appraisal Institute of Canada)
- Report the matter to the Police, FINTRAC (See Providing Voluntary Information), Canada Revenue Agency (Informant Leads Program), etc.; or
- Take other action as appropriate.

Your duty of care does not end after the transaction has closed. If possible fraud is identified after the fact, it must be reported to the respective investigative authorities.

For your Appendix:

When reporting suspected fraud, be guided by the Digital Privacy Act; specifically section 7(3)(d) and (d.1):

“(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is:

(d) made on the initiative of the organization to an investigative body, a government institution or a part of a government institution and the organization

- i) has reasonable grounds to believe that the information relates to a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, or*

(d.1) made to another organization and is reasonable for the purposes of investigating a breach of an agreement or a contravention of the laws of Canada or a province that has been, is being or is about to be committed and it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the investigation

(d.2) made to another organization and is reasonable for the purposes of detecting or suppressing fraud or of preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect or suppress the fraud

(d.3) made on the initiative of the organization to a government institution, a part of a government institution or the individual's next of kin or authorized representative and

- (i) the organization has reasonable grounds to believe that the individual has been, is or may be the victim of financial abuse;*
- (ii) the disclosure is made solely for purposes related to preventing or investigating the abuse, and*
- (iii) it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the ability to prevent or investigate the abuse."*

1.3.2 Working For Only One Brokerage

The *MBLAA, 2006* specifically states that Mortgage Brokers/Agents must work for only one Mortgage Brokerage at a time (2006, c29, s8 (4) & s. 11 (5)). You may not, at any time during your contract with ProFunding Financial Services Inc., work for another Mortgage Brokerage.

1.3.3 Operating Other Businesses/Other Employment

It is understood that individuals may conduct other businesses, work at part-time or full-time jobs, or hold other licences at the same time they are licensed as Mortgage Brokers/Agents (O. Reg. 188/08 s.56). It is the policy of this Brokerage that you are permitted to operate other businesses, work part-time or full-time at other companies, or hold other licences while licensed by ProFunding Financial Services Inc. as long as that business is conducted completely separately from your mortgage business, and as long as there is no direct conflict of interest between that business/employment and your mortgage business. If you are operating another business, or working for another employer, you must ensure it does not jeopardize ProFunding Financial Services Inc.'s integrity, independence or competence in any way.

Please note that you **must receive approval from the Principal Broker** to engage in any other business activity, or other employment, so that a notation can be made in your file indicating that the Brokerage does not feel there is any conflict in conducting this non-related business or taking this additional employment.

1.3.4 Use of Information

Do not use any information that you obtained while carrying on your mortgage business for **any other purpose**, without first obtaining the written consent of the individual or business who is the subject of the information, and including a copy of this consent within the mortgage file and obtaining the consent of your Principal Broker (O. Reg. 188/08 s.57).

1.3.5 Changes to your Contact Information

You must notify FSCO and your Principal Broker of changes to your mailing address, e-mail address, and/or telephone or fax number within 5 days of the change that is taking place (O. Reg. 193/08 s.6). **Late notifications by Mortgage Brokers/Agents may result in a \$250 penalty** (O. Reg. 193/08 s.15 (1)).

1.3.6 Necessity To Be Licensed

Trading or dealing in mortgages without a licence is strictly prohibited (O. Reg. 188/08 s.43). All Mortgage Brokers/Agents of ProFunding Financial Services Inc. with our brokerage must be approved and licensed by FSCO to conduct mortgage business.

1.3.7 Advance Fees & Funds / Trust Accounts

The *MBLAA, 2006* contains very specific rules regarding the collection of advance fees and funds for mortgage transactions, and the handling of any advance funds in trust accounts.

In every case, you are prohibited from collecting advance fees for mortgages of \$400,000 or less — if the principal amount of the mortgage is \$400,000 or less, the Mortgage Brokerage cannot require or accept an advance payment/deposit for services to be rendered and expenses to be incurred by the Brokerage or any other person (i.e. appraisal fee) (O. Reg. 188/08 s.37).

For private mortgages, you are also prohibited from receiving funds from Investors/Lenders in advance. Neither the Mortgage Brokerage nor the Mortgage Broker/Agent is permitted to receive funds from an Investor unless an existing mortgage is available, or from a Lender/Investor unless a mortgage application, approval, and intention to fund has been made on a specific property (O. Reg. 188/08 s.38).

1.3.8 Indicating Fees are Government-Approved

You may not, at any time, indicate that Mortgage Brokerage fees are approved by the government or any government authority. The only exception is fees under the Land Titles Act or the Registry Act (O. Reg. 188/08 s.20).

1.3.9 Guarantees

You are prohibited from offering any guarantees to Borrowers regarding future interest rates on variable-rate mortgages, or any other guarantees regarding their mortgage that is not explicitly stated in the mortgage commitment or mortgage instrument.

You are prohibited from offering guarantees to Lenders/Investors — you cannot offer a guarantee to a Lender/Investor regarding a mortgage loan or mortgage investment (O. Reg. 188/08 s.16).

1.3.10 Tied Selling

You are prohibited from engaging in tied selling. Borrowers cannot be required to obtain a product or service as a condition for obtaining another product or service from the Mortgage Brokerage (O. Reg. 188/08 s.15).

1.3.11 Supervising Other Agents

Within ProFunding Financial Services Inc., there are individuals who work alone to conduct their own business on a day-to-day basis, and other individuals who work collectively as a team in their businesses, taking advantage of synergies within their group. There are also individuals who have formed “Teams” underneath them, whereby they wish to accept responsibility for the actions of the Agents they recruit to their Team.

The *MBLAA, 2006* is very clear regarding the supervision of Mortgage Agents, in section 9 (5), where it states: “A person who has a mortgage agent’s licence shall not deal in mortgages in Ontario or trade in mortgages in Ontario except under the supervision of a mortgage broker”.

Therefore, it is the policy of ProFunding Financial Services Inc. that no Teams shall be permitted unless the Team Lead is licensed as a Mortgage Broker in the Province of Ontario, in order for them to properly supervise the activities of the members of their Team.

1.3.12 Fiduciary Duties

All Mortgage Brokers/Agents working for ProFunding Financial Services Inc. must at all times exercise full and total implementation of responsibility and Fiduciary Duties. Whether dealing with the Lender or the Borrower, the Broker or Agent cannot ignore their “Duty of Care”.

1.3.13 Personal Service Corporations

A Personal Service Corporation can be established by Mortgage Brokers/Agents. This is typically done to facilitate bookkeeping and/or taxation and is common when using the ‘team’ model mentioned earlier (refer to section 1.3.11). Appropriate agreements between the Personal Service Corporation and the Mortgage Brokerage as well as agreements between the Mortgage Brokerage and each individual member of the Personal Service Corporation must be in place outlining the relationship between the parties involved. Only with these agreements in place will the Mortgage Brokerage be permitted to make any commission payments owing to each member of the Personal Service Corporation to the corporation, instead of payment personally.

Each individual member of a Personal Service Corporation MUST BE SCREENED and APPROVED by the Mortgage Brokerage with whom the Personal Service Corporation is setup. Each member may only receive payment or remuneration for dealing or trading in mortgages from one personal service corporation at a time. Each individual working under the Personal Service Corporation MUST BE LICENSED under the Mortgage Brokerage with whom the Personal Service Corporation is setup.

No payments may be received by the Personal Service Corporation, or any individuals working within it, from Borrowers, Lenders, or Investors. The Personal Service Corporation is not authorized or licensed to lend funds in any capacity except through the Mortgage Brokerage with whom the agreement is setup.

Because the Personal Service Corporation is NOT a licensed Mortgage Brokerage, the name of the Personal Service Corporation may NEVER be advertised or used in any marketing material or communications with Borrowers, Lenders, or Consumers in general. The Personal Service Corporation MUST BE INVISIBLE TO THE PUBLIC.

Refer to the appropriate regulations when setting up or working under a Personal Service Corporation model: www.e-laws.gov.on.ca/html/regs/english/elaws_regs_070407_e.htm

1.4 Advertising Policy

1.4.1 Introduction

The Standards of Practice for Mortgage Brokerages (Ontario Regulation 188/08 under the *MBLAA, 2006*) contains detailed advertising and marketing regulations. These rules are not optional – they are mandatory, and FSCO has made it quite clear there will be financial penalties for those individuals and Brokerages that do not comply.

Please note that these rules apply to anything and everything you use to market to the general public, referral sources, etc. in any medium, save any for Promotional Items as defined in the next section.

1.4.2 Definition of Promotional Materials

Promotional Materials are defined as those items, which you would distribute to peers or referral sources within the Mortgage, Real Estate, Legal, Appraisal, Inspection, or Financial Services industries in order to promote your business in the hopes of gaining referrals. In addition, Promotional Materials are also defined as those items, which you use to promote ProFunding Financial Services Inc.'s name, brand, and identity, along with your own identity. This includes (but is not limited to) items like golf balls or golf towels, shirts, pens, coffee mugs, awards, etc.

Each Promotional Item will be evaluated on a case-by-case basis to determine whether full Brokerage information needs to be displayed. In any case, if anything has the individual Agent or Broker name on it, it is the policy of ProFunding Financial Services Inc. that the proper title as dictated by FSCO will follow your name (i.e. Mortgage Agent or Mortgage Broker).

Please submit all Promotional Material ideas/proofs to the Principal Broker for approval before purchasing and distributing so they can be approved as Promotional Materials as per this definition.

1.4.3 Use of Authorized Names

This is one area that causes some confusion among Mortgage Brokers/Agents. Your Authorized Name is the name under which you are licensed by FSCO. To verify your Authorized Name, visit the FSCO Website at www.fSCO.gov.on.ca and use the Consumer search engine to search for yourself. This will show you your Authorized Name.

You **must** conduct your business under this name, and this name **only** (O. Reg. 187/08 s.8). You must use this name on each and every piece of advertising, public relations material, business card, web posting, or any other documents as part of the mortgage application process.

For example, if your name is Peter Smith, you may only conduct business under this name – you **cannot use** “Pete Smith” **unless you have notified FSCO** that this is the name under which you wish to conduct your business. In these cases, FSCO will add a bracketed name to the end of your listing in their systems (for this example, it would show as “SMITH, PETER (PETE)”), after which you may use the shortened form of your name to conduct your business as outlined above.

If you need to change your name, or the Authorized Name, you must first contact FSCO’s licensing department and ask for the change. Once they have completed it, you must notify the Executive Administrator so that ProFunding Financial Services Inc. can ensure you are listed properly in our internal systems, on your website, and that all mortgage application and transaction forms reflect this new name.

All public relations material must be approved by the Brokerage’s Principal Broker or designate.

If you work under a team model or have setup a ‘Personal Service Corporation’s (*see Section 1.3.13*) to facilitate bookkeeping and/or taxation, you **MUST** have the appropriate agreements in place with your Mortgage Brokerage, in which case the name of the Personal Service Corporation may **NEVER** be advertised or used in any marketing material or communications with Borrowers, Lenders, or Consumers in general.

1.4.4 Use of Title (Broker/Agent)

You must always ensure that you list yourself as either a Mortgage Agent, Mortgage Broker, Agent or Broker in all marketing and promotional materials. These titles must appear immediately following or below your name. You may use descriptive phrase such as “Specialist in Retail and Commercial Mortgages” or “A Highly-Trained Mortgage Expert” in addition to your legal title, but these phrases have to be **in addition** to your title (O. Reg. 188/08 s.6 (4)).

Please note that it is not a requirement under Regulation 188/08 that Brokers/Agents provide their licence numbers as well as the Brokerage licence number on promotional materials, but it is permitted.

1.4.5 False, Misleading or Deceptive Information

Any advertising or marketing materials you use must not contain any misleading or deceptive information (O. Reg. 188/08 s.7).

Misleading representations may be the result of:

- Negligence
- Incompetence
- Intentional misrepresentation

- Improper use of disclaimers
- Improper reliance on industry terms
- Incomplete comparative ads
- Implied endorsements
- Improper use of teasers
- Use of unsubstantiated exaggeration
- Lack of timely reviews of advertisement

1.4.6 Examples of False or Misleading Advertisements

- Providing sample monthly repayment amounts for mortgage loans requiring no repayment of principal, without properly identifying that the payments shown represent only the interest portion;
- Advertising payment amounts for mortgage loans with unusually long amortization periods that do not specify the amortization period;
- Advertisements which contain repayment figures but do not contain an indication of the amortization period used to determine the repayment figure;
- Advertisements for interest-only mortgages that do not specify that the repayments do not include any principal amounts.

While in some instances the term “*for illustration purposes*” may be included with advertisements such as the above, it may or may not be sufficient to ensure that the ad is not misleading. The best practice is **ABC: Always Be Clear**.

1.4.7 Specific Rules for Specific Mortgage Types

There are also specific rules for advertising particular mortgages:

Fixed Amounts – Advertisements for a mortgage for a fixed amount that state the interest rate, or the amount of any prepayment, or of any charge other than interest, must also include the Annual Percentage Rate (APR) and the term of the mortgage; and the APR must be displayed in a manner consistent with the remainder of the ad. If the APR of the terms of the mortgage are not the same for all mortgages to which the advertisement relates, the disclosure must be based on an example of a mortgage that fairly depicts all those mortgages and is identified as a representative sample of them (O. Reg. 191/08 s.18).

Mortgages Securing Lines of Credit – Advertisements for mortgages that secure lines of credit that state the annual interest rate, or the amount of any payment, or of any charge other than interest, must also include the annual rate of interest on the date of the advertisement. They must also include any initial or periodic charges, other than interest, and this information must be displayed as prominently as the other information in the ad (O. Reg. 191/08 s.19).

Interest-Free Periods – If an advertisement states or implies that a period of the mortgage is free of any interest charges, the ad must indicate whether interest accrues during the period and is payable after the period (O. Reg. 191/08 s.20). If interest does not accrue during a period, the ad must clearly state:

- That there is an interest-free period or grace period;
- The conditions that apply to qualify for the interest free period;
- The APR, or the annual interest rate, if the conditions are not met.

1.4.8 Mandatory Brokerage Approval

All advertising you are planning to do *must* be submitted to the Principal Broker for review before publication or printing, to ensure compliance with all rules and regulations. A copy of all approved advertising will be kept in your file for reference purposes.

1.5 Suitability and Disclosure to Borrowers

1.5.1 Introduction

Under the *MBLAA, 2006* and its Regulations (O. Reg. 188/08 s.24), it is our duty, as Mortgage Brokers/Agents of ProFunding Financial Services Inc., to first and foremost consider the needs and circumstances of the Borrower to ensure that any mortgage presented is suitable for them. Three basic elements to consider when assessing the suitability of a particular mortgage product are:

- Borrower's **financial circumstances**;
- Borrower's **personal circumstances**;
- Borrower's **financial literacy** and general knowledge about mortgages.

1.5.2 Suitability based on the borrower's financial circumstances

- ✓ Determine whether they qualify for this mortgage based on qualifying formulas;
- ✓ Encourage consideration to whether the overall cost will be **comfortable** based on their *actual* monthly budget taking into consideration monthly expenses not typically included in lender qualifying formulas (*provide budgeting resources – see Know Your Client*);
- ✓ Are there any patterns of past behaviour that might suggest challenges in managing payments;
- ✓ Are there any indicators that income may NOT be consistent, on-going or reliable;
- ✓ Review other financial priorities and goals and take those into account, ie. new car, home renovations, post-secondary education expenses;
- ✓ Help in matching payment frequency to pay cycles to facilitate budgeting.

1.5.3 Suitability based on the borrower's personal circumstances

- ✓ Understand the borrower's personal goals, plans and timelines;
- ✓ Understand the borrower's priorities and help match amortization and payments with these goals in mind;
- ✓ Understand the borrower's life stage to ensure sufficient flexibility is built into the mortgage to meet their needs, ie. maternity leave, job changes or re-location possibilities, retirement, marriage or divorce-related challenges;
- ✓ Ensure this mortgage product will be flexible enough to meet changing needs, to the best of your ability. Provide disclosure regarding product limitations.

1.5.4 The borrower's financial literacy and general knowledge of mortgages

- ✓ Ensure the borrower understands what they are signing, ie. as a mortgagor there are covenants being agreed to in addition to making the mortgage payments, such as

- keeping condo fees, property taxes and a homeowner's insurance policy current and up to date, as well as maintaining the property in a good state of repair;
- ✓ Ensure the mortgage product(s) being offered meet the borrower's risk tolerance, ie. would their budget be able to accommodate fluctuations that occur with variable rate products;
 - ✓ For first-time homebuyers or those with no previous mortgage or financing experience, ensure basic mortgage terminology is either explained or educational material is provided. Concepts such as 'fixed vs variable rate' or 'term vs amortization' or the implications of 'monthly vs biweekly/weekly payments' are not common place knowledge – don't assume these terms are understood;
 - ✓ Ensure borrowers understand the consequences of a longer vs shorter term of the mortgage, ie. what if I need to move, need more money, need to payout the mortgage in full prior to end of term;
 - ✓ Ensure the mortgage product is affordable for the borrower, especially a first-time buyer who may not be familiar with the cost of other housing expenses such as property taxes, condo fees, utilities, insurance, etc. Provide either a Monthly Budget spreadsheet or a Know Your Client Form to help understand all of their expenses relative to take-home pay.

1.5.5 Suitability – What Needs to be Documented

Keeping detailed notes specific to the above three areas are a required part of your complete client file:

- 1) Document – information received from clients specific to their needs/circumstances according to the three areas noted above (Financial Circumstances / Personal Circumstances / Financial Literacy);
- 2) Document – options under consideration and steps taken in short-listing suitable products;
- 3) Document – reasoning behind how the chosen product was identified and others eliminated;
- 4) Document – steps taken/information provided to educate clients/assist in choosing a solution.

1.5.6 Suitability - Disclosing Material Risks

In addition, all material risks inherent in the transaction must be disclosed, including any potential conflicts of interest in recommending a specific product, and anything else that may be material to the client's decision to proceed with the mortgage transaction.

Disclosure must include whether you are representing,

- 1) the Borrower(s);
- 2) the Lender(s);
- 3) both the borrower(s) and lender(s);

so they are aware of whose interest you are representing and be able to make a qualified decision as to whether to enlist your services or not. The Broker/Agent should recognize that this statement will implement his/her responsibilities regarding fiduciary duties.

The guidelines below apply to all borrowers in all circumstances. We will now go into each of these elements in detail.

1.5.7 Suitability – Client Risk Profile

Know your Client Questionnaire

FSCO has made it clear that, even though your Client may qualify for a mortgage, and even though you may have a Lender willing to issue a commitment, you must determine if a reasonable person would find the mortgage affordable under the Client's financial circumstances.

In order to offer a suitable mortgage for your client, you need to understand their needs, preferences and goals. ***You must document your efforts to do so as part of a complete mortgage file. An application alone is not sufficient documentation to evidence a suitability assessment was undertaken.***

Because many clients have incomplete or limited knowledge of the options and variables that come with mortgage products today, they may not have considered how a mortgage might restrict their future plans at the time of the application. For this reason, it is a requirement that **a complete mortgage application be filled out for each and every Borrower in addition to a 'Know Your Client Questionnaire'.**

After taking an initial mortgage application to get the client's basic information, the next step in your initial assessment of mortgage options for a client will be to provide your client with a **'Know Your Client Questionnaire'** along with a **'Consent/Privacy'** document to obtain written permission for a credit bureau check. These two documents will allow you to do a more in-depth suitability assessment by providing you with the details you need to understand what mortgage options might be best suited and available to this client. Don't make the mistake of thinking out loud or discussing specific mortgage options with a client prior to understanding completely all details of a client's circumstances. This leads to an 'over-promise, under-deliver' scenario whereby some attractive options may not be suitable (or available) to this particular client. Be sure of details before you present your ideas.

Ensure that each and every question included in the Questionnaire is answered, including the Personal Budget section. It may be easier for each borrower in the case of a joint application to complete their own Questionnaire. Each borrower must sign at the bottom, you must also sign and date the form, and a copy should also be provided to the client as part of your disclosure documentation. If you are dealing with clients over the phone, you must review the questions

on the form and have the client sign and return to you, or include as part of the mortgage paperwork/required signing package when you meet with them to present the mortgage commitment.

This questionnaire can be completed in conjunction with a Privacy/Consent form in order to obtain written client consent for a credit bureau check and to advise of your firm's privacy policies. If an application is being taken over the phone, make it clear that a credit check will be required prior to submitting a mortgage application and that **written** permission is required PRIOR to obtaining the credit report. If having a Privacy/Consent form signed is not convenient at the moment or results in an undesirable delay in moving forward, at a minimum written approval MUST otherwise be obtained by having the potential client send you a quick email stating that they provide permission to run a credit check for mortgage financing purposes.

Credit Reporting Agency policy requires written consent be obtained prior to obtaining a credit report on a mortgage applicant. Not obtaining prior written approval to run a credit check is a **serious breach** of Brokerage and Credit Reporting Agency policy. If it is determined that credit bureau reports are being pulled without obtaining prior written consent, **access to the credit bureau system will be immediately withdrawn** effectively limiting your ability to underwrite and complete applications. Ongoing incidents of non-compliance will result in **termination** from this brokerage.

If, after reviewing the 'Know Your Client Questionnaire' you determine that there are additional circumstances that make a particular mortgage suitable/unsuitable or affordable/unaffordable to the Client, your observations should be documented and included as part of the Know your Client Questionnaire. Sign and date the form and have the Client(s) sign and date the form, and include it in the file (ie. a variable rate mortgage is not advisable at this time based on the information provided due to risk of interest rate/payment increases relative to the fixed budget of the client).

1.5.8 Suitability – Possible Mortgage Options

Having reviewed the 'Know your Client Questionnaire' you are also required to prepare/document a list of 'Possible Mortgage Options' as part of a complete mortgage file. Review the identified options with your client (this does not necessarily have to be handed to the client), could be outlined in an email or discussed over the phone, but should include a summary of advantages/disadvantages, restrictions/limitations vs benefits, feature, lender and interest rate comparisons and included in your mortgage paperwork/signing package. Have the client sign off that these options were reviewed/discussed in the process of identifying the best mortgage product for them, unless an email was sent in which case your emailed options should be part of the your documentation that a Suitability Assessment was conducted. This should show what alternatives were under consideration, other than the chosen solution.

It is important to note that the ultimate decision on whether to proceed with any particular mortgage always rests with the client. Your obligation is to determine the suitability and affordability of the mortgage, and document and disclose this information to the client. **If it is your professional opinion that the mortgage chosen by the client is not affordable or contains excessive risk under the client's current circumstances, yet they wish to proceed regardless, include a note on your Borrower Disclosure document or 'Know Your Client' that they will need to make adjustments to their budget and/or lifestyle in order to afford the mortgage comfortably, and that they understand the affordability risks associated with taking the mortgage given the information they have disclosed.**

1.5.9 Client Right to Waive Suitability Assessment

Some borrowers are experienced, long-time homeowners who feel competent and knowledgeable of their own financial circumstances and know what they want in a mortgage product. If, having provided a 'Know Your Client Questionnaire' to a client and they refuse, decline or prefer not to complete or choose to provide partial or limited information (ie. no budget information provided), they do have the option to waive this level of suitability assessment/service/guidance. Have your client sign the 'Waiver to Disclose Complete Personal/Financial Circumstances' at the bottom of the 'Know Your Client Questionnaire'. A complete mortgage file must include either a completed 'Know Your Client Questionnaire' or a signed 'Waiver to Disclose Complete Personal/Financial Circumstances'. In the event a 'Waiver to Disclose' is signed, it is also required that your Borrower Disclosure makes note of the fact the client declined the option to receive an in-depth suitability assessment requiring completion of the 'Know Your Client Questionnaire' and that they have chosen to accept the risk involved and take full responsibility for the transaction.

1.5.10 The Client Agreement Form

(brokerage to decide if they wish to include-customize to your preferences as a brokerage)

In order to comply with the client disclosure requirements of the *MBLAA, 2006* and its Regulations, a Client Agreement Form has been developed (see Section 3) to accomplish this task. This form has several different sections, which are outlined below.

It is the policy of ProFunding Financial Services Inc. that the Client Agreement Form is filled out by **every** client who applies for a mortgage with our firm, and that this document **must** be kept on file at (ProFunding Financial Services Inc.'s) head office, regardless of whether the mortgage proceeds or not.

1.5.10.1 General Terms

These are the general terms of the Agreement, outlining the perspective the document is written from (the Client's), and other legal information outlining the purposes of the entire Agreement.

1.5.10.2 Obligations

This section outlines the obligations the Client has to provide us with complete and accurate information and that we will use their information for the purposes of advising them on the mortgage transaction. It also provides some indemnification for you and the Brokerage from any third-party, and obligates the Client to pay for any costs associated with the transaction that are disclosed to them and agreed to by them, in advance.

1.5.10.3 Compensation

This section outlines the various methods by which Mortgage Brokers/Agents receive compensation from Lenders, and is self-explanatory; however, we draw your attention to the following statement at the end of the section:

If there are specific compensation benefits for you to offer me a mortgage from one company over another, you will fully disclose this information to me as part of the mortgage application process so that I may make a fully informed decision regarding the placement of my mortgage with specific lenders.

One of the major changes included in the *MBLAA, 2006* is the need for disclosure of compensation types (not amounts) (O. Reg. 188/08 s.21), and also the need to disclose *differences in compensation received for different types of mortgages recommended*. This means that if there are two mortgages that are suitable to the Client, and they have identical interest rates, terms, and conditions, you are still **obligated** by the Act to disclose that the mortgage product you are recommending pays you a higher commission, volume bonus, reward points, etc. than the other.

However, these new disclosure requirements remain true *especially when the terms of the two mortgage products differ*. For example, if a client would qualify for a 5-year mortgage from Lender A at 4.5% that pays 90bps FF and 20bps VB, and would also qualify for a 5-year mortgage from Lender B at 4.15% that pays 80bps FF and no VB, **you are obligated under the Act** to present both mortgage options to the Client, **and** disclose to the Client that you will receive a higher commission for the higher-rate mortgage (or a lower commission for the lower-rate mortgage).

The same applies if the Client is looking for the “best rate” and is not concerned about term – if comparing a three-year mortgage to a five-year mortgage, you must disclose to the Client which mortgage you will receive a greater commission from.

This does not necessarily mean that you must settle for lower pay for the work that you do.

This is the key element of probably the largest change taking place in our industry, as we move away from being strictly salespeople and into the realm of Professional Advisors. There is nothing wrong with presenting both options, but charging a broker fee for the lower rates you offer your clients in lieu of the commissions you would have received. **The key is disclosure.**

Therefore, there is nothing wrong, under our first example above, in turning to the Client and stating to them: “I have two options for you – one is at a rate of 4.5%. However, I have been able to locate, through my efforts, a much lower rate of 4.15%, which I am prepared to offer you with a broker fee of \$450, because it pays me less in commissions than the mortgage at 4.5%. Taking the mortgage at 4.15% will result in an interest savings to you of \$X over the term of the mortgage, so I feel the broker fee of \$450 is reasonable given the amount of money I can save you. Which mortgage would you like to go with?” Doing so meets all of the requirements of the *MBLAA, 2006* and its Regulations, and ensures you are providing the Client with the best mortgage for their needs.

1.5.10.4 Collection of Identification

In cooperation with the Anti-Money Laundering laws, we have a duty to verify the identity of the clients we meet with. To this end, it is ProFunding Financial Services Inc.’s policy to collect a piece of acceptable identification from each client, record the number of the identification, photocopy it if possible or reasonable under the circumstances, and keep this information in the file.

Depending on the Lender, it is typically a requirement to obtain a photocopy of two pieces of identification for each borrower. As individual lender requirements may vary, when determining which pieces of identification are acceptable and whether a photocopy or written attestation is preferred, be guided by the lender’s own policies for client identification.

In general, lenders require two pieces of identification. The first piece must be issued by a federal or provincial government agency and must contain a photograph. Examples may include: Passports, Drivers’ Licenses, Nexus Cards, Canadian Forces Service Cards, Certificate of Indian Status, etc. The second piece of identification may also be issued by a federal or provincial government agency or a Federally Regulated Financial Institution (FRFI) and is not required to contain a photograph. Examples may include credit cards, debit cards, employee identity cards, etc.

Take the time to compare the name and address on the identification with the name and address on the application/Credit Bureau Report. Ensure the identification has not expired, the

photo is a reasonable facsimile of the individual and the signatures on the identification approximately match the signatures on the documents on file.

Be aware of the security features on most forms of identification and assure yourself that the document has not been altered, counterfeited or tampered with.

The following documents were not originally intended to be used as personal identification and as such, contain few or no security features: Canadian Citizenship Cards or Certificates, Social Insurance Cards, Old Age Security Cards or Birth Certificates. You may accept any of the above if they are on the lender's list of acceptable I.D., however attempt to obtain more secure pieces of identification if available.

Provincial legislation specifies that Health Cards from Ontario, Manitoba, PEI or Quebec (unless offered) are not acceptable as personal identification.

If suspicious, or if the applicant does not have sufficient identification, request secondary documentation such as utility bills containing the Borrower's name and address or copies of negotiated, personalized cheques indicating an established banking relationship, etc. Advise the lender that the borrower does not have the required identification documents and obtain prior agreement for the use of alternative forms of I.D.

Be guided by the individual lender's requirements for recording identification and provide the information to the lender in their preferred format. Where requested by the lender, photocopy or take a digital image of the identification front and back. Alternately, record the identification number and identifying characteristics (issue/expiry date, date of birth, identification/card number).

Powers of Attorney - Always advise the lender in writing where there is a Power of Attorney (POA). Make a reasonable attempt to validate POAs. Obtain the address, contact information and reason for the POA. Keep a record of the validation steps performed. Include the validation information in the borrower's application and the Lender/Investor Disclosure Statement for Brokered Transactions.

Addition/Deletion of Borrowers - If borrowers are being added or deleted from a mortgage at refinance, ensure the entire mortgage is re-qualified.

Ensure it is disclosed to the lender or investor in writing or on the appropriate Investor/Lender Disclosure Statement for Brokered Transactions, where the borrower could not be adequately identified. In these instances, the lender may add additional conditions to the Commitment.

1.5.10.5 Original Documentation/Verification of Documentation for Fraud Prevention

This section obligates the borrower to provide original documentation where available, which assists in the prevention of fraud. It is understood that this will not always be possible, given the nature of faxing and email relations with borrowers today. However, we are still obligated to verify the documentation provided to us. Therefore, it is the policy of ProFunding Financial Services Inc. that every Mortgage Broker/Agent will exercise proper due diligence in the efforts of fraud prevention by verifying the authenticity of any documentation provided by a borrower. If potentially fraudulent documentation is discovered, report it immediately to the Principal Broker to be addressed.

Under the *MBLAA, 2006* and its Regulations (O. Reg. 188/08 s.17), upon request in writing by the Superintendent, the owner or the owner's agent, will return to their owner promptly, without charge, any and all documents, deed(s) instruments and/or other applicable documents without any unreasonable hold.

1.5.10.5.1 Verify Borrower Application

Brokers are required to take reasonable steps to validate the authenticity of application information and supporting documents provided by the borrower(s). The following represent guidelines and examples of verification techniques. It is up to the individual Broker/Agent to use sound judgement in determining which verification practices are warranted in each case. If you have questions, refer to your Principal Broker.

Provide evidence that the supporting documents were provided by the borrower by requesting each borrower to initial or sign all pages of the documentation provided in support of their employment and income. As a best practice, the borrower(s) must sign a copy of the application. In doing so, the borrower is attesting that the information contained therein is accurate and complete. Retain a copy of the application and signed documentation in the file and provide a copy to the lender. *Advise the borrower that submitting falsified information on a mortgage application is a fraud and can result in serious consequences.*

1.5.10.5.2 Review Credit Report

Scan the Credit Report for irregularities or characteristics that are not consistent with the application such as:

- Date Credit Bureau record opened (Since Date);
- Current address or address history;
- Employer name, nature of employment or employment history;
- Number of open trades, credit utilization and size of credit limits vs. general expectations for current employment, tenure and income;
- Evidence of unreported loans or mortgages not reflected in debt servicing ratios; or

- DOB mismatch, possible True Name Fraud or other alerts.

The presence of inconsistencies on the Credit Report does not necessarily indicate fraud, however it is a best practice to attempt to obtain a reasonable explanation for all irregularities as the lender may also have the same concerns.

1.5.10.5.3 Verify Employment and Income

Take reasonable steps to validate employment, income and tenure. Visually scan all documentation for consistency and accuracy. For example, perform Internet checks such as locating the employer website and the physical address using a “Street View” utility. If in doubt, request additional documentation or perform a telephone interview with the borrower. Document all steps taken to validate the employment and income prior to submitting the file to the lender. If you have concerns, you may wish to contact the lender in advance to request additional direction.

For self-employed or low-doc loans, use the Internet to locate employer/business websites and physical premises. Undertake a critical review of the documents provided for reasonableness and perform a telephone interview of the client. If in doubt, request additional documentation such as tax records or audited financial statements. Maintain a record of all steps taken to validate the employment and income prior to submitting the file to the lender.

1.5.10.5.4 Verify Equity

Attempt to validate the down payment and/or the gift letter if the down payment is a gift. Visually scan all supporting documentation such as account or investment statements for reasonableness and consistency. Account for all regular deposits and/or withdrawals that are not clearly itemized on the statement. Scan for layout, typographical, acronym and addition errors. If in doubt, request additional documentation, or conduct a borrower interview clarifying the source of the down payment.

For gift letters, ensure the source of funds is well documented in the file through account statements or cancelled cheques provided by the giftor. As down payments in general and gift letters in particular have been used as methods to launder money, lenders require a high level of due diligence.

Where the down payment is coming from the sale of another property:

- If the property has not been sold or the sale has not been completed, obtain a copy of the on-line MLS listing (if still available) and/or the completed Agreement for Purchase & Sale. The lender may require that a firm sale date be established or approval for bridge financing be obtained prior to providing the Commitment. The lender may make direct arrangements with the solicitor if the same solicitor is acting for the purchase of the new residence, or may require additional Commitment conditions;

- If the sale has been completed, obtain a copy of the MLS listing (if available), the completed Agreement for Purchase & Sale, a copy of the lawyer's Receipts & Disbursements document with proof that the proceeds of the sale have been deposited into the client's bank account; or
- Depending on the timing of the sale and whether the same lawyer is handling the new purchase, the lender may validate the sale proceeds directly with the lawyer.

Ensure each borrower responsible for paying the down payment signs or initials each page of the documentation provided in support of equity.

1.5.10.5.5 Verify Property

For purchase transactions, ensure a completed Agreement for Purchase and Sale is on file along with all Schedules and Amendments. Attempt to capture and print an on-line version of the MLS listing. If the sale is a private sale, be guided by the practices of the individual lender.

For new construction loans, verify the Developer and the Development against the Tarion New Home Warranty website to ensure both are registered. Conduct further due diligence by reviewing the Developer's previous projects and checking with the Better Business Bureau, for example.

For purchase plus improvement loans, ensure sufficient documentary evidence is on file to support the proposed construction such as builder's plans, materials estimates, architect's drawings, etc. If possible, perform due diligence on the contractor and other professionals.

For the purchase of condominiums, be guided by the individual lender's requirements for required documents. At a minimum, ensure the borrower provides a copy of the Status Certificate, copies of the last Condo Corporation Meeting Minutes, a copy of the most recent Audited Financial Statements and current Reserve Fund Statements.

1.5.10.5.6 Verify Intent to Reside

Ascertain whether the property will be owner-occupied or used as an investment. Review the credit report for evidence of other mortgage loans not included in the debt servicing ratios.

Attempt to verify Rental Agreements and rental income. For example, ensure rental deposits are accurately reflected in the deposit account statements or attempt to locate existing renters in 411.ca listings.

1.5.10.5.7 Verify Appraisals

Review appraisals for irregularities such as:

- Inconsistencies in property and neighbourhood information in relation to the MLS listing;
- Comparable properties with large adjustments, “stale-dated” or geographically incompatible comparables;
- Unusual historic transactions; or
- Any notes indicative of irregularities in the property, usage, improvements, history or transactions, etc.

1.5.10.5.8 Disclosure

When submitting applications to lenders or investors, disclose all material risks as well as measures taken to detect and mitigate mortgage fraud. Retain detailed notes and copies of materials on file to demonstrate fraud mitigation actions.

With respect to investors, ensure all appropriate Investor/Lender Disclosure Statement(s) for Brokered Transactions are completed. (O. Reg. 188/08 s.31)

1.5.10.5.9 Review the application with the borrower

As proof that the borrower provided the supporting documentation and is aware of the entire contents of the application, have each borrower sign or initial all pages of documentation provided in support of their mortgage application. It is a good practice to also obtain the borrower(s)' signature on the application form as an attestation that the information contained therein is accurate and complete.

As a best practice, advise the borrower that the lender may contact third parties in order to validate the information in the mortgage application and supporting documents. Also advise the borrower that misrepresenting personal or financial information on a mortgage application and/or providing false or altered supporting documents constitutes fraud and may result in serious consequences.

1.5.10.6 Conflicts of Interest

Conflicts of Interest, or the perception of Conflicts of Interest, are another key area of disclosure to Clients, ensuring they are always aware of where there may be a potential motivation to not act in their best interests. One of these Conflicts of Interest was reviewed above: Presenting a Client with one mortgage over another because you are going to receive a higher commission, for example, is a Conflict of Interest if the rate to the Client is lower for a lower-paying mortgage product.

Other examples:

- The Mortgage Broker/Agent is related to the Appraiser;
- The Lender is related to the Mortgage Broker/Agent;

- The Lender is a family member of the Borrower;
- When the Mortgage Brokerage/Broker/Agent is also the Lender;
- If the Mortgage Broker/Agent or his/her spouse uses a self-directed RRSP to fund the mortgage for the Borrower;
- Favouring a Lender for monetary reasons;
- Receiving travel points, free holidays, or other incentives that are normally not available;
- When a Mortgage Broker/Agent acts for both the Borrower and Lender;
- If the Mortgage Broker/Agent receives higher “bonus” commissions for working with a specific Lender during a specific timeframe;
- If the Principal Broker is also a Real Estate Broker who is involved with listing and/or selling a property;
- Or any other perceived Conflicts of Interest.

It is the policy of ProFunding Financial Services Inc. that any and all perceived Conflicts of Interest be disclosed to the Client and recorded in this section of the Client Agreement and on the Borrower’s Disclosure Form so that these disclosures will form part of the file (O. Reg. 188/08 s.27). When describing and recording notes regarding potential or perceived Conflicts of Interest, also describe measures taken to reduce the risk of fraud arising from the conflict or potential conflict on the applicable Investor/Lender Disclosure Statement(s) for Brokered Transactions.

1.5.10.7 Communications with Parties Involved

This section authorizes you, the Mortgage Broker/Agent, to communicate with other parties involved in the mortgage transaction with those details pertinent to their conduct of business (e.g. notifying a Realtor that the mortgage is approved, arranging an Appraiser, etc.)

1.5.10.8 Indemnification of Brokerage

This is a key disclosure section to the Client, in that they are acknowledging that, as the Mortgage Brokerage or Mortgage Broker/Agent, we are at the mercy of the Lenders and Insurers regarding conditions that must be fulfilled in order for a mortgage to fund. This section indemnifies us and holds us free from harm should we perform our duties properly, yet the mortgage does not fund as a result of the Lender or Insurer conditions not being fulfilled for any reason other than our negligence as the Mortgage Brokerage or Mortgage Broker/Agent for the transaction.

1.5.10.9 Disclosure of Material Risks

This section outlines the various material risks inherent with mortgage transactions and is self-explanatory. It is the policy of ProFunding Financial Services Inc. that each Mortgage

Broker/Agent will discuss the relevant material risks with all Clients and mark the relevant check boxes beside the risks that apply. If there are additional risks associated with the mortgage that are not included in this section, they must be documented and attached to the Client Agreement, after being initialled by the Client (O. Reg. 188/08 s.25).

1.5.10.10 Credit Bureau and Privacy Authorization

This is a standard written clause that credit reporting agencies require we have signed as proof the Client has authorized us to pull a Credit Report through their services. In cases where the Client provides authorization over the phone, it is the policy of this brokerage that the Client Agreement is signed on first meeting with the Client, and a notation made that the Client provided verbal authorization, with the time and date also registered in the appropriate field.

The Privacy Authorization covers the sensitivity of the information we are receiving from the client and how we use it for the purposes of a mortgage transaction.

1.5.11 Lender Disclosures

While some of this information is contained within the Client Agreement, you are required by the *MBLAA, 2006* and its Regulations (O. Reg. 188/08 s.18 & 19) to provide to a Client the following information on request:

- The number of lenders on whose behalf the Mortgage Brokerage acted during the previous fiscal year;
- Whether the Brokerage itself was a lender in the previous year;
- The name of the Lender, if any, with whom the Brokerage arranged more than 50 per cent of the total number of mortgages and mortgage renewals during the previous fiscal year.

1.5.12 Duty to Verify Appraisals

It is the policy of ProFunding Financial Services Inc. that whenever a property appraisal is ordered by a Lender and arranged by the Mortgage Broker/Agent or Client, the Mortgage Broker/Agent will contact the Appraiser personally after the completed appraisal has been received by the Lender to ensure the Appraiser in question actually completed the appraisal.

1.6 Private Lenders

1.6.1 Introduction

Private Lenders (also known as Investors by the *MBLAA, 2006*) are a special case in our industry. Mortgages provided to Borrowers from Private Lenders must be treated with greater care and due-diligence due to the nature of our relationship to both the Borrower and Lender in these cases. The following section outlines some of the special considerations, policies, and documentation surrounding Private Lending within ProFunding Financial Services Inc.

It is imperative that these rules be followed, as FSCO may be performing full audits of mortgage brokerages in Ontario to verify that this information is in place, and that these policies and procedures are being followed.

1.6.2 Agents Must Not Sign Investment Disclosure Forms

In accordance to the *MBLAA, 2006*, NO AGENT representing ProFunding Financial Services Inc. is permitted to sign an investment disclosure form to a private lender. It is a further condition of ProFunding Financial Services Inc. that no agent may present an investment disclosure document to a private lender.

1.6.3 Principal Broker Must Approve All Private Lenders

It is the policy of ProFunding Financial Services Inc. to evaluate and approve all Private Lenders used by any Mortgage Broker/Agent within this Brokerage. This means that a physical file containing full Private Lender information must be maintained at ProFunding Financial Services Inc.'s head office. A full Investor Risk Profile conducted on the Private Lender must also be in the file in order to verify the suitability of all mortgage investment presented to them.

It is important to note that, while the Principal Broker must approve all Private Lenders and maintain a file on them, it does not mean that this Private Lender will be accessible directly to all Mortgage Brokers/Agents in the firm. This process should ensure the protection of these private sources of funds because once a file is created at ProFunding Financial Services Inc.'s head office, only the Mortgage Broker/Agent who provided the information to the Principal Broker will be permitted to work directly with the Private Lender.

1.6.4 Know Your Client for Private Lenders

In order for any Mortgage Broker/Agent to work with a Private Lender, the first step is to ensure that you know your Client is aware of the risk associated with the investment, and that risk is suitable given their age, needs, etc. It is mandatory under the *MBLAA, 2006* (O. Reg. 188/08 s.10 & 11) for there to be documentation on each Private Lender used by Mortgage

Brokers/Agents of ProFunding Financial Services Inc. at our company's head office, for the purposes of a FSCO audit. Therefore, at a bare minimum, basic information about the Client may include copies of their identification, and declarations of "know your client" must be kept in this file.

We follow Anti-Money-Laundering legislation and verify that funds for our mortgages are coming from within the financial system, not from large cash deposits. In addition, a copy of the appropriate Investor/Lender Disclosure Statement(s) for Brokered Transactions for each mortgage funded by any specific Private Lender needs to be retained by the Brokerage in our files. Even if this is someone you have worked with for years, this documentation is mandatory, and will be examined by the Regulator during an audit. Ensure you notify the Principal Broker of each and every Private Lender you work with, and ensure there is a file for each at ProFunding Financial Services Inc.'s main office.

It is the responsibility of the Broker to ensure that Brokers/Agents of this Brokerage are not being used to facilitate dishonesty, fraud, crime or illegal conduct.

1.6.5 Investor Disclosure Form

Every Private Lender must be presented with the appropriate Ontario Investor /Lender Disclosure Statement(s) for Brokered Transactions for each and every mortgage transaction in which they are a participant (O. Reg. 188/08 s.31). Once signed by the Private Lender, a copy of this/these form(s) must be included in both the Client mortgage transaction file, and the Private Lender file at ProFunding Financial Services Inc.'s head office – note that only a Broker licensed person may sign the Lender/Investor Disclosure(s) (O. Reg. 188/08 s.31 (1)).

1.6.6 Designated Class of Lenders or Investors

In some cases, you may end up working with a Private Lender or consortium that belongs to (or should belong to) what the *MBLAA, 2006* Regulations calls a "Designated Class of Lenders or Investors" (O. Reg. 188/08 s. 2). The most common conditions you will face under which Private Lenders would be part of this class are as follows:

- A person or entity who is registered as an Adviser or Dealer under the Securities Act when the person or entity is acting as a Principal, or Agent, or Trustee for accounts that are fully managed by the person or entity;
- An individual, who, alone or together with his or her spouse, has net assets of at least \$5 million and who provides written confirmation of this to the Brokerage;
- An individual who, alone or together with his or her spouse, beneficially owns financial assets (being cash, securities within the meaning of the Securities Act, the cash surrender value of a life insurance contract, a deposit or evidence of a deposit) that have an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1 million and who provides written confirmation of this to the Brokerage;

- An individual whose net income before taxes in each of the two most recent years exceeded \$200,000 or whose net income before taxes in each of those years combined with that of his or her spouse in each of those years exceeded \$300,000, who has a reasonable expectation of exceeding the same net income or combined net income, as the case may be, in the current year and who provides written confirmation of this to the Brokerage.

In these cases, if we have the relevant information on file as outlined above, it is not mandatory to provide a copy of the Ontario Investor/Lender Disclosure Statement(s) for Brokered Transactions to the Lender for each transaction. It is suggested that one be presented so as to avoid any conflicts if the mortgage goes into default with a sustaining loss.

1.6.7 Borrower Enhanced Due Diligence for Private Lenders

In the case of Private Lenders, complete the appropriate Investor/Lender Disclosure Statement(s) for Brokered Transactions, including the following:

- Brokers must perform Enhanced Due Diligence and provide documentary evidence of the borrower's ability to meet the mortgage payments for the life of the loan;
- If it is a construction loan, document due diligence on the developers and the property to reduce the risk of mortgage fraud;
- Document the risks of the rank of the mortgage; and
- Document situations where the Investor may be required to contribute additional funds.

Appraisals will be required in almost all instances. In the event an appraisal is not required, document the rationale in the file. If the appraiser does not hold a CRA or AACI designation document the rationale in the file.

1.7 Mortgage File Documentation Requirements

1.7.1 Introduction

Proper documentation for each file is critical in the Mortgage Broker industry. It ensures that we have taken the proper care to work in the Client's best interests. It is also the law. Under the *MBLAA, 2006* and its Regulations (O. Reg. 188/08 s.46), all documentation for a mortgage originated by a Brokerage must be kept on file in either paper or electronic format for six years from the end of the initial term of the mortgage. This means that the documentation for a 5-year term mortgage must be retained by the Brokerage for 11 years from the funding date of the mortgage.

1.7.2 The File Checklist

All Brokers/Agents of ProFunding Financial Services Inc. will store all original files at the Head Office. Branch offices and any Broker/Agents working out of remote locations (ie. Home offices) will deliver their completed files to the head office for file storage. They will keep only the records as described in 1.7.8.

1.7.3 Documentation Requirements

Each file must contain all documents relevant to the transaction, all documentation transmitted to the Lender, and any other internal documentation required. It is the policy of ProFunding Financial Services Inc. that the following documentation, at a minimum, will be contained in each mortgage file:

- Client Agreement
- Client Risk Profile Form
- Signed Mortgage Commitment
- Cost of Borrowing Disclosure
- Client Budget Form (if required)
- MLS Listing (if required)
- Final Purchase & Sale Agreement (if required)
- Schedules/Waivers (if required)
- Proof of Income & Employment
- Proof of Equity (if required)
- Proof of Borrower(s) Identity
- Amortization Schedule
- MLI Application / Waiver Form
- Invoice Checklist

All additional information and documentation required as part of your due diligence and/or required by the Lender must be contained in the file. It is a best practice to also include any notes, timelines of interactions, and other details about the application or transaction process in the file for future reference.

In addition to the above positive photo confirmation of the applicant(s)' identity must be obtained (2 forms if possible) by scanning, photocopy or recording the particulars of the identification. If because of the Electronic Documents Act (EDA) or privacy concerns the

Broker/Agent must satisfy him/herself as to the identity of the applicant and sign an attestation letter to that effect. A copy of the letter must be kept in the file.

1.7.4 Files for Non-Completed Mortgages

Even mortgages that do not fund require a paper trail. If an application is taken for a Client, then a file must be created. At minimum, each of these files **must** contain a signed Client Agreement, and should contain any other documentation you were provided by the Client during the application process. Be sure to note in the file, or within your notes, why the deal did not fund.

If the deal is cancelled, or you know it will not proceed, the Brokerage is also responsible to retain the file for a period of 24 months (O. Reg. 188/08 s.46 (4)).

1.7.5 Complete File Required Before Commissions Paid

It is the policy of ProFunding Financial Services Inc. that no commissions are paid on mortgage files unless we have a complete file in our possession at that time. Files are reviewed and audited for documentation contents prior to commission payments, so if anything is missing from the file you will be notified by payroll and will be expected to remedy the situation before receiving your commissions. **There are no exceptions to this rule.**

1.7.6 Electronic Filing Requirements

All paperwork can be filed electronically or retained physically in proper storage.

1.7.7 Destruction of Files by Agent

It is the policy of ProFunding Financial Services Inc. that no Mortgage Brokers/Agents will retain any documentation related to any mortgage file for a period longer than 60 days from the funding date of the transaction. All documentation must be properly destroyed by secured means (cross-shredding or other destruction method) whereby the documentation cannot be legible or intelligible to anyone who might gain access to it.

This is not to say that the Mortgage Broker/Agent cannot retain a Client list and basic, non-financial information relevant to the conduct of their business and the provision of proper customer service (e.g. full Client contact information, initial mortgage amount, funding date, Lender, maturity date, interest rate, etc.). However, should you choose to store this information in a different manner, then it must be stored in a secure manner, password-protected, and physically secure within your office, home office, or place of business at all times.

1.7.8 Maintaining Files

ProFunding Financial Services Inc. will maintain the following records:

1. Complete and accurate financial records of its licensed activities in Ontario.
2. Complete and accurate records of every mortgage application, mortgage instrument and mortgage renewal agreement received or arranged by the brokerage.
3. Complete and accurate records of every other agreement entered into by the brokerage in the course of dealing or trading in mortgages or in the course of mortgage lending.
4. Complete and accurate records of all documents or written information given to or obtained from a borrower or prospective borrower, a lender or prospective lender, an investor or prospective investor or any other person or entity pursuant to a requirement established under the Act.

All files will be stored in a manner that safeguards against theft or falsification of records.

1.7.9 Co-brokering

ProFunding Financial Services Inc. will only pay a fee or other forms of remuneration to a Registered Licensed Brokerage, or to an exempted entity with regards co-brokered transactions. ProFunding Financial Services Inc. will not pay a fee or remuneration directly to a Broker/Agent of another Licensed Brokerage (O.Reg 188/08 s. 44).

ProFunding Financial Services Inc.'s Brokers/Agents may from time to time co-broker a deal with a Broker or Agent from another Brokerage. This can be done as long as the following conditions and agreements are met.

1. The broker or agent has obtained the consent of the other brokerage.
2. The brokerages have a written agreement governing the provision of the incentive to the broker or agent.
3. The brokerage has a written agreement with the broker or agent governing the provision of the incentive to him or her.
4. Both agreements require the brokerage to give the other brokerage particulars of the following matters both periodically and upon request:
 - i. the incentives provided by the brokerage to the broker; or a
 - ii. if an incentive entitles the broker or agent to exercise one or more options in the future, particulars of the options exercised during the applicable period.

1.8 Managing Deemed Trust Funds

Trust Bank Accounts - Brokerages that have trust accounts on occasion may not be quite clear on the management of the account. Following are some Q&A's that address common questions regarding trust accounts.

Q. If I receive money from a borrower to pay for an appraisal, can I put it into my General Account?

A. Any monies that your brokerage receives for a third party are trust funds.

Examples are:

- Appraisal Fees (i)
 - Legal Retainer Fees (ii)
 - If monies are received for a private lender's payment (iii)
 - Co-brokered Fees (iv)
- (i) If you don't have a trust account have the cheque made payable to the appraiser
(ii) If you don't have a trust account have the cheque made payable to the lawyer
(iii) The brokerage cannot receive payments for another party. If you don't have a trust account have the cheque made payable to the private lender
(iv) If you don't have a trust account the cheques should be made payable to the individual brokerages by the solicitor closing the transaction.

Q. If my trust account was inactive in the previous fiscal year; do I have to report it on my AIR?

A. Whether your trust account was active or inactive its existence must be reported on your AIR.

Q. Do my cheques and bank statements have to state that this is a trust account?

A. All bank statements and cheques pertaining to the trust account must clearly state that they are representative of the trust account.

Q. Can I have more than one trust account, so as to serve separate purposes?

A. Yes you may upon written permission from the Superintendent of Mortgage Brokers.

Q. How often must I reconcile the trust account?

A. The trust bank account must be reconciled within 30 days after the brokerage received the monthly trust bank account statements from the financial institution. It must be signed and dated by the principal broker.

Q. How often should the brokerage deposit monies to offset the monthly service charges and possible NSF fees?

A. The monthly service charges are usually deducted the same day every month therefore that should be accommodated. Regarding NSF fees, as soon as the brokerage is made aware of the NSF cheque.

Q. Should I concern myself if the trust account has a shortfall?

A. The MBLAA 2006 states that “If a brokerage determines that there is a shortfall in the authorized trust account; the brokerage shall immediately notify the Superintendent” O. Reg. 188/08, s. 54. As a best practice, it is suggested that when setting up your trust account that an authorization to the bank be given to cover any shortfalls from the general account immediately.

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EXCERPTS FROM MBLAA 2006 RULES AND REGULATIONS 188/08

MANAGING DEEMED TRUST FUNDS

Deemed trust funds

49. (1) Subject to subsection (2), money received by a brokerage directly or indirectly from a borrower, lender or investor in connection with carrying on the business of dealing or trading in mortgages is deemed, for the purposes of this Regulation, to be held in trust by the brokerage. O. Reg. 188/08, s. 49 (1).

(2) Money received by a brokerage for any of the following purposes is not deemed to be held in trust by the brokerage:

1. Money earned by the brokerage for its services.
2. Money received to reimburse the brokerage for its expenses.
3. Money payable to the brokerage as a mortgage lender. O. Reg. 188/08, s. 49 (2).

Authorized trust account

50. (1) A brokerage that receives or holds deemed trust funds shall maintain a trust account designated as its mortgage brokerage trust account at one of the following types of financial institutions in Ontario:

1. A bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada).
2. A credit union or caisse populaire to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
3. A corporation registered under the *Loan and Trust Corporations Act*.
4. A retail association as defined under the *Cooperative Credit Associations Act* (Canada).
O. Reg. 188/08, s. 50 (1).

(2) A brokerage shall not establish or maintain more than one mortgage brokerage trust account unless it has the prior written consent of the Superintendent to do so. O. Reg. 188/08, s. 50 (2).

Administration of trust account

51. (1) A brokerage shall deposit deemed trust funds that it receives into its authorized trust account within two business days after receiving the funds. O. Reg. 188/08, s. 51 (1).

(2) A brokerage shall keep deemed trust funds separate from money that does not constitute deemed trust funds. O. Reg. 188/08, s. 51 (2).

(3) Unless otherwise agreed to in writing by the beneficial owner of deemed trust funds, any interest earned on the deemed trust funds shall be paid to the beneficial owner. O. Reg. 188/08, s. 51 (3).

(4) A brokerage shall not disburse any deemed trust funds except in accordance with the terms upon which the funds were received by the brokerage. O. Reg. 188/08, s. 51 (4).

Record of trust account transactions

52. A brokerage shall make a written record of all deemed trust funds that it receives and all transactions relating to the funds, and the record must include the following information:

1. The contents of the written statement required by section 39 that is given to the person or entity from whom money is received.
2. With respect to every deposit made to the authorized trust account, the amount of the deposit, the date on which it was made, the name of the person or entity from whom the deposited money was received and the purpose for the deposit, including particulars of the mortgage, if any, to which the deposit relates.
3. With respect to every disbursement made from the authorized trust account, the amount of the disbursement, the date on which it was made, the name of the person or entity to whom the money was disbursed and the purpose for the disbursement, including particulars of the mortgage, if any, to which the disbursement relates.
4. With respect to every payment of interest on money in the authorized trust account, a way of identifying the deposit of deemed trust funds to which the interest relates, the amount of the interest associated with the deposit and the date, if any, on which the interest was paid to the person or entity from whom the deposit was received. O. Reg. 188/08, s. 52.

Monthly reconciliation statement for trust account

53. (1) Every month, a brokerage shall prepare a reconciliation statement for the authorized trust account and the principal broker shall review the statement and sign and date it to indicate that he or she certifies that it is accurate. O. Reg. 188/08, s. 53 (1).

(2) The reconciliation statement for a month must be prepared, reviewed and signed by the following deadline:

1. If the brokerage receives a monthly account statement from the financial institution where the account is maintained, 30 days after the brokerage receives the monthly account statement.
2. In any other case, 30 days after the end of the month. O. Reg. 188/08, s. 53 (2).

(3) The reconciliation statement for a month must set out the following information:

1. The differences, if any, between the records of the brokerage and the records of the applicable financial institution as of the following date:
 - i. if the brokerage receives a monthly account statement from the financial institution, the date of the monthly account statement, and
 - ii. in any other case, the last day of the month.
2. The balance in the account that is owing to each person or entity as of the applicable date described in subparagraph 1 i or ii. O. Reg. 188/08, s. 53 (3).

Duty to report shortfall in trust account

[54.](#) If a brokerage determines that there is a shortfall in the authorized trust account, the brokerage shall immediately notify the Superintendent. O. Reg. 188/08, s. 54.

Annual reconciliation statement for trust account

[55.](#) (1) If, for any month during its fiscal year, a brokerage is required to prepare a reconciliation statement for the authorized trust account, the brokerage shall prepare an annual reconciliation statement for the account for the fiscal year within 90 days after the end of the year. O. Reg. 188/08, s. 55 (1).

(2) The annual reconciliation statement must summarize the contents of each of the required monthly reconciliation statements for the account for the fiscal year. O. Reg. 188/08, s. 55 (2).

Appendix