



FSCO Licence Number: 11616

**POLICIES & PROCEDURES MANUAL
SECTION 5**

2017

In this Section of the manual, you will find the complete Mortgage Brokerages, Lenders and Administrators Act 2006 and all of the accompanying Rules and Regulations. We have made it easy for you by providing all the files in one complete document.

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Mortgage Brokerages, Lenders and Administrators Act, 2006

S.O. 2006, CHAPTER 29

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INTERPRETATION

Definitions

1. In this Act,

“cost of borrowing”, for a mortgage, means,

- (a) the interest or discount applicable to the mortgage,
- (b) any amount charged in connection with the mortgage that is payable by the borrower to the brokerage or lender,
- (c) any amount charged in connection with the mortgage that is payable by the borrower to a person other than the brokerage or lender, where the amount is chargeable, directly or indirectly, by the person to the brokerage or lender, and
- (d) any charge prescribed as included in the cost of borrowing,

but does not include any charge prescribed as excluded from the cost of borrowing; (“coût d’emprunt”)

“financial institution” means a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a credit union or caisse populaire to which the *Credit Unions and Caisses Populaires Act, 1994* applies including a league within the meaning of that Act, an insurer licensed under the *Insurance Act*, a corporation registered under the *Loan and Trust Corporations Act* or a retail association as defined under the *Cooperative Credit Associations Act* (Canada); (“institution financière”)

“lawyer” means a person who is authorized to practise law in Ontario; (“avocat”)

“licence” means a licence issued under this Act; (“permis”)

“licensed” means licensed under this Act; (“titulaire de permis”)

“mortgage” has the same meaning as in section 1 of the *Mortgages Act*; (“hypothèque”)

“mortgage administrator” means a corporation, partnership, sole proprietorship or other entity that has a mortgage administrator’s licence; (“administrateur d’hypothèques”)

“mortgage agent” or “agent” means an individual who has a mortgage agent’s licence; (“agent en hypothèques”, “agent”)

“mortgage broker” or “broker” means an individual who has a mortgage broker’s licence; (“courtier en hypothèques”, “courtier”)

“mortgage brokerage” or “brokerage” means a corporation, partnership, sole proprietorship or other entity that has a brokerage licence; (“maison de courtage d’hypothèques”, “maison de courtage”)

“prescribed” means prescribed by a regulation; (“prescrit”)

“regulation” means a regulation made under this Act; (“règlement”)

“requirement established under this Act” means a requirement imposed by this Act or by a regulation, a condition of a licence, a requirement imposed by order or an obligation assumed by way of an undertaking; (“exigence établie en application de la présente loi”)

“Superintendent” means the Superintendent of Financial Services appointed under the *Financial Services Commission of Ontario Act, 1997*; (“surintendant”)

“Tribunal” means the Financial Services Tribunal established under the *Financial Services Commission of Ontario Act, 1997*. (“Tribunal”) 2006, c. 29, s. 1.

REGULATED ACTIVITIES

Dealing in mortgages

2. (1) For the purposes of this Act, a person or entity is dealing in mortgages in Ontario when he, she or it engages in any of the following activities in Ontario, or holds himself out as doing so:

1. Soliciting another person or entity to borrow or lend money on the security of real property.
2. Providing information about a prospective borrower to a prospective mortgage lender, whether or not this Act governs the lender.
3. Assessing a prospective borrower on behalf of a prospective mortgage lender, whether or not this Act governs the lender.
4. Negotiating or arranging a mortgage on behalf of another person or entity, or attempting to do so.
5. Engaging in such other activities as may be prescribed. 2006, c. 29, s. 2 (1).

Prohibition re carrying on business

(2) No person or entity shall carry on the business of dealing in mortgages in Ontario unless he, she or it has a brokerage licence or is exempted from the requirement to have such a licence. 2006, c. 29, s. 2 (2).

Prohibition re dealing

(3) No individual shall deal in mortgages in Ontario for remuneration, whether direct or indirect, as an employee or otherwise, unless he or she has a mortgage broker’s or agent’s licence and is acting on behalf of a mortgage brokerage or is exempted from the requirement to have such a licence. 2006, c. 29, s. 2 (3).

Trading in mortgages

3. (1) For the purposes of this Act, a person or entity is trading in mortgages in Ontario when he, she or it engages in any of the following activities in Ontario, or holds himself out as doing so:

1. Soliciting another person or entity to buy, sell or exchange mortgages.
2. Buying, selling or exchanging mortgages on behalf of another person or entity.
3. Buying, selling or exchanging mortgages on the person’s or entity’s own behalf.
4. Engaging in such other activities as may be prescribed. 2006, c. 29, s. 3 (1).

Prohibition re carrying on business

(2) No person or entity shall carry on the business of trading in mortgages in Ontario unless he, she or it has a brokerage licence or is exempted from the requirement to have such a licence. 2006, c. 29, s. 3 (2).

Prohibition re trading

(3) No individual shall trade in mortgages for remuneration, whether direct or indirect, as an employee or otherwise, by engaging in an activity described in paragraph 1, 2 or 4 of subsection (1) unless he or she has a mortgage broker’s or agent’s licence and is acting on behalf of a mortgage brokerage or is exempted from the requirement to have such a licence. 2006, c. 29, s. 3 (3).

Mortgage lending

4. (1) For the purposes of this Act, a person or entity is a mortgage lender in Ontario when he, she or it lends money in Ontario on the security of real property, or holds himself out as doing so. 2006, c. 29, s. 4 (1).

Prohibition re carrying on business

(2) No person or entity shall carry on business as a mortgage lender in Ontario unless he, she or it has a brokerage licence or is exempted from the requirement to have such a licence. 2006, c. 29, s. 4 (2).

Administering mortgages

5. (1) For the purposes of this Act, a person or entity is administering mortgages in Ontario when he, she or it engages in any of the following activities in Ontario, or holds himself out as doing so:

1. Receiving payments from a borrower under a mortgage on behalf of another person or entity, and remitting the payments to or on behalf of that person or entity.
2. Engaging in such other activities as may be prescribed. 2006, c. 29, s. 5 (1).

Prohibition re carrying on business

(2) No person or entity shall carry on the business of administering mortgages in Ontario unless he, she or it has a mortgage administrator's licence or is exempted from the requirement to have such a licence. 2006, c. 29, s. 5 (2).

Exemptions

Financial institutions

6. (1) Every financial institution is exempted from the requirement in sections 2, 3 and 4 to have a brokerage licence. 2006, c. 29, s. 6 (1).

Same

(2) Every financial institution is exempted from the requirement in section 5 to have a mortgage administrator's licence. 2006, c. 29, s. 6 (2).

Directors, officers, employees of financial institutions

(3) A director, officer or employee of a financial institution is exempted from the requirement in sections 2 and 3 to have a mortgage broker's or agent's licence when, in the ordinary course of his or her duties, the individual deals in or trades in mortgages on behalf of the financial institution. 2006, c. 29, s. 6 (3).

Simple referrals

(4) A person or entity is exempted from the requirement in section 2 to have a brokerage licence or a mortgage broker's or agent's licence when he, she or it refers a prospective borrower to a prospective mortgage lender if,

- (a) the person or entity provides the prospective borrower with only such information about the prospective lender that is prescribed;
- (b) the person or entity provides the prospective borrower with prescribed information in accordance with the regulations respecting the fee or other remuneration the person or entity receives, is entitled to receive, has received or may receive, directly or indirectly, for the referral; and
- (c) the person or entity complies with such other requirements as may be prescribed. 2006, c. 29, s. 6 (4).

Same

(5) A person or entity is exempted from the requirement in section 2 to have a brokerage licence or a mortgage broker's or agent's licence when he, she or it refers a prospective mortgage lender to a prospective borrower if,

- (a) the person or entity provides the prospective lender with only such information about the prospective borrower that is prescribed;
- (b) the person or entity provides the prospective borrower with prescribed information in accordance with the regulations respecting the fee or other remuneration the person or entity receives, is entitled to receive, has received or may receive, directly or indirectly, for the referral; and
- (c) the person or entity complies with such other requirements as may be prescribed. 2006, c. 29, s. 6 (5).

Lawyers

(6) Lawyers are exempted from the requirement in sections 2, 3 and 5 to have a licence in such circumstances as may be prescribed. 2006, c. 29, s. 6 (6).

Other persons and entities

(7) Such other persons and entities, or classes of persons or entities, as may be prescribed are exempted from the requirement in sections 2, 3 and 4 to have a brokerage licence in such circumstances as may be prescribed. 2006, c. 29, s. 6 (7).

Same

(8) Such individuals, or classes of individuals, as may be prescribed are exempted from the requirement in sections 2 and 3 to have a mortgage broker's or agent's licence in such circumstances as may be prescribed. 2006, c. 29, s. 6 (8).

Same

(9) Such other persons and entities, or classes of persons or entities, as may be prescribed are exempted from the requirement in section 5 to have a mortgage administrator's licence in such circumstances as may be prescribed. 2006, c. 29, s. 6 (9).

LICENCES

Brokerage licence

7. (1) A corporation, partnership or sole proprietorship or an entity belonging to a prescribed class may apply for a brokerage licence. 2006, c. 29, s. 7 (1).

Authorized activities

(2) A brokerage licence authorizes the licensee to carry on the business of dealing in mortgages in Ontario or the business of trading in mortgages in Ontario or to carry on business as a mortgage lender in Ontario, as the case may be, by engaging in the activities permitted under the licence issued to the licensee. 2006, c. 29, s. 7 (2).

Conditions

(3) A brokerage licence is subject to such conditions as may be imposed by the Superintendent or by the Tribunal. 2006, c. 29, s. 7 (3).

Standards of practice

(4) The licensee shall comply with such standards of practice as may be prescribed for the licence issued to the licensee. 2006, c. 29, s. 7 (4).

Duties re mortgage brokers and agents

(5) The licensee shall ensure that every mortgage broker and mortgage agent who is authorized to deal in mortgages or trade in mortgages on behalf of the licensee complies with the applicable requirements established under this Act. 2006, c. 29, s. 7 (5).

Principal broker

(6) A person or entity who has a brokerage licence shall designate a principal broker to exercise such powers and perform such duties as may be prescribed, and the individual so designated shall carry out his or her powers and duties in accordance with the regulations, if any. 2006, c. 29, s. 7 (6).

Same

(7) An individual who satisfies the prescribed criteria is eligible to be designated as a principal broker. 2006, c. 29, s. 7 (7).

Mortgage broker's licence

8. (1) An individual may apply for a mortgage broker's licence. 2006, c. 29, s. 8 (1).

Authorized activities

(2) A mortgage broker's licence authorizes the licensee to deal in mortgages in Ontario or trade in mortgages in Ontario on behalf of one specified mortgage brokerage by engaging in the activities permitted under the licence issued to the licensee. 2006, c. 29, s. 8 (2).

Conditions

(3) A mortgage broker's licence is subject to such conditions as may be imposed by the Superintendent or by the Tribunal. 2006, c. 29, s. 8 (3).

Standards of practice

(4) The licensee shall comply with such standards of practice as may be prescribed for the licence issued to the licensee. 2006, c. 29, s. 8 (4).

Mortgage agent's licence

9. (1) An individual may apply for a mortgage agent's licence. 2006, c. 29, s. 9 (1).

Authorized activities

(2) A mortgage agent's licence authorizes the licensee to deal in mortgages in Ontario or trade in mortgages in Ontario on behalf of one specified brokerage by engaging in the activities permitted under the licence issued to the licensee. 2006, c. 29, s. 9 (2).

Conditions

(3) A mortgage agent's licence is subject to such conditions as may be imposed by the Superintendent or by the Tribunal. 2006, c. 29, s. 9 (3).

Standards of practice

(4) The licensee shall comply with such standards of practice as may be prescribed for the licence issued to the licensee. 2006, c. 29, s. 9 (4).

Supervision by mortgage broker

(5) 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. 2006, c. 29, s. 9 (5).

Mortgage administrator's licence

10. (1) A corporation, partnership or sole proprietorship or an entity belonging to a prescribed class may apply for a mortgage administrator's licence. 2006, c. 29, s. 10 (1).

Authorized activities

(2) A mortgage administrator's licence authorizes the licensee to carry on the business of administering mortgages in Ontario by engaging in the activities permitted under the licence issued to the licensee. 2006, c. 29, s. 10 (2).

Conditions

(3) A mortgage administrator's licence is subject to such conditions as may be imposed by the Superintendent or by the Tribunal. 2006, c. 29, s. 10 (3).

Standards of practice

(4) The licensee shall comply with such standards of practice as may be prescribed for the licence issued to the licensee. 2006, c. 29, s. 10 (4).

Prohibitions re use of title, etc.

Re mortgage brokerage

11. (1) No person or entity shall use in Ontario the title of "mortgage brokerage" or "maison de courtage d'hypothèques", a variation or abbreviation or an equivalent in another language unless he, she or it is licensed as a mortgage brokerage. 2006, c. 29, s. 11 (1).

Same

(2) No person or entity shall use in Ontario a description that might reasonably be expected to lead to the belief that he, she or it is a mortgage brokerage unless he, she or it is licensed as a mortgage brokerage. 2006, c. 29, s. 11 (2).

Re mortgage broker

(3) No person or entity shall use in Ontario the title of "mortgage broker" or "courtier en hypothèques", a variation or abbreviation or an equivalent in another language unless he, she or it is licensed as a mortgage broker. 2006, c. 29, s. 11 (3).

Same

(4) No person or entity shall use in Ontario a description that might reasonably be expected to lead to the belief that he, she or it is a mortgage broker unless he, she or it is licensed as a mortgage broker. 2006, c. 29, s. 11 (4).

Re mortgage agent

(5) No person or entity shall use in Ontario the title of “mortgage agent” or “agent en hypothèques”, a variation or abbreviation or an equivalent in another language unless he, she or it is licensed as a mortgage agent. 2006, c. 29, s. 11 (5).

Same

(6) No person or entity shall use in Ontario a description that might reasonably be expected to lead to the belief that he, she or it is a mortgage agent unless he, she or it is licensed as a mortgage agent. 2006, c. 29, s. 11 (6).

Re mortgage administrator

(7) No person or entity shall use in Ontario the title of “mortgage administrator” or “administrateur d’hypothèques”, a variation or abbreviation or an equivalent in another language unless he, she or it is licensed as a mortgage administrator. 2006, c. 29, s. 11 (7).

Same

(8) No person or entity shall use in Ontario a description that might reasonably be expected to lead to the belief that he, she or it is a mortgage administrator unless he, she or it is licensed as a mortgage administrator. 2006, c. 29, s. 11 (8).

Licence as prerequisite for enforcing payment

12. (1) A person or entity is not entitled to commence an action or proceeding to be remunerated for dealing in mortgages in Ontario, trading in mortgages in Ontario or administering mortgages in Ontario unless, at the time the person or entity was dealing in, trading in or administering mortgages, he, she or it was licensed to do so or was not required to be licensed to do so. 2006, c. 29, s. 12 (1).

Same

(2) The court may, upon motion, stay an action or proceeding described in subsection (1). 2006, c. 29, s. 12 (2).

THE LICENSING PROCESS

Application for a licence

13. (1) A person or entity who wishes to apply for a licence shall submit an application to the Superintendent in the manner required by the Superintendent and shall give the Superintendent such information and documents as he or she may require and pay the applicable fee. 2006, c. 29, s. 13 (1).

Withdrawal of application

(2) The applicant may withdraw the application at any time before the licence is issued. 2006, c. 29, s. 13 (2).

Issuance of licence

14. (1) The Superintendent shall issue a licence to an applicant who satisfies the prescribed requirements for the licence unless the Superintendent believes, on reasonable grounds, that the applicant is not suitable to be licensed having regard to such circumstances as may be prescribed and such other matters as the Superintendent considers appropriate. 2006, c. 29, s. 14 (1).

Proposal to refuse application

(2) If the Superintendent proposes to refuse to issue a licence to the applicant, the Superintendent shall take the steps required by section 21 or 22. 2006, c. 29, s. 14 (2).

Proposal to impose conditions

(3) If the Superintendent proposes to issue the licence and, without the applicant’s consent, to impose conditions on the licence, the Superintendent shall take the steps required by section 21. 2006, c. 29, s. 14 (3).

Amendment of licence

15. (1) The Superintendent may amend a licence at any time. 2006, c. 29, s. 15 (1).

Proposal to amend

(2) If the Superintendent proposes to amend the licence without the licensee’s consent, the Superintendent shall first take the steps required by section 21. 2006, c. 29, s. 15 (2).

Renewal of mortgage broker’s or agent’s licence

16. (1) An individual who has a mortgage broker's or agent's licence may apply to the Superintendent to renew the licence. 2006, c. 29, s. 16 (1).

Application

(2) The applicant shall submit the application for renewal to the Superintendent in the manner required by the Superintendent and shall give the Superintendent such information and documents as he or she may require and pay the applicable fee. 2006, c. 29, s. 16 (2).

Deadline

(3) The application must be made within the prescribed period or, if no period is prescribed, before the expiry date of the licence. 2006, c. 29, s. 16 (3).

Renewal

(4) The Superintendent shall renew the licence of an applicant who satisfies the prescribed requirements for renewal of the licence unless the Superintendent believes, on reasonable grounds, that the applicant is not suitable to be licensed having regard to such circumstances as may be prescribed and such other matters as the Superintendent considers appropriate. 2006, c. 29, s. 16 (4).

Conditions

(5) Upon renewal, the licence may be made subject to different conditions than those to which it was subject before the renewal. 2006, c. 29, s. 16 (5).

Proposal to refuse application

(6) If the Superintendent proposes to refuse to renew a licence, the Superintendent shall take the steps required by section 21 or 22. 2006, c. 29, s. 16 (6).

Proposal to amend conditions

(7) If the Superintendent proposes to renew the licence and, without the applicant's consent, to amend the conditions to which the licence is subject, the Superintendent shall take the steps required by section 21. 2006, c. 29, s. 16 (7).

Effect of application

(8) If the application for renewal is made by the deadline described in subsection (3), the licence continues in effect after the expiry date until the Superintendent notifies the applicant that the licence is renewed or, if the Superintendent proposes to refuse the renewal or proposes to amend the licence conditions without the consent of the applicant,

- (a) until the Tribunal makes an order under subsection 21 (4) about the renewal; or
- (b) until the expiry of the period for requesting a hearing about the proposal, if no request for such a hearing is made under subsection 21 (3). 2006, c. 29, s. 16 (8).

Automatic suspension of licence

Brokerage licence

17. (1) A brokerage licence is suspended if the mortgage brokerage ceases to have a minimum of one mortgage broker who is authorized under his or her licence to deal in mortgages or trade in mortgages on behalf of the brokerage. 2006, c. 29, s. 17 (1).

Same, end of suspension

(2) The suspension of the brokerage licence is terminated when a mortgage broker becomes authorized under his or her licence to deal in mortgages or trade in mortgages on behalf of the brokerage. 2006, c. 29, s. 17 (2).

Mortgage broker's or agent's licence

- (3) A mortgage broker's or agent's licence is suspended,
 - (a) if the mortgage broker or agent ceases to be authorized by the mortgage brokerage specified in his or her licence to deal in mortgages or trade in mortgages on behalf of the brokerage; or
 - (b) if the brokerage's licence is suspended, surrendered or revoked. 2006, c. 29, s. 17 (3).

Same, end of suspension

- (4) The suspension of a mortgage broker's or agent's licence is terminated,
- (a) when the licence suspension of the specified mortgage brokerage on whose behalf the broker or agent is authorized under his or her licence to deal in mortgages or trade in mortgages is terminated; or
 - (b) when the mortgage broker or agent becomes authorized by another mortgage brokerage to deal in mortgages or trade in mortgages on its behalf and his or her licence has been amended accordingly. 2006, c. 29, s. 17 (4).

Effect of suspension

(5) During the suspension, the licensee is not authorized to carry on the business of dealing in mortgages in Ontario or the business of trading in mortgages in Ontario, to deal in mortgages in Ontario or trade in mortgages in Ontario or to carry on business as a mortgage lender in Ontario, as the case may be. 2006, c. 29, s. 17 (5).

Suspension by Superintendent

18. (1) The Superintendent may, by order, suspend a licence,
- (a) if the licensee ceases to satisfy the prescribed requirements for issuance or renewal, as the case may be, of the licence;
 - (b) if the Superintendent believes, on reasonable grounds, that the licensee is no longer suitable to be licensed having regard to the circumstances, if any, prescribed for the purposes of subsection 14 (1) or 16 (4), as the case may be, and such other matters as the Superintendent considers appropriate;
 - (c) if the licensee contravenes or fails to comply with a requirement established under this Act; or
 - (d) in such other circumstances as may be prescribed. 2006, c. 29, s. 18 (1).

Proposal to suspend

(2) If the Superintendent proposes to suspend a licence without the licensee's consent, the Superintendent shall take the steps required by section 21. 2006, c. 29, s. 18 (2).

Interim order

(3) If, in the Superintendent's opinion, the interests of the public may be adversely affected by any delay in the suspension of a licence as a result of the steps required by section 21, the Superintendent may, without notice, make an interim order suspending the licence and may do so before or after giving the notice required by subsection 21 (2). 2006, c. 29, s. 18 (3).

Same

(4) An interim order takes effect immediately and remains in effect until the expiry of the period for requesting a hearing about the Superintendent's proposal to suspend the licence. 2006, c. 29, s. 18 (4).

Same

(5) Despite subsection (4), if before the end of such period as may be prescribed the Superintendent does not give the person or entity the notice required by subsection 21 (2), the interim order expires at the end of the prescribed period. 2006, c. 29, s. 18 (5).

Extension of interim order

(6) If the licensee requests a hearing about the proposal to suspend the licence, the Superintendent may extend the interim order until the proposal is finally determined. 2006, c. 29, s. 18 (6).

Effect of suspension

(7) During the suspension, the licensee is not authorized to carry on the business of dealing in mortgages in Ontario or the business of trading in mortgages in Ontario, to deal in mortgages in Ontario or trade in mortgages in Ontario, to carry on business as a mortgage lender in Ontario or to carry on the business of administering mortgages in Ontario, as the case may be. 2006, c. 29, s. 18 (7).

Revocation

- (8) The Superintendent may revoke a suspension order or an interim order at any time. 2006, c. 29, s. 18 (8).

Revocation of licence

19. (1) The Superintendent may, by order, revoke a licence in any of the circumstances in which he or she is authorized by clause 18 (1) (a), (b), (c) or (d) to suspend the licence. 2006, c. 29, s. 19 (1).

Proposal to revoke

(2) If the Superintendent proposes to revoke a licence without the licensee's consent, the Superintendent shall take the steps required by section 21 or 22. 2006, c. 29, s. 19 (2).

Interim order

(3) If, in the Superintendent's opinion, the interests of the public may be adversely affected by any delay in the revocation of a licence as a result of the steps required by section 21, the Superintendent may, without notice, make an interim order suspending the licence and may do so before or after giving the notice required by subsection 21 (2). 2006, c. 29, s. 19 (3).

Same

(4) Subsections 18 (4) to (8) apply, with necessary modifications, with respect to an interim order. 2006, c. 29, s. 19 (4).

Surrender of licence

20. (1) A licensee may apply to the Superintendent for permission to surrender his, her or its licence. 2006, c. 29, s. 20 (1).

Application

(2) The applicant shall submit the application to the Superintendent in the manner required by the Superintendent and shall give the Superintendent such information and documents as he or she may require and pay the applicable fee. 2006, c. 29, s. 20 (2).

Same

(3) The Superintendent shall allow the applicant to surrender the licence unless the Superintendent believes, on reasonable grounds, that the surrender of the licence is not in the public interest having regard to such criteria as may be prescribed and such other factors as the Superintendent considers appropriate. 2006, c. 29, s. 20 (3).

Same

(4) The Superintendent may impose conditions relating to the surrender of the licence. 2006, c. 29, s. 20 (4).

Proposal to refuse application

(5) If the Superintendent proposes to refuse to allow the surrender of the licence, the Superintendent shall take the steps required by section 21. 2006, c. 29, s. 20 (5).

Proposal to impose conditions

(6) If the Superintendent proposes to allow the surrender of the licence and, without the applicant's consent, impose conditions relating to its surrender, the Superintendent shall take the steps required by section 21. 2006, c. 29, s. 20 (6).

Withdrawal of application

(7) The applicant may withdraw the application at any time before the licence is surrendered. 2006, c. 29, s. 20 (7).

Superintendent's proposal to refuse application, etc.

21. (1) This section applies if the Superintendent proposes to do any of the following things:

1. Refuse to issue a licence.
2. Issue a licence and, without the applicant's consent, impose conditions.
3. Amend a licence without the licensee's consent.
4. Refuse to renew a mortgage broker's or agent's licence.
5. Renew a mortgage broker's or agent's licence and, without the applicant's consent, amend the conditions to which the licence is subject.

6. Suspend a licence without the licensee's consent, except by an interim order authorized by subsection 18 (3) or 19 (3).
7. Revoke a licence without the licensee's consent.
8. Refuse to allow the surrender of a licence.
9. Allow the surrender of a licence and, without the applicant's consent, impose conditions concerning its surrender. 2006, c. 29, s. 21 (1).

Notice of proposal

(2) The Superintendent shall give written notice of the proposal to the applicant or licensee, including the reasons for the proposal; the Superintendent shall also inform the applicant or licensee that he, she or it can request a hearing by the Tribunal about the proposal and shall advise the applicant or licensee about the process for requesting the hearing. 2006, c. 29, s. 21 (2).

Hearing requested

(3) If the applicant or licensee requests a hearing in writing within 15 days after the notice under subsection (2) is received, the Tribunal shall hold a hearing. 2006, c. 29, s. 21 (3).

Order

(4) The Tribunal may, by order, direct the Superintendent to carry out the proposal, with or without changes, or substitute its opinion for that of the Superintendent and the Tribunal may impose such conditions as it considers appropriate in the circumstances. 2006, c. 29, s. 21 (4).

Appeal

(5) A party to a hearing held by the Tribunal may appeal the order of the Tribunal to the Divisional Court. 2006, c. 29, s. 21 (5).

Effect of appeal

(6) An order of the Tribunal takes effect immediately, but if the order is appealed, the Tribunal may grant a stay of the order until the appeal is finally determined. 2006, c. 29, s. 21 (6).

Hearing not requested

(7) If the applicant or licensee does not request a hearing or does not make the request in accordance with subsection (3), the Superintendent may carry out the proposal. 2006, c. 29, s. 21 (7).

Circumstances in which proposal not required

22. (1) The Superintendent may, by order, revoke a licence or may refuse to issue or renew a licence without giving notice under subsection 21 (2) of his or her proposal to do so and without taking the other steps required by section 21,

- (a) if the applicant or licensee fails to pay a fee or an administrative penalty as required under this Act;
- (b) if the applicant does not give the Superintendent information or documents as required under this Act; or
- (c) in such other circumstances as may be prescribed. 2006, c. 29, s. 22 (1).

Notice

(2) The Superintendent shall give written notice to the applicant or licensee before exercising the Superintendent's authority under subsection (1). 2006, c. 29, s. 22 (2).

MORTGAGE BROKERAGE'S DUTY TO DISCLOSE THE COST OF BORROWING

Required disclosure

23. (1) A mortgage brokerage shall disclose to each borrower the cost of borrowing and any other information prescribed for the purposes of this section. 2006, c. 29, s. 23 (1).

Same

- (2) For the purposes of disclosure required by subsection (1), the cost of borrowing,
 - (a) shall be calculated on the basis that all obligations of the borrower are duly fulfilled;

- (b) shall be calculated in accordance with the regulations;
- (c) shall be expressed as a rate per annum; and
- (d) where required by the regulations, shall be expressed as an amount in dollars and cents. 2006, c. 29, s. 23 (2).

Additional disclosure – term mortgages

24. A mortgage brokerage shall disclose the following with respect to a mortgage to a borrower if the mortgage is required to be repaid on a fixed future date or by instalments:

1. Whether the borrower has the right to repay the amount borrowed before the maturity of the mortgage.
2. Any terms and conditions relating to a right described in paragraph 1, including particulars of the circumstances in which the borrower may exercise the right.
3. Whether any portion of the cost of borrowing for the mortgage is to be rebated to the borrower or any charge or penalty is to be imposed on the borrower, if the borrower exercises a right described in paragraph 1.
4. The manner in which any rebate, charge or penalty referred to in paragraph 3 is to be calculated.
5. Particulars of any charges or penalties to be imposed on the borrower if the borrower fails to repay the amount of the mortgage at maturity or fails to pay an instalment on the day the instalment is due to be paid.
6. If the mortgage brokerage is the lender, particulars of any prescribed change relating to the mortgage agreement or the cost of borrowing for the mortgage.
7. Particulars of any rights or obligations of the borrower that are prescribed for the purposes of this section.
8. Any other information that is prescribed for the purposes of this section. 2006, c. 29, s. 24.

Additional disclosure – other mortgages

25. (1) A mortgage brokerage shall disclose the following to a borrower if there is an arrangement to enter into a loan secured by a mortgage with the borrower in respect of which section 24 does not apply:

1. Particulars of any charges or penalties to be imposed on the borrower if he or she fails to pay an amount in accordance with the arrangement.
2. Particulars of any charges for which the borrower becomes responsible by entering the arrangement.
3. If the mortgage brokerage is the lender, particulars of any prescribed change relating to the arrangement or the cost of borrowing under the arrangement.
4. Particulars of any rights or obligations of the borrower that are prescribed for the purposes of this section.
5. Any other information that is prescribed for the purposes of this section. 2006, c. 29, s. 25 (1).

Interpretation

(2) For the purposes of subsection (1), an arrangement for the making of a loan secured by a mortgage includes an arrangement for a line of credit. 2006, c. 29, s. 25 (2).

Statement re mortgage renewal

26. The mortgage brokerage shall disclose to a borrower such information respecting renewal of the mortgage as is prescribed. 2006, c. 29, s. 26.

Prohibition re disclosure in advertising

27. No person or entity shall authorize any advertisement for a mortgage which purports to contain information relating to the cost of borrowing or any other prescribed matter unless the advertisement contains such information as may be required by the regulations and is in such form and manner as may be prescribed. 2006, c. 29, s. 27.

REGULATION AND ENFORCEMENT

Public register of licensees

28. (1) The Superintendent shall maintain one or more registers containing such information about licensees and former licensees as may be prescribed. 2006, c. 29, s. 28 (1).

Same

(2) The information in a register shall be made available for inspection by the public without charge and in accordance with the regulations. 2006, c. 29, s. 28 (2).

Requirement to submit information, etc.

29. (1) Every licensee shall give the Superintendent such information and documents as may be prescribed and shall do so in the prescribed manner and within the prescribed period. 2006, c. 29, s. 29 (1).

Additional information, etc.

(2) A licensee shall give the Superintendent such additional information and documents as the Superintendent may request and shall do so in the manner and within the period specified by the Superintendent. 2006, c. 29, s. 29 (2).

Inquiries and examinations

Of licensees

30. (1) The Superintendent or a person designated by the Superintendent may make inquiries and conduct examinations of the business and activities of each licensee to ensure that the licensee is complying with the requirements established under this Act. 2006, c. 29, s. 30 (1).

Of other persons and entities

(2) If, in the Superintendent's opinion, a person or entity who is not a licensee is or was required to have a licence, the Superintendent or a person designated by the Superintendent may make such inquiries and conduct such examinations of the business and activities of the person or entity as the Superintendent or designate considers appropriate in the circumstances. 2006, c. 29, s. 30 (2).

Powers

(3) The Superintendent or designate may do any of the following things in the course of making an inquiry or conducting an examination:

1. Enter and inspect at any reasonable time any premises used in connection with the business or activities of the licensee, person or entity.
2. Examine all money, valuables, documents and records of the licensee, person or entity that may be relevant to the inquiry or examination.
3. Require a person who appears to be employed or otherwise working at the premises to answer questions about anything that may be relevant to the inquiry or examination.
4. In order to produce information, use any data storage, processing or retrieval device or system that is used in connection with the business or activities of the licensee, person or entity.
5. Require a person who appears to be employed or otherwise working at the premises to produce a document or record or provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce information.
6. Remove for examination and copying anything that may be relevant to the inquiry or examination, including removing any data storage, processing or retrieval device in order to produce information. 2006, c. 29, s. 30 (3).

Entry into dwelling

(4) The Superintendent or designate shall not enter the part of a premises, if any, that is used as a dwelling unless the occupant consents to the entry or the Superintendent or designate is authorized to enter the dwelling by an order made under section 31 or 32. 2006, c. 29, s. 30 (4).

Use of force

(5) The Superintendent or designate shall not use force to enter or inspect premises. 2006, c. 29, s. 30 (5).

Duty to assist

(6) If, under this section, the Superintendent or designate requires a person to answer questions, to produce a document or record or to provide assistance, the person shall do so in the manner and within the period specified by the Superintendent or designate. 2006, c. 29, s. 30 (6).

Receipt for things removed

(7) The Superintendent or designate shall give a receipt for anything that he or she removes for examination and copying and the Superintendent or designate shall promptly return the thing to the person who produced it. 2006, c. 29, s. 30 (7).

Identification

(8) Upon request, the Superintendent shall produce evidence of his or her office and the designate shall produce evidence of his or her designation. 2006, c. 29, s. 30 (8).

Inspection order for s. 30 inquiry and examination

31. (1) The Superintendent or a person designated by the Superintendent may, without notice, apply to a justice of the peace for an order under this section. 2006, c. 29, s. 31 (1).

Order to enter and examine premises

(2) A justice of the peace may make an order under this subsection authorizing the Superintendent or designate, as named in the order, to enter premises, other than a part of a premises that is being used as a dwelling, specified in the order and to exercise any of the powers mentioned in section 30, subject to such restrictions on their exercise as the justice of the peace considers appropriate in the circumstances, if he or she is satisfied by information under oath,

- (a) that the Superintendent or designate has been prevented from exercising a right of entry to the premises under section 30 or has been prevented from exercising a power described in section 30; or
- (b) that there are reasonable grounds to believe that the Superintendent or designate will be prevented from exercising a right of entry to the premises under section 30 or will be prevented from exercising a power described in section 30. 2006, c. 29, s. 31 (2).

Same – dwelling

(3) A justice of the peace may make an order under this subsection authorizing the Superintendent or designate, as named in the order, to enter a part of a premises that is being used as a dwelling and that is specified in the order and to exercise any of the powers mentioned in section 30, subject to such restrictions on their exercise as the justice of the peace considers appropriate in the circumstances, if he or she is satisfied by information under oath,

- (a) that it is necessary for the Superintendent or designate to enter that part of the premises in order to carry out an inquiry or examination under section 30; and
- (b) that,
 - (i) the Superintendent or designate has been prevented from entering that part of the premises under section 30 or has been prevented from exercising a power described in section 30, or
 - (ii) there are reasonable grounds to believe that the Superintendent or designate will be prevented from entering that part of the premises under section 30 or will be prevented from exercising a power described in section 30. 2006, c. 29, s. 31 (3).

Use of force

(4) The person named in the order may call upon police officers for assistance in executing the order and may use whatever force is reasonably necessary to execute the order. 2006, c. 29, s. 31 (4).

Duty to assist

(5) If, in carrying out an order made under this section, the Superintendent or designate requires a person to answer questions, to produce a document or record or to provide assistance, the person shall do so in the manner and within the period specified by the Superintendent or designate. 2006, c. 29, s. 31 (5).

Receipt for things removed

(6) The Superintendent or designate shall give a receipt for anything that he or she removes for examination and copying and the Superintendent or designate shall promptly return the thing to the person who produced it. 2006, c. 29, s. 31 (6).

Expert help

(7) The order may authorize persons who have special, expert or professional knowledge to accompany and assist the person named in the order. 2006, c. 29, s. 31 (7).

Time of execution

(8) Entry or access under an order shall be made between 6 a.m. and 9 p.m. unless the order specifies otherwise. 2006, c. 29, s. 31 (8).

Expiry of order

(9) An order shall specify an expiry date, which shall be no later than 30 days after the order is made, but a justice of the peace may extend the order for an additional period of no more than 30 days upon application without notice. 2006, c. 29, s. 31 (9).

Inspection order – general

32. (1) The Superintendent or a person designated by the Superintendent may, without notice, apply to a justice of the peace for an order under this section. 2006, c. 29, s. 32 (1).

Criteria

- (2) A justice of the peace may make an order under this section if he or she is satisfied by information under oath,
- (a) that there are reasonable grounds to believe that a person or entity has contravened or failed to comply with a requirement established under this Act or has committed an offence under the law of any jurisdiction that is relevant to the suitability of the person or entity to be licensed; and
 - (b) that there are reasonable grounds to believe that,
 - (i) at any premises or place, including in a vehicle, there is anything related to the contravention or failure to comply or to the suitability of the person or entity to be licensed, or
 - (ii) that anything relating to the contravention or failure to comply or to the suitability of the person or entity to be licensed may be obtained through the use of an investigative technique or procedure or the doing of anything described in the order. 2006, c. 29, s. 32 (2).

Powers under order

(3) An order made under this section authorizes the Superintendent or designate, as named in the order, to exercise the following powers and may impose such restrictions on their exercise as the justice of the peace considers appropriate in the circumstances:

1. To enter the premises or access the place specified in the order.
2. To examine all money, valuables, documents and records at the premises or place.
3. In order to produce information, to use any data storage, processing or retrieval device or system.
4. To remove for examination and copying anything at the premises or place that may be relevant to the contravention or failure to comply or to the suitability of the person or entity to hold a licence, including removing any data storage, processing or retrieval device in order to produce information.
5. To use any investigative technique or procedure to do anything described in the order.
6. To do anything specified in the order. 2006, c. 29, s. 32 (3).

Restrictions

(4) Subsections 31 (4) to (9) apply with necessary modifications to an order made under this section. 2006, c. 29, s. 32 (4).

Same – dwelling

(5) The Superintendent or designate shall not enter a place, or part of a place, used as a dwelling unless the order expressly authorizes entry into a dwelling. 2006, c. 29, s. 32 (5).

Seizure of things not specified

33. The Superintendent, or a person designated by the Superintendent, who is lawfully present in a place pursuant to an order or otherwise in the execution of his or her duties may, without an order, seize anything that the Superintendent or designate on reasonable grounds believes will afford evidence relating to a contravention of or failure to comply with a requirement established under this Act. 2006, c. 29, s. 33.

Power to summon persons, etc.

34. (1) The Superintendent may issue a summons where he or she believes that,

- (a) it is necessary in order to determine whether a person or entity is complying with a requirement established under this Act; and
- (b) it is, in the circumstances, in the public interest. 2006, c. 29, s. 34 (1).

Same

- (2) A summons issued under subsection (1) may require a person,
 - (a) to produce such documents and things as are specified by the Superintendent; and
 - (b) to give such information on oath as the Superintendent or a person designated by the Superintendent considers relevant to determining whether a person or entity is complying with a requirement established under this Act. 2006, c. 29, s. 34 (2).

Identification

(3) Upon request, the Superintendent shall produce evidence of his or her office and a person designated by the Superintendent shall produce evidence of his or her designation. 2006, c. 29, s. 34 (3).

Administering oath

- (4) The Superintendent or designate may administer an oath required under this section. 2006, c. 29, s. 34 (4).

Right to counsel

(5) A person may be represented by counsel when giving information on oath and may claim any privilege to which the person is entitled. 2006, c. 29, s. 34 (5).

Stated case

(6) If the person does not comply with the summons, the Superintendent may state a case to the Divisional Court setting out the facts and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, the court may punish the person in the same manner as if the person had been guilty of contempt of the court. 2006, c. 29, s. 34 (6).

Compliance order

35. (1) This section applies if, in the Superintendent's opinion,
- (a) a person or entity is committing any act or pursuing any course of conduct that contravenes or does not comply with a requirement established under this Act;
 - (b) a person or entity is committing any act or pursuing any course of conduct that might reasonably be expected to result in a state of affairs that would contravene or not comply with a requirement established under this Act; or
 - (c) a person or entity has committed any act or pursued any course of conduct that contravenes or does not comply with a requirement established under this Act. 2006, c. 29, s. 35 (1).

Proposal re order

(2) The Superintendent may propose to order the person or entity to cease committing an act or cease pursuing a course of conduct identified by the Superintendent or to perform such acts as, in the Superintendent's opinion, are necessary to remedy the situation. 2006, c. 29, s. 35 (2).

Notice of proposal

(3) The Superintendent shall give written notice of the proposal to the person or entity including the reasons for the proposal; the Superintendent shall also inform the person or entity that he, she or it can request a hearing by the Tribunal about the proposal and shall advise the person or entity about the process for requesting the hearing. 2006, c. 29, s. 35 (3).

Hearing requested

(4) If the person or entity requests a hearing in writing within 15 days after the notice under subsection (3) is received, the Tribunal shall hold a hearing. 2006, c. 29, s. 35 (4).

Order

(5) The Tribunal may, by order, direct the Superintendent to carry out the proposal, with or without changes, or substitute its opinion for that of the Superintendent and the Tribunal may impose such conditions as it considers appropriate in the circumstances. 2006, c. 29, s. 35 (5).

Hearing not requested

(6) If the person or entity does not request a hearing or does not make the request in accordance with subsection (4), the Superintendent may carry out the proposal. 2006, c. 29, s. 35 (6).

Interim order

(7) If, in the opinion of the Superintendent, the interests of the public may be adversely affected by any delay in making an order (a “permanent order”) as a result of the steps required by subsections (3), (4) and (5), the Superintendent may, without notice, make an interim order as described in subsection (2) and may do so before or after giving notice of his or her proposal to make the permanent order. 2006, c. 29, s. 35 (7).

Same

(8) An interim order takes effect immediately and remains in effect until the expiry of the period for requesting a hearing about the Superintendent’s proposal to make the permanent order. 2006, c. 29, s. 35 (8).

Same

(9) Despite subsection (8), if before the end of such period as may be prescribed the Superintendent does not give the person or entity notice of the proposal to make the permanent order, the interim order expires at the end of the prescribed period. 2006, c. 29, s. 35 (9).

Extension of interim order

(10) If the person or entity requests a hearing about the proposal to make the permanent order, the Superintendent may extend the interim order until the proposal is finally determined. 2006, c. 29, s. 35 (10).

Amendment, etc., of interim order

(11) The Superintendent may amend, revoke or replace an interim order and the amended or replacement order has effect as described in subsections (8), (9) and (10). 2006, c. 29, s. 35 (11).

Amendment of permanent order

(12) The Superintendent may by order amend a permanent order and, if the Superintendent proposes to amend it without the consent of the person or entity, subsections (2) to (6) apply with respect to the proposal. 2006, c. 29, s. 35 (12).

Revocation of permanent order

(13) The Superintendent may revoke a permanent order. 2006, c. 29, s. 35 (13).

Court enforcement

(14) The Superintendent may file a certified copy of an order made under this section in the Superior Court of Justice and the order shall be deemed to be an order of that court and is enforceable as such. 2006, c. 29, s. 35 (14).

Order to freeze assets and trust funds

Circumstances

36. (1) This section applies in any of the following circumstances:

1. The Superintendent has notified, or is about to notify, a person or entity (the “designated person”) under subsection 21 (2) that the Superintendent proposes to suspend or revoke the designated person’s licence without his, her or its consent.
2. The Superintendent has made or is about to make an interim order under subsection 18 (3) or 19 (3) suspending the designated person’s licence.
3. The Superintendent has notified, or is about to notify, the designated person under subsection 35 (3) that the Superintendent proposes to make an order concerning him, her or it.
4. The Superintendent has made or is about to make an interim order under subsection 35 (7) concerning the designated person.

5. The Superintendent believes that proceedings for an offence under this Act have been or are about to be instituted against the designated person, against a director or partner of the designated person, against an officer or employee of the designated person or, if the designated person is an entity other than a person or partnership, against a person who is a member of the directing body of the entity.
6. The Superintendent believes that proceedings in relation to a contravention of the law of any jurisdiction have been or are about to be instituted against the designated person, against a director or partner of the designated person, against an officer or employee of the designated person or, if the designated person is an entity other than a person or partnership, against a person who is a member of the directing body of the entity, but only if the proceedings are instituted in connection with or arising out of activities for which a licence under this Act is required. 2006, c. 29, s. 36 (1).

Orders

(2) The Superintendent may, without notice, make any order under this section with respect to the designated person if the Superintendent believes it to be in the public interest to do so. 2006, c. 29, s. 36 (2).

Order to third party

(3) The Superintendent may order a person or entity who holds assets or trust funds on deposit or controls them for or on behalf of the designated person to hold them. 2006, c. 29, s. 36 (3).

Order to refrain from withdrawing assets, etc.

(4) The Superintendent may order the designated person to refrain from withdrawing assets or trust funds from another person or entity who has them on deposit or controls them. 2006, c. 29, s. 36 (4).

Order to have assets, etc., in trust

(5) The Superintendent may order the designated person to hold assets or trust funds of another person or entity in trust for the person or entity entitled to them. 2006, c. 29, s. 36 (5).

Effect

(6) An order takes effect immediately and may be made subject to such conditions as the Superintendent considers appropriate. 2006, c. 29, s. 36 (6).

Release of assets

(7) The Superintendent may consent to the release of any particular asset or trust fund from the order or may wholly revoke the order. 2006, c. 29, s. 36 (7).

Effect of giving security

(8) The Superintendent shall not make an order under subsection (3), (4) or (5) if the designated person gives the Superintendent security in any of the following forms and in the amount and manner required by the Superintendent:

1. A personal bond accompanied by collateral security.
2. A bond of an insurer who is licensed under the *Insurance Act* to write surety and fidelity insurance.
3. A bond of a guarantor accompanied by collateral security.
4. Another form of security acceptable to the Superintendent. 2006, c. 29, s. 36 (8).

Same

(9) If an order is made under subsection (3), (4) or (5) before the designated person gives the Superintendent the security described in subsection (8), the Superintendent shall revoke the order. 2006, c. 29, s. 36 (9).

Notice in land registry office

(10) The Superintendent may register in the appropriate land registry office a notice that an order has been made under subsection (3), (4) or (5) and that the order may affect land belonging to the person referred to in the notice; this notice has the same effect as the registration of a certificate of pending litigation, except that the Superintendent may in writing revoke or modify the notice. 2006, c. 29, s. 36 (10).

Application to court

(11) A person or entity in receipt of an order under this section may apply to the Superior Court of Justice if the person or entity is in doubt about whether the order applies to a particular asset or trust fund. 2006, c. 29, s. 36 (11).

Same

(12) A person or entity who claims an interest in an asset or a trust fund that is subject to an order made under subsection (3), (4) or (5) may apply to the Superior Court of Justice for a decision concerning the disposition of the asset or trust fund. 2006, c. 29, s. 36 (12).

Same, by Superintendent

(13) The Superintendent may apply to the Superior Court of Justice for directions or an order relating to the disposition of assets, trust funds or land affected by an order under this section or a notice filed under subsection (10), and the application may be made without notice to any other person or entity. 2006, c. 29, s. 36 (13).

Court order

(14) On an application under subsection (11), (12) or (13), the court may make any order the court considers appropriate in the circumstances. 2006, c. 29, s. 36 (14).

Application to Tribunal

(15) A designated person in respect of whom the Superintendent has made an order under this section may apply to the Tribunal for cancellation of the order in whole or in part and the Tribunal may, by order, do so after a hearing if the Tribunal is satisfied that the order or the part of the order is not required in the public interest. 2006, c. 29, s. 36 (15).

Same

(16) A person or entity who has an interest in land affected by a notice filed under subsection (10) may apply to the Tribunal to discharge the registration of the notice in whole or in part and the Tribunal may, by order, do so after a hearing if the Tribunal is satisfied that registration of the notice or the part of the notice is not required to protect other persons or entities having an interest in the land. 2006, c. 29, s. 36 (16).

Appeal

(17) A party to a proceeding before the Tribunal under subsection (15) or (16) may appeal the order of the Tribunal to the Divisional Court. 2006, c. 29, s. 36 (17).

Appointment of receiver, etc.

37. (1) The Superintendent may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of property that is in the possession or under the control of a licensee or person or entity who the Superintendent believes, on reasonable grounds, is or was required to have a licence (the "designated person"). 2006, c. 29, s. 37 (1).

Order

(2) If the court is satisfied that the appointment is in the public interest, the court may make the appointment and may impose such conditions as the court considers appropriate. 2006, c. 29, s. 37 (2).

Period of appointment

(3) The court shall specify the period of the appointment in the order, but if the court makes the order on an application without notice, the period of the appointment shall not exceed 15 days. 2006, c. 29, s. 37 (3).

Same

(4) If an order is made without notice, the Superintendent may apply to the court within 15 days after the date of the order to continue the order or for such other order as the court considers appropriate. 2006, c. 29, s. 37 (4).

Powers of appointee

(5) The appointee has the powers specified in the order and, if so directed by the court, has the authority to wind up or manage the affairs of the designated person. 2006, c. 29, s. 37 (5).

Effect of appointment

(6) When an order is made, the directors of the designated person are no longer entitled to exercise the powers that are given to the appointee; when the appointee is discharged by the court, the directors become entitled to exercise those powers once again. 2006, c. 29, s. 37 (6).

Fees and expenses

(7) The appointee's fees and expenses are in the discretion of the court. 2006, c. 29, s. 37 (7).

Variation or discharge of order

(8) The court may vary or discharge an order made under this section. 2006, c. 29, s. 37 (8).

Administrative penalties

38. (1) An administrative penalty may be imposed under section 39 or 40 for either of the following purposes:

1. To promote compliance with the requirements established under this Act.
2. To prevent a person or entity from deriving, directly or indirectly, any economic benefit as a result of contravening or failing to comply with a requirement established under this Act. 2006, c. 29, s. 38 (1).

Same

(2) An administrative penalty may be imposed alone or in conjunction with any other regulatory measure provided by this Act, including a compliance order or the amendment, suspension or revocation of a licence. 2006, c. 29, s. 38 (2).

General administrative penalties

39. (1) If the Superintendent is satisfied that a person or entity is contravening or not complying with or has contravened or not complied with a requirement established under this Act, other than a requirement for which a penalty is provided under section 40 or a requirement prescribed under clause 55 (5) (a), the Superintendent may, by order, impose an administrative penalty on the person or entity in accordance with this section and the regulations. 2006, c. 29, s. 39 (1).

Proposal to impose penalty

(2) If the Superintendent proposes to impose an administrative penalty under this section, the Superintendent shall give written notice of the proposal to the person or entity, including the details of the contravention or failure to comply, the amount of the penalty and the payment requirements; the Superintendent shall also inform the person or entity that he, she or it can request a hearing by the Tribunal about the proposal and shall advise the person or entity about the process for requesting a hearing. 2006, c. 29, s. 39 (2).

Notice of combined proposals

(3) A notice of proposal to impose an administrative penalty under this section may be combined with a notice of proposal authorized by any other section. 2006, c. 29, s. 39 (3).

Limitation

(4) The Superintendent shall not give notice of a proposal more than two years after the day the Superintendent became aware of the contravention or failure to comply. 2006, c. 29, s. 39 (4).

Hearing requested

(5) If the person or entity requests a hearing in writing within 15 days after the notice under subsection (2) is received, the Tribunal shall hold a hearing. 2006, c. 29, s. 39 (5).

Order

(6) The Tribunal may, by order, direct the Superintendent to carry out the proposal, with or without changes, or substitute its opinion for that of the Superintendent. 2006, c. 29, s. 39 (6).

Hearing not requested

(7) If the person or entity does not request a hearing or does not make the request in accordance with subsection (5), the Superintendent may carry out the proposal. 2006, c. 29, s. 39 (7).

Effect of paying penalty

(8) If the person or entity pays the administrative penalty in accordance with the terms of the order or, if the order is varied, in accordance with the terms of the varied order, he, she or it cannot be charged with an offence under this Act in respect of the same contravention or failure to comply. 2006, c. 29, s. 39 (8).

Summary administrative penalties

40. (1) If the Superintendent is satisfied that a person or entity is contravening or not complying with or has contravened or failed to comply with subsection 29 (1) or such other provision of this Act or the regulations as may be prescribed, the Superintendent may, by order, impose an administrative penalty on the person or entity in accordance with this section and the regulations. 2006, c. 29, s. 40 (1).

Same

(2) Before imposing a penalty, the Superintendent shall give the person or entity a reasonable opportunity to make written submissions. 2006, c. 29, s. 40 (2).

Limitation

(3) The Superintendent shall not make an order under this section more than two years after the day the Superintendent became aware of the contravention or failure to comply. 2006, c. 29, s. 40 (3).

Appeal

(4) The person or entity may appeal the Superintendent's order to the Tribunal in writing within 15 days after the order in subsection (1) is received by the person or entity. 2006, c. 29, s. 40 (4).

Same

(5) An appeal commenced in accordance with subsection (4) operates as a stay of the order until the matter is finally disposed of. 2006, c. 29, s. 40 (5).

Same

(6) The Tribunal may confirm, revoke or vary the order within the limits, if any, established by the regulations. 2006, c. 29, s. 40 (6).

Effect of paying penalty

(7) If the person or entity pays the administrative penalty in accordance with the terms of the order or, if the order is varied, in accordance with the terms of the varied order, he, she or it cannot be charged with an offence under this Act in respect of the same contravention or failure to comply. 2006, c. 29, s. 40 (7).

Maximum administrative penalties

41. An administrative penalty imposed under section 39 or 40 shall not exceed the following amount:

1. For a contravention or failure to comply by a person or entity who is, or is required to be, licensed as a mortgage brokerage or a mortgage administrator, \$25,000 or such lesser amount as may be prescribed for a prescribed requirement established under this Act.
2. For a contravention or failure to comply by an individual who is, or is required to be, licensed as a mortgage broker or agent, \$10,000 or such lesser amount as may be prescribed for a prescribed requirement established under this Act.
3. For a contravention or failure to comply by any other person or entity, \$25,000 or such lesser amount as may be prescribed for a prescribed requirement established under this Act. 2006, c. 29, s. 41.

Enforcement of administrative penalties

42. (1) If a person or entity fails to pay an administrative penalty imposed under section 39 or 40 in accordance with the terms of the order imposing the penalty, the Superintendent may file the order with the Superior Court of Justice and the order may be enforced as if it were an order of the court. 2006, c. 29, s. 42 (1).

Same

(2) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court shall be deemed to be the date of the order. 2006, c. 29, s. 42 (2).

Same

(3) An administrative penalty that is not paid in accordance with the terms of the order imposing the penalty is a debt due to the Crown and is also enforceable as such. 2006, c. 29, s. 42 (3).

PROHIBITIONS AND OFFENCES

Prohibition re false or deceptive information

43. (1) No mortgage brokerage or mortgage administrator shall give, assist in giving or induce or counsel another person or entity to give or assist in giving any false or deceptive information or document when carrying on the business of dealing in mortgages in Ontario or the business of trading in mortgages in Ontario, when carrying on business as a mortgage lender in Ontario or when carrying on the business of administering mortgages in Ontario. 2006, c. 29, s. 43 (1).

Same

(2) No mortgage broker or agent shall give, assist in giving or induce or counsel another person or entity to give or assist in giving any false or deceptive information or document when dealing in mortgages in Ontario or trading in mortgages in Ontario. 2006, c. 29, s. 43 (2).

Prohibition re obstruction

44. (1) No person or entity shall hinder or obstruct the Superintendent or a person designated by the Superintendent in the performance of their duties under this Act. 2006, c. 29, s. 44 (1).

Same

(2) No person or entity shall withhold from the Superintendent or a person designated by the Superintendent or conceal, alter or destroy anything relevant to an inquiry or examination or order under section 30, 31 or 32. 2006, c. 29, s. 44 (2).

Prohibition re false or misleading information

45. (1) No person or entity shall give false or misleading information to the Superintendent or a person designated by the Superintendent in respect of any matter related to this Act or the regulations. 2006, c. 29, s. 45 (1).

Same

(2) No person or entity shall include false or misleading information in any document required to be created, stored or given to the Superintendent under this Act. 2006, c. 29, s. 45 (2).

Prohibition re reprisals

46. No person or entity shall take adverse employment action against an employee of the person or entity because the employee, acting in good faith, has given information or documents to the Tribunal, the Superintendent or a person designated by the Superintendent. 2006, c. 29, s. 46.

Immunity re disclosures

47. A person who gives information or documents to the Tribunal, the Superintendent or a person designated by the Superintendent is not liable in any civil action for having done so if the person giving the information or documents was acting in good faith. 2006, c. 29, s. 47.

List of offences

48. (1) Every person who contravenes or fails to comply with any of the following provisions of this Act is guilty of an offence:

1. Subsection 2 (2) or (3) (Dealing in mortgages).
2. Subsection 3 (2) or (3) (Trading in mortgages).
3. Subsection 4 (2) (Mortgage lending).
4. Subsection 5 (2) (Administering mortgages).
5. Subsection 11 (1), (2), (3), (4), (5), (6), (7) or (8) (Prohibitions re use of title, etc.).
6. Section 27 (Prohibition re disclosure in advertising).
7. Subsection 30 (6) (Inquiries and examinations).
8. Subsection 43 (1) or (2) (Prohibition re false or deceptive information).
9. Subsection 44 (1) or (2) (Prohibition re obstruction).
10. Subsection 45 (1) or (2) (Prohibition re false or misleading information).
11. Section 46 (Prohibition re reprisals). 2006, c. 29, s. 48 (1).

Offence re standards of practice

(2) Every person who contravenes or fails to comply with a standard of practice that is applicable to his, her or its licence is guilty of an offence. 2006, c. 29, s. 48 (2).

Offence re conditions of licence

(3) Every person who fails to comply with a condition of his, her or its licence is guilty of an offence. 2006, c. 29, s. 48 (3).

Offence re orders

(4) Every person who fails to comply with an order made under this Act is guilty of an offence. 2006, c. 29, s. 48 (4).

Liability of directors and officers

(5) If a corporation commits an offence under this Act, every director or officer of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence, or who failed to take reasonable care to prevent the corporation from committing the offence, is guilty of an offence, whether or not the corporation has been prosecuted or convicted. 2006, c. 29, s. 48 (5).

Liability of directing individuals

(6) Every partner of a partnership and every individual who is a member of the directing body of an entity, other than a person or partnership, who directed, authorized, assented to, acquiesced in or participated in the commission of an act or omission by the partnership or entity which, if committed by a person, would be an offence under this Act, is guilty of an offence. 2006, c. 29, s. 48 (6).

Limitation

(7) No proceeding under this section shall be commenced more than two years after the day the Superintendent became aware of the facts upon which the proceeding is based. 2006, c. 29, s. 48 (7).

Penalties for offences

For an individual

49. (1) Every individual convicted of an offence under this Act is liable to a fine of not more than \$100,000 or imprisonment for a term of not more than one year or both a fine and imprisonment. 2006, c. 29, s. 49 (1).

For a corporation

(2) Every corporation convicted of an offence under this Act is liable to a fine of not more than \$200,000. 2006, c. 29, s. 49 (2).

Additional order for compensation or restitution

50. (1) If a person is convicted of an offence under this Act, the court may order the person convicted to pay compensation or make restitution in such amount and on such conditions as the court considers just, in addition to any other penalty imposed by the court. 2006, c. 29, s. 50 (1).

Payment to insurer

(2) If an order for compensation or restitution is made in favour of a person or entity who has received an amount from an insurer who is licensed under the *Insurance Act* in respect of the matter, the person required by the order to pay the compensation or make the restitution shall deliver the amount payable under the order to the insurer. 2006, c. 29, s. 50 (2).

Civil remedy

(3) No civil remedy for an act or omission is affected by reason only that an order for compensation or restitution under this section has been made in respect of that act or omission. 2006, c. 29, s. 50 (3).

GENERAL

Matters of evidence

51. A copy of a document or record that purports to be certified by the Superintendent or a person designated by the Superintendent as a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 29, s. 51.

Joint and several liability

52. (1) If a licence is issued to a partnership, the partners are jointly and severally liable to comply with any requirement established under this Act applicable to the partnership. 2006, c. 29, s. 52 (1).

Same

(2) If a licence is issued to an entity other than a person or partnership, the members of the directing body of the entity are jointly and severally liable to comply with any requirement established under this Act applicable to the entity. 2006, c. 29, s. 52 (2).

Fees

53. The Minister of Finance may establish fees that are payable under this Act. 2006, c. 29, s. 53.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 53 of the Act is repealed and the following substituted: (See: 2015, c. 20, Sched. 27, s. 1)

Fees

53. The Minister of Finance may make regulations governing fees under this Act, including,

- (a) requiring the payment of fees in relation to any matter under this Act, including any services provided by or through the Ministry of Finance or the Financial Services Commission of Ontario;
- (b) prescribing the amount of fees or the manner of determining fees;
- (c) prescribing the manner in which and the period within which fees must be paid. 2015, c. 20, Sched. 27, s. 1.

Forms

54. (1) The Superintendent may approve the use of forms for any purpose under this Act. 2006, c. 29, s. 54 (1).

Verification of information

(2) The Superintendent may require a person to verify by affidavit or statutory declaration any information or document given under this Act to the Superintendent or to a person designated by the Superintendent for the purposes of this Act. 2006, c. 29, s. 54 (2).

Regulations, general

55. (1) The Lieutenant Governor in Council may make regulations,

- (a) subject to section 56, prescribing anything that is required or permitted to be prescribed or that is required or permitted to be done in accordance with the regulations or as provided in the regulations;
- (b) prescribing activities that are included in or excluded from each of the regulated activities set out in subsections 2 (1), 3 (1), 4 (1) and 5 (1);
- (c) establishing classes of licences and governing the requirements, including standards of practice, applicable to each class of licence;
- (d) governing the issuance, amendment, renewal, suspension, revocation and surrender of licences;
- (e) governing the public register or registers of licensees and former licensees;
- (f) governing the provision of information and documents to the Superintendent by licensees;
- (g) governing proposals by the Superintendent that are referred to in sections 21, 35 and 39 with respect to licences;
- (h) governing the administrative penalties that may be imposed under section 39 or 40;
- (i) prescribing and governing how information and documents are to be given or served under this Act, including prescribing rules governing deemed receipt of documents;
- (j) providing for transitional matters relating to the requirements to be satisfied for issuance of licences. 2006, c. 29, s. 55 (1).

Classes of persons and entities

(2) A regulation may create different classes of persons and entities and may establish different entitlements for, or relating to, each class or impose different requirements, conditions or restrictions on, or relating to, each class. 2006, c. 29, s. 55 (2).

Exemptions, etc.

(3) A regulation may exempt a person or entity or class of persons or entities from a specified requirement imposed by this Act or a regulation in such circumstances as may be prescribed or provide that a specified provision

of this Act or a regulation does not apply to the person, entity or class in such circumstances as may be prescribed. 2006, c. 29, s. 55 (3).

Subdelegation to Superintendent

(4) A regulation made under subsection (1) may authorize the Superintendent to establish all or some of the education and experience requirements respecting the issuance or renewal of mortgage broker's or agent's licences or to establish all or some of the education and experience criteria respecting the designation of a principal broker. 2006, c. 29, s. 55 (4).

Administrative penalties

- (5) Without limiting the generality of clause (1) (h), a regulation governing administrative penalties may,
- (a) prescribe requirements established under this Act for which an administrative penalty may not be imposed;
 - (b) prescribe criteria the Superintendent is required or permitted to consider when imposing a penalty under section 39 or 40;
 - (c) authorize the Superintendent to determine the amount of a penalty, if the amount of the penalty is not prescribed, and prescribe criteria the Superintendent is required or permitted to consider when determining the amount of the penalty;
 - (d) establish different penalties or ranges of penalties for different types of contraventions or failures to comply and for different classes of licensees and different classes of persons and entities;
 - (e) authorize a penalty to be imposed for each day or part of a day on which a contravention or failure to comply continues;
 - (f) authorize higher penalties for a second or subsequent contravention or failure to comply by a person or entity;
 - (g) require that the penalty be paid before a specified deadline or before a deadline specified by the Superintendent;
 - (h) authorize the imposition of late payment fees respecting penalties that are not paid before the deadline, including graduated late payment fees;
 - (i) establish a maximum cumulative penalty payable in respect of a contravention or failure to comply or in respect of contraventions or failures to comply during a specified period. 2006, c. 29, s. 55 (5).

Same

- (6) A regulation made under this section may be general or particular in its application. 2006, c. 29, s. 55 (6).

Regulations re cost of borrowing

56. (1) The Lieutenant Governor in Council may make regulations,
- (a) prescribing, for the purposes of the definition of the "cost of borrowing" in section 1, charges that are included in the cost of borrowing and charges that are excluded from the cost of borrowing;
 - (b) prescribing information other than the cost of borrowing that must be disclosed under section 23;
 - (c) prescribing the manner of calculating the cost of borrowing for the purposes of section 23;
 - (d) prescribing the circumstances in which the cost of borrowing must be expressed as an amount in dollars and cents for the purposes of section 23;
 - (e) prescribing the manner of calculating any rebate referred to in paragraph 4 of section 24;
 - (f) prescribing changes for the purposes of paragraph 6 of section 24 and paragraph 3 of subsection 25 (1);
 - (g) prescribing rights and obligations of borrowers for the purposes of paragraph 7 of section 24 and paragraph 4 of subsection 25 (1);
 - (h) prescribing information that must be disclosed under paragraph 8 of section 24 and paragraph 5 of subsection 25 (1);
 - (i) prescribing information for the purposes of section 26;
 - (j) providing that sections 23 to 26, and the regulations made under those sections, do not apply to such mortgage brokerages in such circumstances as are prescribed;

- (k) providing that sections 23 to 26, and the regulations made under those sections, do not apply in respect of such classes of mortgages in such circumstances as are prescribed;
- (l) prescribing matters for the purposes of section 27 and respecting the form, manner and content of advertisements for the purposes of section 27;
- (m) prescribing the time, manner and form of any disclosure required under sections 23 to 27;
- (n) prescribing classes of mortgages in respect of which some or all of the requirements of sections 23 to 27 do not apply;
- (o) prohibiting the imposition by a brokerage who is the lender of any charge or penalty referred to in section 24 or 25;
- (p) governing the nature and amount of any charge or penalty referred to in section 24 or 25 that may be imposed by a brokerage who is the lender, including but not limited to,
 - (i) providing that such a charge or penalty shall not exceed an amount prescribed in the regulation, and
 - (ii) respecting the costs of the brokerage, mortgage broker or agent that may be included or must be excluded in the determination of the charge or penalty;
- (q) respecting any other matter or thing that is necessary to carry out the purposes of sections 23 to 27. 2006, c. 29, s. 56 (1).

Same

(2) A regulation made under clause (1) (a) may exclude charges described in clause (a), (b) or (c) of the definition of “cost of borrowing” in section 1. 2006, c. 29, s. 56 (2).

Same

(3) A regulation made under subsection (1) may be general or particular in its application and may be restricted in its application to the class or classes of mortgages, borrowers or lenders set out in the regulation. 2006, c. 29, s. 56 (3).

Review of Act and regulations

Initial review

57. (1) Within five years after this section comes into force, the Minister shall appoint one or more persons to review the operation of this Act and the regulations and to make recommendations to the Minister. 2006, c. 29, s. 57 (1).

Subsequent reviews

(2) The Minister shall, no later than five years after the appointment under subsection (1), appoint one or more persons to conduct a subsequent review and shall, no later than five years after the most recent appointment under this subsection, appoint one or more persons to conduct subsequent reviews. 2006, c. 29, s. 57 (2).

Public consultation

(3) When conducting a review, the appointees shall solicit the views of the public. 2006, c. 29, s. 57 (3).

Available to public

(4) The Minister shall make the recommendations of the appointees available to the public. 2006, c. 29, s. 57 (4).

58.-65. OMITTED (AMENDS OR REPEALS OTHER ACTS). 2006, c. 29, ss. 58-65.

66. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2006, c. 29, s. 66.

67. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2006, c. 29, s. 67.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 406/07

REGULATED ACTIVITIES: ADDITIONAL PRESCRIBED ACTIVITIES

Consolidation Period: From March 6, 2009 to the [e-Laws currency date](#).

Last amendment: O. Reg. 87/09.

This is the English version of a bilingual regulation.

Administering mortgages

1. The following activities are prescribed for the purposes of paragraph 2 of subsection 5 (1) of the Act as activities that constitute administering mortgages:

1. Taking steps, on behalf of another person or entity, to enforce payment by a borrower under a mortgage.
O. Reg. 406/07, s. 1.
2. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 406/07, s. 2.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 407/07

EXEMPTIONS FROM THE REQUIREMENTS TO BE LICENSED

Consolidation Period: From January 1, 2015 to the [e-Laws currency date](#).

Last amendment: O. Reg. 237/14.

This is the English version of a bilingual regulation.

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EXEMPTIONS FOR SIMPLE REFERRALS

When providing information to a prospective borrower

1. (1) A person or entity who refers a prospective borrower to a prospective mortgage lender is exempted under subsection 6 (4) of the Act from the requirement in section 2 of the Act to have a brokerage licence or a mortgage broker's or agent's licence if the person or entity complies with both of the following requirements and criteria:

1. Before or at the time of making the referral, the person or entity informs the prospective borrower in writing,
 - i. that the person or entity has received or will or may receive a fee or other remuneration, whether directly or indirectly, for making the referral, and
 - ii. of the nature of the relationship between the person or entity and the prospective lender.

2. The only other information that the person or entity is permitted to give to the prospective borrower is the name, address, telephone number, fax number, email address or website address of the prospective lender or of an individual who acts on behalf of the prospective lender. O. Reg. 407/07, s. 1 (1).

(2) Nothing in subsection (1) affects the right of a person or entity who does not have a brokerage licence or a mortgage broker's or agent's licence to refer a prospective borrower to a prospective lender for no fee or other remuneration. O. Reg. 407/07, s. 1 (2).

When providing information to a prospective lender

2. (1) A person or entity who refers a prospective mortgage lender to a prospective borrower is exempted under subsection 6 (5) of the Act from the requirement in section 2 of the Act to have a brokerage licence or a mortgage broker's or agent's licence if the person or entity complies with all of the following requirements and criteria:

1. Before making the referral, the person or entity informs the prospective borrower in writing,
 - i. that the person or entity has received or will or may receive a fee or other remuneration, whether directly or indirectly, for making the referral, and
 - ii. of the nature of the relationship between the person or entity and the prospective lender.
2. The person or entity then obtains the prospective borrower's written consent to give specified information to the prospective lender.
3. The only information that the person or entity is permitted to give to the prospective lender is the name, address, telephone number, fax number, email address or website address of the prospective borrower or of an individual who acts on behalf of the prospective borrower.
4. The person or entity does not give the prospective lender any information about the prospective borrower other than the information that is authorized by both paragraph 3 and the written consent of the prospective borrower. O. Reg. 407/07, s. 2 (1).

(2) Nothing in subsection (1) affects the right of a person or entity who does not have a brokerage licence or a mortgage broker's or agent's licence to refer a prospective lender to a prospective borrower for no fee or other remuneration. O. Reg. 407/07, s. 2 (2).

EXEMPTIONS FOR LAWYERS

When dealing in mortgages

3. A lawyer is exempted under subsection 6 (6) of the Act from the requirement under section 2 of the Act to have a brokerage licence or a mortgage broker's or agent's licence if both of the following circumstances exist:

1. The lawyer, acting in his or her professional capacity as a lawyer on behalf of a client,
 - i. solicits a person or entity to lend money on the security of real property, or
 - ii. engages in an activity described in paragraph 2, 3 or 4 of subsection 2 (1) of the Act.
2. The lawyer does not hold himself or herself out as engaging in any activity described in subsection 2 (1) of the Act, except as described in paragraph 1 of this section, or otherwise as dealing in mortgages. O. Reg. 407/07, s. 3.

When trading in mortgages

4. A lawyer is exempted under subsection 6 (6) of the Act from the requirement in section 3 of the Act to have a brokerage licence or a mortgage broker's or agent's licence if both of the following circumstances exist:

1. The lawyer, acting in his or her professional capacity as a lawyer on behalf of a client, engages in an activity described in paragraph 1 or 2 of subsection 3 (1) of the Act.
2. The lawyer does not hold himself or herself out as engaging in any activity described in subsection 3 (1) of the Act, except as described in paragraph 1 of this section, or otherwise as trading in mortgages. O. Reg. 407/07, s. 4.

When administering mortgages

5. A lawyer is exempted under subsection 6 (6) of the Act from the requirement in section 5 of the Act to have a mortgage administrator's licence if both of the following circumstances exist:

1. The lawyer administers mortgages, acting in his or her professional capacity as a lawyer on behalf of a client.
2. The lawyer does not hold himself or herself out as administering mortgages, except as described in paragraph 1 of this section. O. Reg. 407/07, s. 5.

EXEMPTIONS FOR OTHER PERSONS AND ENTITIES

GENERAL EXEMPTIONS

For trustees in bankruptcy

6. A person or entity who is acting as a trustee in bankruptcy is exempted under subsections 6 (7) and (9) of the Act from any requirement to have a brokerage licence or a mortgage administrator's licence. O. Reg. 407/07, s. 6.

When acting under court order

7. A person or entity who is acting under an order of the Superior Court of Justice is exempted under subsections 6 (7) and (9) of the Act from any requirement to have a brokerage licence or a mortgage administrator's licence. O. Reg. 407/07, s. 7.

For certain statutory corporations

8. The following corporations are exempted under subsections 6 (7) and (9) of the Act from any requirement to have a brokerage licence or a mortgage administrator's licence:

1. Eastern Ontario Development Corporation.
2. Northern Ontario Development Corporation.
3. Ontario Development Corporation.
4. Ontario Infrastructure and Lands Corporation.
5. Ontario Mortgage and Housing Corporation.
6. REVOKED: O. Reg. 211/11, s. 1 (2).

O. Reg. 407/07, s. 8; O. Reg. 211/11, s. 1.

For personal corporation of broker, agent

8.1 (1) In this section,

“member brokers and agents” means, in respect of a corporation, every broker or agent who is an employee or shareholder of the corporation. O. Reg. 186/08, s. 1 (1).

(2) Expressions used in this section have the same meaning as in the standards of practice prescribed for brokerage licences. O. Reg. 186/08, s. 1 (1).

(3) A corporation is exempted under subsection 6 (7) of the Act from any requirement to have a brokerage licence if all of the following circumstances exist:

1. Every member broker and agent of the corporation is authorized to deal or trade in mortgages on behalf of a particular brokerage.
2. The corporation does not carry on the business of dealing or trading in mortgages otherwise than by providing the services of its member brokers and agents to the particular brokerage.
3. The corporation does not carry on business as a mortgage lender unless it does so solely through the particular brokerage.
4. The corporation and its member brokers and agents do not represent to the public in any manner, directly or indirectly, that the corporation carries on the business of dealing or trading in mortgages or carries on business as a mortgage lender.
5. The corporation does not receive, directly or indirectly, revenue for dealing or trading in mortgages from any person or entity other than the particular brokerage.
6. The member brokers and agents do not receive, directly or indirectly, fees or other remuneration for dealing or trading in mortgages from any person or entity other than the corporation or the particular brokerage.

7. The corporation does not, on behalf of the particular brokerage, directly or indirectly hold funds or other assets received from borrowers, lenders or investors in connection with dealing or trading in mortgages.
8. A majority of the corporation's directors are member brokers and agents.
9. A majority of the equity of the corporation is legally and beneficially owned, directly or indirectly, by one or more of its member brokers or agents.
10. There is a written agreement between the particular brokerage and each member broker or agent governing the relationship between the brokerage and the broker or agent.
11. There is a written agreement between the corporation and the particular brokerage governing the relationship between the brokerage and the corporation and its member brokers and agents.
12. Under the agreement between the corporation and the particular brokerage, the corporation agrees not to hinder or obstruct the brokerage or its principal broker in the performance of their duties under the Act and not to obstruct or hinder the member brokers and agents in the performance of their duties under the Act.
13. Under the agreement between the corporation and the particular brokerage, the corporation agrees to provide whatever assistance may be reasonably necessary to enable the brokerage and its principal broker to comply with their duties under the Act and to enable the brokerage and its principal broker to ensure that the member brokers and agents are complying with their duties under the Act.
14. Under the agreement between the corporation and the particular brokerage, the corporation agrees to provide whatever assistance may be reasonably necessary to enable the brokerage to determine whether the circumstances entitling the corporation to the exemption established by this section exist. O. Reg. 186/08, s. 1 (1).

For certain corporations (motor vehicle dealership financing)

8.2 (1) In this section,

“eligible mortgage” means a mortgage described in subsection (5); (“hypothèque admissible”)

“registered motor vehicle dealer” means a person who is registered under the *Motor Vehicle Dealers Act, 2002* as a motor vehicle dealer. (“commerçant de véhicules automobiles inscrit”) O. Reg. 186/08, s. 1; O. Reg. 78/09, s. 2; O. Reg. 174/09, s. 1.

(2) This section applies to the following corporations:

1. BMW Canada Inc.
2. Ford Credit Canada Limited.
3. General Motors Financial of Canada, Ltd.
4. Honda Canada Finance Inc.
5. Mercedes-Benz Financial Services Canada Corporation.
6. Nissan Canada Financial Services Inc.
7. Toyota Credit Canada Inc.
8. VFS Canada Inc.
9. VW Credit Canada, Inc.
10. Hyundai Capital Canada Inc. O. Reg. 314/13, s. 1; O. Reg. 237/14, s. 1.

(3) A corporation listed in subsection (2) is exempted under subsection 6 (7) of the Act from the requirement in section 2, 3 or 4 of the Act to have a brokerage licence if the corporation deals or trades in, or lends money on the security of, eligible mortgages only and if it does not engage in other activities requiring a brokerage licence. O. Reg. 186/08, s. 1 (1).

(4) A corporation listed in subsection (2) is exempted under subsection 6 (9) of the Act from the requirement in section 5 of the Act to have a mortgage administrator's licence if the corporation administers eligible mortgages only and does not engage in other activities requiring a mortgage administrator's licence. O. Reg. 186/08, s. 1 (1).

(5) A mortgage is an eligible mortgage for the purposes of this section if all of the following conditions are satisfied:

1. One or more of the following persons or entities is either the borrower under the mortgage or guarantees payment of the mortgage:
 - i. a registered motor vehicle dealer,
 - ii. a person or entity with an ownership interest in a registered motor vehicle dealer,
 - iii. a person or entity in which a registered motor vehicle dealer has an ownership interest.
2. The mortgage loan is made for the purposes of the business for which the registered motor vehicle dealer requires the registration or for the purposes of another business that is ancillary to that business.
3. The real property that secures the mortgage loan is not a residential premises in whole or in part. O. Reg. 186/08, s. 1 (1).

For directors, employees, etc., of Crown agencies

9. (1) In this section,

“Crown agency” means an agency of the Crown in right of Ontario, Canada or another province or territory of Canada. O. Reg. 407/07, s. 9 (1).

(2) Every individual who is an officer or employee of a Crown agency or is a director, partner or member of the governing body of a Crown agency is exempted under subsection 6 (8) of the Act from the requirement in section 2 or 3 of the Act to have a mortgage broker’s or agent’s licence if he or she deals or trades in mortgages solely on behalf of the Crown agency in the ordinary course of his or her duties. O. Reg. 407/07, s. 9 (2).

For directors, employees, etc., of certain exempted persons and entities

10. (1) In this section,

“exempted person or entity” means a person or entity who is exempted under subsection 6 (4), (5), (6) or (7) of the Act from the requirement in section 2 or 3 of the Act to have a brokerage licence. O. Reg. 407/07, s. 10 (1).

(2) Every individual who is an officer or employee of an exempted person or entity or is a director, partner or member of the governing body of such a person or entity is exempted under subsection 6 (8) of the Act from the requirement in section 2 or 3 of the Act to have a mortgage broker’s or agent’s licence if he or she deals or trades in mortgages solely on behalf of the person or entity in the ordinary course of his or her duties. O. Reg. 407/07, s. 10 (2).

(3) Despite subsection (2), if there are conditions or restrictions that apply with respect to the exempted person’s or entity’s exemption, the individual’s exemption is subject to corresponding restrictions. O. Reg. 407/07, s. 10 (3).

(4) This section does not apply to an individual who is an officer or employee of a corporation that is exempted under section 8.1 or to an individual who is a director, partner or member of the governing body of such a corporation. O. Reg. 186/08, s. 2.

EXEMPTIONS FOR DEALING IN MORTGAGES

For consumer reporting agencies

11. A consumer reporting agency registered under the *Consumer Reporting Act* is exempted under subsection 6 (7) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* from the requirement in section 2 of the Act to have a brokerage licence if both of the following circumstances exist:

1. In the course of acting as a consumer reporting agency, the agency provides information about prospective borrowers to prospective mortgage lenders, whether or not the Act governs the lenders.
2. The agency does not hold itself out as otherwise dealing in mortgages. O. Reg. 407/07, s. 11.

Limited exemption, registered real estate brokerages, etc.

11.1 (1) In this section,

“registered real estate broker or salesperson” means an individual who is registered under the *Real Estate and Business Brokers Act, 2002* as a broker or salesperson, as the case may be; (“courtier ou agent immobilier inscrit”)

“registered real estate brokerage” means a person or entity who is registered under the *Real Estate and Business Brokers Act, 2002* as a brokerage; (“maison de courtage immobilier inscrite”)

“trade in real estate” has the same meaning as in the *Real Estate and Business Brokers Act, 2002*. (“opération immobilière”, “mener des opérations immobilières”) O. Reg. 186/08, s. 3.

(2) If both of the following circumstances exist, a registered real estate brokerage is exempted under subsection 6 (7) of the Act from the requirement in section 2 of the Act to have a mortgage brokerage licence when arranging a vendor take-back mortgage, or attempting to do so, in the course of a trade in real estate:

1. The registered real estate brokerage does not hold itself out as otherwise dealing in mortgages.
2. The registered real estate brokerage does not engage in any other activity that requires a licence under the Act. O. Reg. 186/08, s. 3.

(3) If all of the following circumstances exist, a registered real estate broker or salesperson is exempted under subsection 6 (8) of the Act from the requirement in section 2 of the Act to have a mortgage broker’s or agent’s licence when arranging a vendor take-back mortgage, or attempting to do so, in the course of a trade in real estate:

1. The registered real estate brokerage for whom he or she is a real estate broker or salesperson is exempted by subsection (2) from the requirement to have a mortgage brokerage licence.
2. The registered real estate broker or salesperson does not hold himself or herself out as otherwise dealing in mortgages.
3. He or she does not engage in any other activity that requires a licence under the Act. O. Reg. 186/08, s. 3; O. Reg. 314/13, s. 2.

EXEMPTIONS FOR TRADING IN MORTGAGES

For registered dealers

12. A person or entity who is registered as a dealer under the *Securities Act* is exempted under subsection 6 (7) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* from the requirement under section 3 of the Act to have a brokerage licence if the following circumstances exist:

1. The person or entity, acting on its own behalf, buys, sells or exchanges mortgages with one or more of the following persons or entities or, acting on its own behalf, solicits one or more of the following persons or entities to buy, sell or exchange mortgages:
 - i. The Crown in right of Ontario, Canada or any province or territory of Canada.
 - ii. A brokerage acting on its own behalf.
 - iii. A financial institution.
 - iv. A corporation that is a subsidiary of a person or entity described in paragraph 1, 2 or 3.
 - v. A corporation that is an approved lender under the *National Housing Act* (Canada).
 - vi. An administrator or trustee of a registered pension plan within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada).
 - vii. 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 as an agent or trustee for accounts that are fully managed by the person or entity.
 - viii. A person or entity who is registered under securities legislation in another province or territory of Canada with a status comparable to that described in subparagraph vii when the person or entity is acting as a principal or as an agent or trustee for accounts that are fully managed by the person or entity.
 - ix. A person or entity in respect of which all of the owners of interests, except the voting securities required by law to be owned by directors, are persons or entities described in subparagraphs i to viii.
2. The person or entity does not hold themselves out as otherwise trading in mortgages.
3. The person or entity is not otherwise required to be licensed. O. Reg. 407/07, s. 12.

In connection with mortgage securitization

13. (1) A person or entity is exempted under subsection 6 (7) of the Act from the requirement in section 3 of the Act to have a brokerage licence if both of the following circumstances exist:

1. The person or entity carries on the business of trading in mortgages in connection with mortgage securitization.
2. The person or entity is not otherwise required to be licensed. O. Reg. 407/07, s. 13 (1).

(2) In this section,

“mortgage securitization” means the creation of securities, as defined in the *Securities Act*, that represent an interest in, or obligations backed by, a mortgage or a discrete pool of mortgages. O. Reg. 407/07, s. 13 (2).

When acting through an intermediary

14. A person or entity is exempted under subsection 6 (7) of the Act from the requirement in section 3 of the Act to have a brokerage licence if the person or entity buys, sells or exchanges mortgages on its own behalf through a mortgage brokerage or a person or entity that is exempted from the requirement to have a brokerage licence. O. Reg. 407/07, s. 14.

EXEMPTIONS FOR MORTGAGE LENDING

When acting through an intermediary

15. A person or entity is exempted under subsection 6 (7) of the Act from the requirement in section 4 of the Act to have a brokerage licence if the person or entity carries on business as a mortgage lender solely through a mortgage brokerage or a person or entity that is exempted from the requirement to have a brokerage licence. O. Reg. 407/07, s. 15.

EXEMPTIONS FOR ADMINISTERING MORTGAGES

When acting for the Crown

16. A person or entity is exempted under subsection 6 (9) of the Act from the requirement in section 5 of the Act to have a mortgage administrator’s licence if the person or entity carries on the business of administering mortgages on behalf of the Crown in right of Ontario, Canada or another province or territory of Canada and if the person or entity is not otherwise required to be licensed. O. Reg. 407/07, s. 16.

When acting for a financial institution, etc.

17. (1) A person or entity is exempted under subsection 6 (9) of the Act from the requirement in section 5 of the Act to have a mortgage administrator’s licence if the person or entity carries on the business of administering mortgages on behalf of a financial institution or finance company and if the person or entity is not otherwise required to be licensed. O. Reg. 407/07, s. 17 (1).

(2) For the purposes of this section,

“affiliate”, with respect to a corporation, has the same meaning as in the *Business Corporations Act*; (“membre du même groupe”)

“finance company” means a corporation or partnership, other than a financial institution, that satisfies both of the following criteria:

1. A material business activity of the corporation or partnership involves making or refinancing loans, or entering into other similar arrangements for advancing funds or credit.
2. The shares or ownership interests of the corporation or partnership, or of another person or entity with which it is affiliated, are listed on a stock exchange in Canada or outside Canada that is a prescribed stock exchange for the purposes of the *Income Tax Act* (Canada). (“société de financement”) O. Reg. 407/07, s. 17 (2).

(3) For the purposes of the definition of “finance company” in subsection (2), a partnership is affiliated with another person or entity if one of them is controlled by the other or if both are controlled by the same person or entity. O. Reg. 407/07, s. 17 (3).

For collection agencies

18. A collection agency that is registered under the *Collection Agencies Act* is exempted under subsection 6 (9) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* from the requirement in section 5 of the Act to have a mortgage administrator’s licence if both of the following circumstances exist:

1. In the course of acting as a collection agency, the agency takes steps, on behalf of another person or entity, to enforce payment by borrowers under mortgages.

2. The agency does not hold itself out as engaging in any other activity described in subsection 5 (1) of the Act or otherwise as administering mortgages. O. Reg. 407/07, s. 18.

In connection with mortgage-backed securities

19. (1) A person or entity is exempted under subsection 6 (9) of the Act from the requirement in section 5 of the Act to have a mortgage administrator's licence when the person or entity carries on the business of administering only those mortgages that constitute the assets backing mortgage-backed securities. O. Reg. 407/07, s. 19 (1).

(2) In this section,

“mortgage-backed securities” means securities, as defined in the *Securities Act*, that represent an interest in, or obligations backed by, a mortgage or a discrete pool of mortgages. O. Reg. 407/07, s. 19 (2).

20. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 407/07, s. 20.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 408/07 MORTGAGE BROKERAGES: LICENSING

Consolidation Period: From March 6, 2009 to the [e-Laws currency date](#).

Last amendment: O. Reg. 82/09.

This is the English version of a bilingual regulation.

ELIGIBILITY CRITERIA

For a corporation

1. (1) A brokerage licence may be issued under subsection 14 (1) of the Act to a corporation if all of the following requirements are satisfied:

1. The corporation was incorporated under an Act of any jurisdiction in Canada.
2. The corporation has a mailing address in Ontario that is not a post office box and that is suitable to permit service by registered mail.
3. The corporation has errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it has some other form of assurance in a form approved by the Superintendent. The insurance or other assurance must be sufficient to pay a minimum of \$500,000 in respect of any one occurrence involving the corporation or any mortgage broker or agent authorized to deal or trade in mortgages on its behalf and \$1 million in respect of all occurrences during a 365-day period involving the corporation or any such broker or agent.
4. The application includes the particulars of the individual to be designated as the corporation's principal broker. The individual must be eligible under subsection 7 (7) of the Act to be designated as a principal broker. O. Reg. 408/07, s. 1 (1).

(2) In determining whether a corporation is not suitable to be licensed as a mortgage brokerage, the Superintendent is required by subsection 14 (1) of the Act to have regard to the following prescribed circumstances:

1. Whether, having regard to its financial position, the corporation cannot reasonably be expected to be financially responsible in the conduct of its business.
2. Whether the past conduct of any director or officer of the corporation affords reasonable grounds for belief that the business of the corporation will not be carried on in accordance with the law and with integrity and honesty.
3. Whether the corporation is carrying on activities that contravene or will contravene the Act or the regulations if the corporation is licensed.
4. Whether a director or officer of the corporation has made a false statement or has provided false information to the Superintendent with respect to the application for a licence. O. Reg. 408/07, s. 1 (2).

(3) REVOKED: O. Reg. 408/07, s. 1 (4).

(4) SPENT: O. Reg. 408/07, s. 1 (4).

For a partnership

2. (1) A brokerage licence may be issued under subsection 14 (1) of the Act to a partnership if all of the following requirements are satisfied:

1. The partnership was formed under the law of any jurisdiction in Canada.
2. The partnership has a mailing address in Ontario that is not a post office box and that is suitable to permit service by registered mail.
3. The partnership has errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it has some other form of assurance in a form approved by

the Superintendent. The insurance or other assurance must be sufficient to pay a minimum of \$500,000 in respect of any one occurrence involving the partnership or any mortgage broker or agent authorized to deal or trade in mortgages on its behalf and \$1 million in respect of all occurrences during a 365-day period involving the partnership or any such broker or agent.

4. The application includes the particulars of the individual to be designated as the partnership's principal broker. The individual must be eligible under subsection 7 (7) of the Act to be designated as a principal broker. O. Reg. 408/07, s. 2 (1).

(2) In determining whether a partnership is not suitable to be licensed as a mortgage brokerage, the Superintendent is required by subsection 14 (1) of the Act to have regard to the following prescribed circumstances:

1. Whether, having regard to its financial position, the partnership cannot reasonably be expected to be financially responsible in the conduct of its business.
2. Whether the past conduct of any partner affords reasonable grounds for belief that the business of the partnership will not be carried on in accordance with the law and with integrity and honesty.
3. Whether the partnership or any partner is carrying on activities that contravene or will contravene the Act or the regulations if the partnership is licensed.
4. Whether a partner has made a false statement or has provided false information to the Superintendent with respect to the application for a licence. O. Reg. 408/07, s. 2 (2).

(3) REVOKED: O. Reg. 408/07, s. 2 (4).

(4) SPENT: O. Reg. 408/07, s. 2 (4).

For a sole proprietorship

3. (1) A brokerage licence may be issued under subsection 14 (1) of the Act to a sole proprietorship if all of the following requirements are satisfied:

1. The proprietor is a resident of Canada.
2. The sole proprietorship has a mailing address in Ontario that is not a post office box and that is suitable to permit service by registered mail.
3. The sole proprietorship has errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it has some other form of assurance in a form approved by the Superintendent. The insurance or other assurance must be sufficient to pay a minimum of \$500,000 in respect of any one occurrence involving the sole proprietorship or any mortgage broker or agent authorized to deal or trade in mortgages on its behalf and \$1 million in respect of all occurrences during a 365-day period involving the sole proprietorship or any such broker or agent. O. Reg. 408/07, s. 3 (1).

(2) In determining whether a sole proprietorship is not suitable to be licensed as a mortgage brokerage, the Superintendent is required by subsection 14 (1) of the Act to have regard to the following prescribed circumstances:

1. Whether, having regard to its financial position, the sole proprietorship cannot reasonably be expected to be financially responsible in the conduct of its business.
2. Whether the past conduct of the proprietor affords reasonable grounds for belief that the business of the sole proprietorship will not be carried on in accordance with the law and with integrity and honesty.
3. Whether the sole proprietorship or the proprietor is carrying on activities that contravene or will contravene the Act or the regulations if the sole proprietorship is licensed.
4. Whether the proprietor has made a false statement or has provided false information to the Superintendent with respect to the application for a licence. O. Reg. 408/07, s. 3 (2).

(3) REVOKED: O. Reg. 408/07, s. 3 (4).

(4) SPENT: O. Reg. 408/07, s. 3 (4).

LICENSEES' AUTHORIZED NAMES

Authorized names

4. (1) A brokerage licence is issued either in the legal name of the corporation, partnership or sole proprietorship or in the legal name and one other name that is registered to the corporation, partnership or sole proprietorship under the *Business Names Act*. O. Reg. 408/07, s. 4 (1).

(2) Despite subsection (1), a brokerage licence cannot be issued to a corporation, partnership or sole proprietorship in any name that the Superintendent reasonably believes is,

- (a) the same as or similar to the name of another licensee such that the use of that name by two licensees would be likely to confuse or mislead the public; or
- (b) objectionable on any public grounds. O. Reg. 408/07, s. 4 (2).

SURRENDER OF LICENCE

Criteria re surrender of licence

4.1 The following criteria are prescribed for the purposes of subsection 20 (3) of the Act as criteria to which the Superintendent shall have regard when determining whether it is not in the public interest to allow a licensee to surrender a brokerage licence:

1. Whether the applicant has any funds remaining in a mortgage brokerage trust account that was being maintained under the standards of practice.
 2. Whether any funds in the applicant's mortgage brokerage trust account have not been accounted for.
 3. Whether the applicant has failed to make reasonable arrangements for the retention of the records required by the standards of practice, or has failed to inform the Superintendent about the location in which the records are to be kept.
 4. Whether any deeds, instruments or agreements signed by or on behalf of a borrower, lender or investor or any other documents given to the applicant by the borrower, lender or investor in connection with the applicant's business of dealing or trading in mortgages have not been returned.
 5. Whether the applicant has any outstanding fees, charges or penalties payable under the Act. O. Reg. 183/08, s. 1.
5. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THE ENGLISH VERSION OF THIS REGULATION). O. Reg. 408/07, s. 5.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 409/07

MORTGAGE BROKERS AND AGENTS: LICENSING

Consolidation Period: From July 1, 2011 to the [e-Laws currency date](#).

Last amendment: O. Reg. 286/11.

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INTERPRETATION

Definitions

1. In this Regulation,

“approved” means approved by the Superintendent; (“approuvé”)

“authorizing certificate” means a certificate, licence, registration, or other form of official recognition, granted by an out-of-province regulatory authority to an individual, which attests to the individual being qualified to practise the occupation that is substantially equivalent to that of mortgage broker or mortgage agent and authorizes the individual to practise either occupation, use a title or designation relating to either occupation, or both; (“certificat d'autorisation”)

“occupation” means a set of jobs which, with some variation, are similar in their main tasks or duties or in the type of work performed; (“métier ou profession”)

“out-of-province regulatory authority” means a regulatory authority that is authorized to issue authorizing certificates under an Act of Canada or of a province, other than Ontario, or territory of Canada that is a party to the Agreement on Internal Trade, as defined in the *Ontario Labour Mobility Act, 2009*; (“autorité de réglementation extraprovinciale”)

“prescribed education and experience requirements for a broker's licence” means the requirements described in paragraphs 5, 6, 7 and 8 of subsection 2 (1); (“exigences prescrites en matière de formation et d'expérience pour l'obtention d'un permis de courtier”)

“prescribed education requirements for an agent's licence” means the requirement described in paragraph 5 of subsection 5 (1). (“exigences prescrites en matière de formation pour l'obtention d'un permis d'agent”) O. Reg. 409/07, s. 1; O. Reg. 286/11, s. 1.

ISSUANCE OF MORTGAGE BROKER'S LICENCES

Eligibility criteria, mortgage broker's licence

2. (1) A mortgage broker's licence may be issued under subsection 14 (1) of the Act to an individual who satisfies the following requirements:

1. The individual is at least 18 years old.
2. The individual is a resident of Canada.
3. The individual has a mailing address in Ontario that is not a post office box and that is suitable to permit service by registered mail.
4. The individual is authorized by a brokerage to deal or trade in mortgages on its behalf.
5. The individual has successfully completed an approved education program for mortgage agents.
6. The individual has been licensed as a mortgage agent for at least 24 of the 36 months immediately before he or she applies for the licence.
7. The individual has successfully completed an approved education program for mortgage brokers within three years before he or she applies for the licence.
8. The individual has passed the approved qualifying exam for mortgage brokers within three years before he or she applies for the licence. O. Reg. 409/07, s. 2 (1).

(2) An individual is deemed to have satisfied one or more of the prescribed education and experience requirements for a broker's licence if the Superintendent is satisfied that the individual has a combination of education and experience that is equivalent to the applicable requirement. O. Reg. 409/07, s. 2 (2).

(3) REVOKED: O. Reg. 409/07, s. 2 (4).

(4) SPENT: O. Reg. 409/07, s. 2 (4).

Partial exemption, out-of-province authorizing certificate

2.1 (1) An individual is exempted from the prescribed education and experience requirements for a broker's licence if,

- (a) the individual holds an authorizing certificate in good standing;
- (b) the Superintendent is satisfied that the authorizing certificate authorizes the individual to practise the occupation that is substantially equivalent to that of mortgage broker;
- (c) the individual demonstrates knowledge of matters applicable to practising as a mortgage broker in Ontario, if this is required by the Superintendent of all applicants under this subsection, and if so required, in the manner required by the Superintendent, which shall not include material additional training, experience, examinations or assessments; and
- (d) the individual complies with any requirements for mortgage brokers that are listed on the website of the Ministry of Training, Colleges and Universities or other website specified in a regulation made under the *Ontario Labour Mobility Act, 2009* pursuant to subsection 9 (3) of that Act. O. Reg. 286/11, s. 2.

(2) Despite subsection (1), if an individual's authorizing certificate is subject to a condition, the Superintendent may,

- (a) impose an equivalent condition on the broker's licence issued to the individual; or
- (b) refuse to issue a broker's licence to the individual, if the Superintendent cannot impose an equivalent condition on the broker's licence. O. Reg. 286/11, s. 2.

Partial exemption, previous licensee

3. (1) An individual is exempted from the prescribed education and experience requirements for a broker's licence if the individual was licensed as a mortgage broker at any time during the 24 months before applying for the licence. O. Reg. 409/07, s. 3.

(2) Subsection (1) does not apply if the individual was required, as a condition of the prior licence, to successfully complete an education program by a specified date and the individual did not do so. O. Reg. 23/08, s. 1.

Restriction on applications for mortgage broker's licence

4. (1) An individual whose mortgage broker's licence has been revoked, or whose application for a mortgage broker's licence or for renewal of such a licence has been refused, cannot apply for a mortgage broker's licence unless,

- (a) 12 months have passed since the revocation or refusal; and
- (b) the individual satisfies the Superintendent that new or other evidence is available or that material circumstances have changed. O. Reg. 409/07, s. 4 (1).

(2) An individual whose mortgage agent's licence has been revoked, or whose application for an agent's licence or for renewal of such a licence has been refused, cannot apply for a mortgage broker's licence unless,

- (a) 12 months have passed since the revocation or refusal; and
- (b) the individual satisfies the Superintendent that new or other evidence is available or that material circumstances have changed. O. Reg. 409/07, s. 4 (2).

ISSUANCE OF MORTGAGE AGENT'S LICENCES

Eligibility criteria, mortgage agent's licence

5. (1) A mortgage agent's licence may be issued under subsection 14 (1) of the Act to an individual who satisfies the following requirements:

1. The individual is at least 18 years old.
2. The individual is a resident of Canada.
3. The individual has a mailing address in Ontario that is not a post office box and that is suitable to permit service by registered mail.
4. The individual is authorized by a brokerage to deal or trade in mortgages on its behalf.
5. The individual has successfully completed an approved education program for mortgage agents within two years before he or she applies for the licence. O. Reg. 409/07, s. 5 (1).

(2) An individual is deemed to have satisfied the prescribed education requirements for an agent's licence if the Superintendent is satisfied that the individual has a combination of education and experience that is equivalent to those requirements. O. Reg. 409/07, s. 5 (2).

Partial exemption, out-of-province authorizing certificate

5.1 (1) An individual is exempted from the prescribed education requirements for an agent's licence if,

- (a) the individual holds an authorizing certificate in good standing;
- (b) the Superintendent is satisfied that the authorizing certificate authorizes the individual to practise the occupation that is substantially equivalent to that of mortgage agent;
- (c) the individual demonstrates knowledge of matters applicable to practising as a mortgage agent in Ontario, if this is required by the Superintendent of all applicants under this subsection, and if so required, in the manner required by the Superintendent, which shall not include material additional training, experience, examinations or assessments; and
- (d) the individual complies with any requirements for mortgage agents that are listed on the website of the Ministry of Training, Colleges and Universities or other website specified in a regulation made under the *Ontario Labour Mobility Act, 2009* pursuant to subsection 9 (3) of that Act. O. Reg. 286/11, s. 3.

(2) Despite subsection (1), if an individual's authorizing certificate is subject to a condition, the Superintendent may,

- (a) impose an equivalent condition on the agent's licence issued to the individual; or
- (b) refuse to issue an agent's licence to the individual, if the Superintendent cannot impose an equivalent condition on the agent's licence. O. Reg. 286/11, s. 3.

Partial exemption, previous licensee

6. (1) An individual is exempted from the prescribed education requirements for an agent's licence if the individual was licensed as a mortgage agent at any time during the 24 months before applying for the licence. O. Reg. 409/07, s. 6.

(2) Subsection (1) does not apply if the individual was required, as a condition of the prior licence, to successfully complete an education program by a specified date and the individual did not do so. O. Reg. 23/08, s. 2.

Partial exemption, work for certain finance companies

7. (1) An individual is exempted from the prescribed education requirements for an agent's licence if all of the following circumstances exist:

1. The brokerage on whose behalf the individual is authorized to deal in mortgages is a finance company and the brokerage is either the lender for all of the mortgages that brokers and agents authorized to deal in mortgages on behalf of the brokerage deal in, or is an affiliate of the lender.
2. The Superintendent is satisfied that the brokerage will provide the individual with such training as the Superintendent considers adequate.
3. The individual undertakes, as a condition of his or her licence, to successfully complete an approved education program for mortgage agents before he or she is authorized to deal in mortgages on behalf of another brokerage other than a finance company that satisfies the criteria described in paragraphs 1 and 2. O. Reg. 409/07, s. 7 (1); O. Reg. 23/08, s. 3.

(2) For the purposes of this section,

“affiliate”, with respect to a corporation, has the same meaning as in the *Business Corporations Act*; (“membre du même groupe”)

“finance company” means a corporation or partnership, other than a financial institution, that satisfies both of the following criteria:

1. A material business activity of the corporation or partnership involves making or refinancing loans, or entering into other similar arrangements for advancing funds or credit.
2. The shares or ownership interests of the corporation or partnership, or of another person or entity with which it is affiliated, are listed on a stock exchange in Canada or outside Canada that is a prescribed stock exchange for the purposes of the *Income Tax Act* (Canada). (“société de financement”) O. Reg. 409/07, s. 7 (2).

(3) For the purposes of the definition of “finance company” in subsection (2), a partnership is affiliated with another person or entity if one of them is controlled by the other or if both are controlled by the same person or entity. O. Reg. 409/07, s. 7 (3).

Restriction on applications for agent's licence

8. (1) An individual whose mortgage agent's licence has been revoked, or whose application for an agent's licence or for renewal of such a licence has been refused, cannot apply for an agent's licence unless,

- (a) 12 months have passed since the revocation or refusal; and
- (b) the individual satisfies the Superintendent that new or other evidence is available or that material circumstances have changed. O. Reg. 409/07, s. 8 (1).

(2) An individual whose mortgage broker's licence has been revoked, or whose application for a mortgage broker's licence or for renewal of such a licence has been refused, cannot apply for an agent's licence unless,

- (a) 12 months have passed since the revocation or refusal; and
- (b) the individual satisfies the Superintendent that new or other evidence is available or that material circumstances have changed. O. Reg. 409/07, s. 8 (2).

EXPIRY OF BROKERS' AND AGENTS' LICENCES

Expiry date for licences

8.1 (1) In this section,

“two-year licensing cycle” means the two-year period that begins on April 1, 2010 and ends on March 31, 2012 and each successive two-year period thereafter. O. Reg. 184/08, s. 1.

(2) A mortgage broker’s licence or mortgage agent’s licence that takes effect at the beginning of a two-year licensing cycle or at any time during the licensing cycle expires at the end of the licensing cycle. O. Reg. 184/08, s. 1.

(3) A mortgage broker’s licence or mortgage agent’s licence that takes effect on or after July 1, 2008 and before April 1, 2010 expires on March 31, 2010. O. Reg. 184/08, s. 1.

RENEWAL OF BROKERS’ AND AGENTS’ LICENCES

Eligibility criteria for renewal

9. (1) A mortgage broker’s or agent’s licence may be renewed under subsection 16 (4) of the Act for an individual who satisfies the following requirements:

1. The individual is a resident of Canada.
2. The individual has a mailing address in Ontario that is not a post office box and that is suitable to permit service by registered mail.
3. The individual is authorized by a brokerage to deal or trade in mortgages on its behalf.
4. The individual has completed an approved continuing education requirement, if any, for mortgage brokers or agents, as the case may be. O. Reg. 409/07, s. 9.

(2) Despite subsection (1), an individual’s licence cannot be renewed if the individual was required, as a condition of the previous licence, to successfully complete an education program by a specified date and the individual did not do so. O. Reg. 23/08, s. 4.

UNSUITABILITY FOR LICENCE

Criteria re individual not suitable

10. In determining whether an individual is not suitable to be licensed as a mortgage broker or agent, the Superintendent is required by subsections 14 (1) and 16 (4) of the Act to have regard to the following prescribed circumstances:

1. Whether the individual’s past conduct affords reasonable grounds for belief that he or she will not deal or trade in mortgages in accordance with the law and with integrity and honesty.
2. Whether the individual is carrying on activities that contravene or will contravene the Act or the regulations if he or she is licensed.
3. Whether the individual has made a false statement or has provided false information to the Superintendent with respect to the application for the licence. O. Reg. 409/07, s. 10.

11. REVOKED: O. Reg. 409/07, s. 11 (2).

12. REVOKED: O. Reg. 409/07, s. 12 (2).

13. REVOKED: O. Reg. 409/07, s. 13 (2).

14. REVOKED: O. Reg. 409/07, s. 14 (2).

15. REVOKED: O. Reg. 409/07, s. 15 (4).

16. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 409/07, s. 16.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 410/07

PRINCIPAL BROKERS: ELIGIBILITY, POWERS AND DUTIES

Consolidation Period: From March 6, 2009 to the [e-Laws currency date](#).

Last amendment: O. Reg. 86/09.

This is the English version of a bilingual regulation.

Eligibility criteria

1. An individual who satisfies the following criteria is eligible under subsection 7 (7) of the Act to be designated by a brokerage as its principal broker:

1. The individual is a mortgage broker who is authorized by the brokerage to deal or trade in mortgages on its behalf.
2. The individual has the following status in relation to the brokerage:
 - i. If the brokerage is a corporation, he or she is a director or officer of the corporation.
 - ii. If the brokerage is a partnership other than a limited partnership, he or she is a partner.
 - iii. If the brokerage is a limited partnership, he or she is a general partner or is a director or officer of a corporation that is a general partner.
 - iv. If the brokerage is a sole proprietorship, he or she is the sole proprietor. O. Reg. 410/07, s. 1.

Duty re compliance

2. (1) The principal broker of a brokerage shall take reasonable steps to ensure that the brokerage, and each broker and agent authorized to deal or trade in mortgages on its behalf, complies with every requirement established under the Act. O. Reg. 410/07, s. 2 (1).

(2) The principal broker shall ensure that the brokerage takes reasonable steps to deal with any contravention of a requirement established under the Act by the brokerage or by a broker or agent authorized to deal or trade in mortgages on its behalf. O. Reg. 410/07, s. 2 (2).

Duty re policies and procedures

3. (1) The principal broker of a brokerage shall review the policies and procedures of the brokerage to determine whether they are reasonably designed to ensure,

- (a) that the brokerage, and each broker and agent authorized to deal or trade in mortgages on its behalf, comply with every requirement established under the Act; and
- (b) that each broker and agent authorized to deal or trade in mortgages on behalf of the brokerage is adequately supervised. O. Reg. 410/07, s. 3 (1).

(2) The principal broker shall recommend to the brokerage that it make changes in its policies and procedures, if necessary, to ensure that the standards described in clauses (1) (a) and (b) are achieved. O. Reg. 410/07, s. 3 (2).

Duty re trust statement

4. The principal broker of a brokerage shall sign and date any trust account reconciliation statement prepared by the brokerage to indicate that he or she has reviewed it and certifies that it is accurate. O. Reg. 410/07, s. 4.

5. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 410/07, s. 5.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 411/07

MORTGAGE ADMINISTRATORS: LICENSING

Consolidation Period: From March 6, 2009 to the [e-Laws currency date](#).

Last amendment: O. Reg. 80/09.

This is the English version of a bilingual regulation.

ELIGIBILITY CRITERIA

For a corporation

1. (1) A mortgage administrator's licence may be issued under subsection 14 (1) of the Act to a corporation if all of the following requirements are satisfied:

1. The corporation was incorporated under an Act of any jurisdiction in Canada.
2. The corporation has a mailing address in Ontario that is not a post office box and that is suitable to permit service by registered mail.
3. The corporation has errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it has some other form of assurance in a form approved by the Superintendent. The insurance or other assurance must be sufficient to pay a minimum of \$500,000 in respect of any one occurrence involving the corporation and \$1 million in respect of all occurrences during a 365-day period involving the corporation.
4. The corporation has a financial guarantee in an amount equal to \$25,000. The financial guarantee may be unimpaired working capital or it may be another form of financial guarantee acceptable to the Superintendent. O. Reg. 411/07, s. 1 (1); O. Reg. 185/08, s. 1.

(2) In determining whether a corporation is not suitable to be licensed as a mortgage administrator, the Superintendent is required by subsection 14 (1) of the Act to have regard to the following prescribed circumstances:

1. Whether, having regard to its financial position, the corporation cannot reasonably be expected to be financially responsible in the conduct of its business.
2. Whether the past conduct of any director or officer of the corporation affords reasonable grounds for belief that the business of the corporation will not be carried on in accordance with the law and with integrity and honesty.
3. Whether the corporation is carrying on activities that contravene or will contravene the Act or the regulations if the corporation is licensed.
4. Whether a director or officer of the corporation has made a false statement or has provided false information to the Superintendent with respect to the application for a licence. O. Reg. 411/07, s. 1 (2).

(3) REVOKED: O. Reg. 411/07, s. 1 (4).

(4) SPENT: O. Reg. 411/07, s. 1 (4).

For a partnership

2. (1) A mortgage administrator's licence may be issued under subsection 14 (1) of the Act to a partnership if all of the following requirements are satisfied:

1. The partnership was formed under the law of any jurisdiction in Canada.
2. The partnership has a mailing address in Ontario that is not a post office box and that is suitable to permit service by registered mail.
3. The partnership has errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it has some other form of assurance in a form approved by the Superintendent. The insurance or other assurance must be sufficient to pay a minimum of \$500,000 in

respect of any one occurrence involving the partnership and \$1 million in respect of all occurrences during a 365-day period involving the partnership.

4. The partnership has a financial guarantee in an amount equal to \$25,000. The financial guarantee may be unimpaired working capital or it may be another form of financial guarantee acceptable to the Superintendent. O. Reg. 411/07, s. 2 (1); O. Reg. 185/08, s. 2.

(2) In determining whether a partnership is not suitable to be licensed as a mortgage administrator, the Superintendent is required by subsection 14 (1) of the Act to have regard to the following prescribed circumstances:

1. Whether, having regard to its financial position, the partnership cannot reasonably be expected to be financially responsible in the conduct of its business.
2. Whether the past conduct of any partner affords reasonable grounds for belief that the business of the partnership will not be carried on in accordance with the law and with integrity and honesty.
3. Whether the partnership or any partner is carrying on activities that contravene or will contravene the Act or the regulations if the partnership is licensed.
4. Whether a partner has made a false statement or has provided false information to the Superintendent with respect to the application for a licence. O. Reg. 411/07, s. 2 (2).

(3) REVOKED: O. Reg. 411/07, s. 2 (4).

(4) SPENT: O. Reg. 411/07, s. 2 (4).

For a sole proprietorship

3. (1) A mortgage administrator's licence may be issued under subsection 14 (1) of the Act to a sole proprietorship if all of the following requirements are satisfied:

1. The proprietor is a resident of Canada.
2. The sole proprietorship has a mailing address in Ontario that is not a post office box and that is suitable to permit service by registered mail.
3. The sole proprietorship has errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it has some other form of assurance in a form approved by the Superintendent. The insurance or other assurance must be sufficient to pay a minimum of \$500,000 in respect of any one occurrence involving the sole proprietorship and \$1 million in respect of all occurrences during a 365-day period involving the sole proprietorship.
4. The sole proprietorship has a financial guarantee in an amount equal to \$25,000. The financial guarantee may be unimpaired working capital or it may be another form of financial guarantee acceptable to the Superintendent. O. Reg. 411/07, s. 3 (1); O. Reg. 185/08, s. 3.

(2) In determining whether a sole proprietorship is not suitable to be licensed as a mortgage administrator, the Superintendent is required by subsection 14 (1) of the Act to have regard to the following prescribed circumstances:

1. Whether, having regard to its financial position, the sole proprietorship cannot reasonably be expected to be financially responsible in the conduct of its business.
2. Whether the past conduct of the proprietor affords reasonable grounds for belief that the business of the sole proprietorship will not be carried on in accordance with the law and with integrity and honesty.
3. Whether the sole proprietorship or the proprietor is carrying on activities that contravene or will contravene the Act or the regulations if the sole proprietorship is licensed.
4. Whether the proprietor has made a false statement or has provided false information to the Superintendent with respect to the application for a licence. O. Reg. 411/07, s. 3 (2).

(3) REVOKED: O. Reg. 411/07, s. 3 (4).

(4) SPENT: O. Reg. 411/07, s. 3 (4).

LICENSEES' AUTHORIZED NAMES

Authorized names

4. (1) A mortgage administrator's licence is issued either in the legal name of the corporation, partnership or sole proprietorship or in the legal name and one other name that is registered to the corporation, partnership or sole proprietorship under the *Business Names Act*. O. Reg. 411/07, s. 4 (1).

(2) Despite subsection (1), a mortgage administrator's licence cannot be issued to a corporation, partnership or sole proprietorship in any name that the Superintendent reasonably believes is,

- (a) the same as or similar to the name of another licensee such that the use of that name by two licensees would be likely to confuse or mislead the public; or
- (b) objectionable on any public grounds. O. Reg. 411/07, s. 4 (2).

SURRENDER OF LICENCE

Criteria re surrender of licence

4.1 The following criteria are prescribed for the purposes of subsection 20 (3) of the Act as criteria to which the Superintendent shall have regard when determining whether it is not in the public interest to allow a licensee to surrender a mortgage administrator's licence:

- 1. Whether the applicant has any funds remaining in its mortgage administrator's trust account that was being maintained under the standards of practice.
- 2. Whether any funds in the applicant's mortgage administrator's trust account have not been accounted for.
- 3. Whether the applicant has failed to make reasonable arrangements for winding up or transferring its business of administering mortgages in Ontario.
- 4. Whether the applicant has failed to make reasonable arrangements for the retention of the records required by the standards of practice, or has failed to inform the Superintendent about the location in which the records are to be kept.
- 5. Whether any deeds, instruments or agreements signed by or on behalf of a lender or investor or any other documents given to the applicant by a lender or investor in connection with the applicant's business of administering mortgages have not been returned.
- 6. Whether the applicant has any outstanding fees, charges or penalties payable under the Act. O. Reg. 185/08, s. 4.
- 5. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 411/07, s. 5.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 187/08

MORTGAGE BROKERS AND AGENTS: STANDARDS OF PRACTICE

Consolidation Period: From June 18, 2015 to the [e-Laws currency date](#).

Last amendment: O. Reg. 152/15.

Interpretation

1. (1) Expressions used in this Regulation have the same meaning as in the standards of practice prescribed for brokerage licences. O. Reg. 187/08, s. 1 (1).

(2) In this Regulation,

“licensee name” means, in relation to a mortgage broker or agent, the name in which the licence is issued; (“nom indiqué sur le permis”)

“public relations materials” means, in relation to a mortgage broker or agent,

- (a) any advertisement by the broker or agent in connection with his or her status as a licensee or his or her dealing or trading in mortgages that is published, circulated or broadcast by any means, or
- (b) any material that a broker or agent makes available to the public in connection with his or her status as a licensee or his or her dealing or trading in mortgages. (“document de relations publiques”) O. Reg. 187/08, s. 1 (2).

Standards of practice

2. The requirements set out in this Regulation are prescribed as standards of practice for every mortgage broker’s licence and mortgage agent’s licence that is issued under the Act. O. Reg. 187/08, s. 2.

Duty re authorizing brokerage

3. A mortgage broker or agent shall not do or omit to do anything that might reasonably be expected to result in the brokerage on whose behalf he or she is authorized to deal or trade in mortgages to contravene or fail to comply with a requirement established under the Act. O. Reg. 187/08, s. 3.

Note: On January 1, 2016, the Regulation is amended by adding the following section: (See: O. Reg. 152/15, s. 1)

Dishonesty, fraud, etc.

3.1 A mortgage broker or agent shall not act, or do anything or omit to do anything, in circumstances where he or she ought to know that by acting, doing the thing or omitting to do the thing, he or she is being used by a borrower, lender, investor or any other person to facilitate dishonesty, fraud, crime or illegal conduct. O. Reg. 152/15, s. 1.

Restriction re remuneration

4. (1) A mortgage broker or agent shall not receive, directly or indirectly, any fee or other remuneration for dealing or trading in mortgages from a person or entity other than the brokerage on whose behalf he or she is authorized to deal or trade in mortgages. O. Reg. 187/08, s. 4 (1).

(2) A broker or agent does not contravene subsection (1) by reason only that he or she receives a fee or remuneration from the brokerage on whose behalf he or she is authorized to deal or trade in mortgages that is paid from money received by the brokerage from another person or entity for services provided by the broker or agent. O. Reg. 187/08, s. 4 (2).

Remuneration, non-monetary incentives

5. (1) In this section,

“home brokerage” means, in relation to a broker or agent, the brokerage on whose behalf the broker or agent is authorized to deal or trade in mortgages; (“maison de courtage attitrée”)

“outside brokerage” means, in relation to a broker or agent, a brokerage that is not his or her home brokerage. (“autre maison de courtage”) O. Reg. 187/08, s. 5 (1).

(2) Despite section 4, a broker or agent may receive, directly or indirectly, an incentive other than money from an outside brokerage or a financial institution for dealing or trading in mortgages if all of the following conditions are satisfied:

1. The broker or agent has the consent of his or her home brokerage.
2. The home brokerage and the outside brokerage or financial institution have a written agreement governing the provision of the incentive to the broker or agent.
3. The broker or agent has a written agreement with the outside brokerage or financial institution governing the provision of the incentive to him or her.
4. Both agreements require the outside brokerage or financial institution to give the home brokerage particulars about the following matters both periodically and upon request:
 - i. the incentives provided by the outside brokerage or financial institution to the broker or agent during the applicable period, and
 - 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. O. Reg. 187/08, s. 5 (2).

(3) REVOKED: O. Reg. 187/08, s. 5 (4).

(4) SPENT: O. Reg. 187/08, s. 5 (4).

Remuneration, personal corporation

6. Despite section 4, a broker or agent who is a shareholder or employee of a corporation that is exempted by section 8.1 of Ontario Regulation 407/07 (Exemptions from the Requirement to be Licensed) made under the Act from the requirement to have a brokerage licence is permitted to receive fees or other remuneration for dealing or trading in mortgages from the corporation if both of the following circumstances exist:

1. The brokerage on whose behalf the broker or agent is authorized to deal or trade in mortgages pays the applicable fees and other remuneration for the broker or agent to the corporation instead of the broker or agent.
2. The amount of the fees and other remuneration paid by the corporation to the broker or agent is not greater than the amount of the fees and other remuneration received from the brokerage for the broker or agent. O. Reg. 187/08, s. 6.

Use of licensee name

7. A mortgage broker or agent shall not deal or trade in mortgages in a name other than his or her licensee name. O. Reg. 187/08, s. 7.

Use of name, etc., in public relations materials

8. (1) In all of his or her public relations materials, a mortgage broker or agent shall disclose his or her licensee name and the authorized name and licence number of the brokerage on whose behalf he or she is authorized to deal or trade in mortgages, and the names and numbers must be clearly and prominently disclosed. O. Reg. 187/08, s. 8 (1).

(2) If the authorized name of the brokerage is, or includes, a franchise name that the brokerage is permitted to use under a franchise agreement, the public relations materials must clearly indicate that the brokerage is independently owned and operated. O. Reg. 187/08, s. 8 (2).

(3) In the public relations materials, at least one reference to the broker or agent must include one of the following titles and the materials may also include an equivalent title in another language:

1. When referring to a broker, the title “mortgage broker”, “broker”, “courtier en hypothèques” or “courtier” or an abbreviation of any of those titles.
2. When referring to an agent, the title “mortgage agent”, “agent” or “agent en hypothèques” or an abbreviation of any of those titles. O. Reg. 187/08, s. 8 (3).

Prohibition re public relations materials

9. A mortgage broker or agent shall not include false, misleading or deceptive information in his or her public relations materials. O. Reg. 187/08, s. 9.

Duty to provide licence information

10. Upon request, a mortgage broker or agent shall give to a person the broker's or agent's licensee name, licence number and the authorized name and licence number of the brokerage on whose behalf the broker or agent is authorized to deal or trade in mortgages. O. Reg. 187/08, s. 10.

Required addresses

11. (1) A mortgage broker or agent shall maintain a mailing address in Ontario that is suitable to permit service by registered mail. O. Reg. 187/08, s. 11 (1).

(2) A mortgage broker or agent shall maintain an e-mail address. O. Reg. 187/08, s. 11 (2).

12. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THE ENGLISH VERSION OF THIS REGULATION). O. Reg. 187/08, s. 12.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 188/08

MORTGAGE BROKERAGES: STANDARDS OF PRACTICE

Consolidation Period: From June 18, 2015 to the [e-Laws currency date](#).

Last amendment: O. Reg. 153/15.

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INTERPRETATION

Definitions

1. In this Regulation,
 - “authorized name” means, in relation to a brokerage, any name in which the brokerage is licensed; (“nom autorisé”)
 - “authorized trust account” means, in relation to a brokerage, its mortgage brokerage trust account established in accordance with section 50; (“compte en fiducie autorisé”)
 - “business day” means a day that is not a Saturday or holiday within the meaning of section 87 of the *Legislation Act, 2006*; (“jour ouvrable”)
 - “deemed trust funds” means, in relation to a brokerage, money that is deemed by section 49 to be held in trust by the brokerage; (“fonds réputés détenus en fiducie”)
 - “investor” means a person or entity who makes an investment in a mortgage through the purchase or exchange of a loan or an interest in a loan on the security of real estate; (“investisseur”)
 - “public relations materials” means, in relation to a brokerage,
 - (a) any advertisement by the brokerage in connection with its business as a brokerage that is published, circulated or broadcast by any means, or
 - (b) any material that a brokerage makes available to the public in connection with its business as a brokerage; (“document de relations publiques”)
 - “trade completion date” means, in relation to a mortgage, the earlier of,
 - (a) the date on which an investor, or a brokerage on behalf of an investor, enters into an agreement to trade in the mortgage, or
 - (b) the date on which the trade in the mortgage is completed. (“date de conclusion de l’opération”) O. Reg. 188/08, s. 1.

Designated classes of lenders and investors

2. (1) For the purposes of this Regulation, a person or entity is a member of a designated class of lenders and investors if the person or entity is a member of any of the following classes:

1. The Crown in right of Ontario, Canada or any province or territory of Canada.
2. A brokerage acting on its own behalf.
3. A financial institution.
4. A corporation that is a subsidiary of a person or entity described in paragraph 1, 2 or 3.
5. A corporation that is an approved lender under the *National Housing Act* (Canada).
6. An administrator or trustee of a registered pension plan within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada).
7. 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 as an agent or trustee for accounts that are fully managed by the person or entity.
8. A person or entity who is registered under securities legislation in another province or territory of Canada with a status comparable to that described in paragraph 7 when the person or entity is acting as a principal or as an agent or trustee for accounts that are fully managed by the person or entity.
9. A person or entity, other than an individual, who has net assets of at least \$5 million as reflected in its most recently-prepared financial statements and who provides written confirmation of this to the brokerage.
10. 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.
11. 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.
12. 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.
13. A person or entity in respect of which all of the owners of interests, other than the owners of voting securities required by law to be owned by directors, are persons or entities described in paragraphs 1 to 12. O. Reg. 188/08, s. 2 (1).

(2) In this section,

“spouse” means spouse as defined in section 29 of the *Family Law Act*. O. Reg. 188/08, s. 2 (2).

Duties re syndicated mortgages

3. If there is more than one lender under a mortgage or if there is more than one investor who makes an investment in a mortgage, a brokerage owes to each of the lenders or investors the duties imposed by this Regulation in respect of the mortgage or investment. O. Reg. 188/08, s. 3.

STANDARDS OF PRACTICE

Standards of practice

4. The requirements set out in this Regulation are prescribed as standards of practice for every brokerage licence that is issued under the Act. O. Reg. 188/08, s. 4.

PUBLIC RELATIONS

Use of authorized name

5. A brokerage shall not carry on business in a name other than its authorized name. O. Reg. 188/08, s. 5.

Use of name, etc., in public relations materials

6. (1) A brokerage shall disclose its authorized name and its licence number in all of its public relations materials and the name and number must be clearly and prominently disclosed. O. Reg. 188/08, s. 6 (1).

(2) If the authorized name of a brokerage is, or includes, a franchise name that the brokerage is permitted to use under a franchise agreement, the public relations materials must clearly indicate that the brokerage is independently owned and operated. O. Reg. 188/08, s. 6 (2).

(3) If, in its public relations materials, a brokerage identifies a broker or agent by name, the brokerage shall use the name in which the broker or agent is licensed. O. Reg. 188/08, s. 6 (3).

(4) If, in its public relations materials, a brokerage refers to a broker or agent, the materials must include at least one reference to the broker or agent that includes one of the following titles, and the materials may also include an equivalent title in another language:

1. When referring to a broker, the title “mortgage broker”, “broker”, “courtier en hypothèques” or “courtier” or an abbreviation of any of those titles.
2. When referring to an agent, the title “mortgage agent”, “agent” or “agent en hypothèques” or an abbreviation of any of those titles. O. Reg. 188/08, s. 6 (4).

Prohibition re public relations materials

7. A brokerage shall not include false, misleading or deceptive information in its public relations materials. O. Reg. 188/08, s. 7.

Duty to provide licence information

8. (1) Upon request, a brokerage shall give to a person the licence number of the brokerage and the name and licence number of any broker or agent who is authorized to deal or trade in mortgages on behalf of the brokerage. O. Reg. 188/08, s. 8 (1).

(2) Subsection (1) does not require the brokerage to give a person the names and licence numbers of all or substantially all of its brokers or agents. O. Reg. 188/08, s. 8 (2).

Complaints by the public

9. (1) If a person makes a complaint to the brokerage in writing about the mortgage business activities of the brokerage or of any broker or agent authorized to deal or trade in mortgages on its behalf, the brokerage shall give the person a written response to the complaint setting out the brokerage’s proposed resolution of the complaint. O. Reg. 188/08, s. 9 (1).

(2) The written response must also tell the person who made the complaint that, if the person is not satisfied with the proposed resolution and if the person believes that the complaint relates to a contravention of the Act or a regulation, the person may refer the complaint to the Superintendent. O. Reg. 188/08, s. 9 (2).

CUSTOMER RELATIONS

Duty to verify customer’s identity

10. (1) A brokerage shall take reasonable steps to verify the identity of each borrower and lender to whom it intends to present a mortgage or renewal for consideration. O. Reg. 188/08, s. 10 (1).

(2) A brokerage shall take reasonable steps to verify the identity of each investor to whom it intends to present an investment in a mortgage for consideration. O. Reg. 188/08, s. 10 (2).

Duty to verify other party’s identity

11. (1) If a brokerage wishes to present a mortgage or renewal to a borrower for consideration, the brokerage shall take reasonable steps to verify the identity of each lender. O. Reg. 188/08, s. 11 (1).

(2) If a brokerage wishes to present a mortgage or renewal to a lender for consideration, the brokerage shall take reasonable steps to verify the identity of each borrower. O. Reg. 188/08, s. 11 (2).

(3) Subsection (2) does not apply if the lender is otherwise required by law to verify the borrower’s identity. O. Reg. 188/08, s. 11 (3).

(4) If a brokerage wishes to present an investment in a mortgage to an investor for consideration, the brokerage shall take reasonable steps to verify the identity of every other investor involved in the trade. O. Reg. 188/08, s. 11 (4).

(5) Subsection (4) does not apply if another brokerage is acting as the representative of the other investor in the trade. O. Reg. 188/08, s. 11 (5).

(6) The brokerage shall advise the borrower, lender or investor, as the case may be, if the brokerage is unable to verify the identity of another party to the transaction,

- (a) before the borrower enters into the mortgage agreement or signs a mortgage instrument or a mortgage renewal agreement, as the case may be, with the lender;
- (b) before submitting the borrower's mortgage application to the lender or arranging for a mortgage renewal agreement with the lender; or
- (c) before the trade completion date for the investment in a mortgage. O. Reg. 188/08, s. 11 (6).

Duty re unlawful transactions

12. A brokerage shall not act as a representative of a borrower, lender or investor in respect of a mortgage if the brokerage has reasonable grounds to believe that the mortgage, its renewal or the investment in it is unlawful. O. Reg. 188/08, s. 12.

Note: On January 1, 2016, section 12 of the Regulation is revoked and the following substituted: (See: O. Reg. 153/15, s. 1)

Duty re unlawful transactions

12. A brokerage shall not act as a representative of a borrower, lender or investor in respect of a mortgage if the brokerage has reason to doubt that the mortgage, its renewal or the investment in it is lawful. O. Reg. 153/15, s. 1.

Duty re borrower's legal authority

13. If a brokerage has reason to doubt a borrower's legal authority to mortgage a property, the brokerage shall so advise each prospective lender at the earliest opportunity. O. Reg. 188/08, s. 13.

Note: On January 1, 2016, section 13 of the Regulation is revoked and the following substituted: (See: O. Reg. 153/15, s. 1)

Duty re borrower's legal authority

13. A brokerage shall take reasonable steps to verify a borrower's legal authority to mortgage a property, and if the brokerage has reason to doubt the borrower's legal authority, the brokerage shall so advise each prospective lender at the earliest opportunity. O. Reg. 153/15, s. 1.

Duty re accuracy of mortgage application

14. If a brokerage has reason to doubt the accuracy of information contained in a borrower's mortgage application or in a document submitted in support of an application, the brokerage shall so advise each prospective lender at the earliest opportunity. O. Reg. 188/08, s. 14.

Note: On January 1, 2016, the Regulation is amended by adding the following sections: (See: O. Reg. 153/15, s. 2)

Continuation of duty

14.1 The duty to advise a lender under sections 13 and 14 continues with respect to the lender after the borrower enters into the mortgage agreement or signs the mortgage instrument or a mortgage renewal agreement, as the case may be, with the lender. O. Reg. 153/15, s. 2.

Dishonesty, fraud, etc.

14.2 A brokerage shall not act, or do anything or omit to do anything, in circumstances where the brokerage ought to know that by acting, doing the thing or omitting to do the thing, the brokerage is being used by a borrower, lender, investor or any other person to facilitate dishonesty, fraud, crime or illegal conduct. O. Reg. 153/15, s. 2.

Restriction re tied selling

15. (1) A brokerage shall not coerce a borrower, lender or investor to obtain a product or service from a particular person or entity, including the brokerage, as a condition for obtaining another service from the brokerage. O. Reg. 188/08, s. 15 (1).

(2) For the purposes of subsection (1), a brokerage does not coerce a borrower, lender or investor, as the case may be, by virtue of offering a service to the borrower, lender or investor on more favourable terms than it would otherwise offer, if the more favourable terms are offered on the condition that the borrower, lender or investor obtains another product or service from a particular person or entity, including the brokerage. O. Reg. 188/08, s. 15 (2).

Restriction re guarantees

16. A brokerage shall not, directly or indirectly, offer or make any guarantee to a lender in respect of a mortgage or to an investor in respect of an investment in a mortgage. O. Reg. 188/08, s. 16.

Duty to return certain documents

17. (1) A brokerage shall not unreasonably withhold any deed, instruments or other documents from their owner. O. Reg. 188/08, s. 17 (1).

(2) A brokerage shall promptly, without charge, return deeds, instruments or other documents to their owner when requested in writing to do so by the Superintendent, the owner or the owner's agent. O. Reg. 188/08, s. 17 (2).

INFORMATION ABOUT THE BROKERAGE

Disclosure re role of brokerage

18. (1) A brokerage shall disclose in writing to a prospective borrower or lender the following information about the nature of its relationship with borrowers and lenders:

1. Information about whether, and when, the brokerage is acting as a representative of the lender but not the borrower in a transaction.
2. Information about whether, and when, the brokerage is acting as a representative of the borrower but not the lender in a transaction.
3. Information about whether, and when, the brokerage is acting as a representative of both the borrower and the lender in a transaction and is not giving preference to the interests of either. O. Reg. 188/08, s. 18 (1).

(2) Subsection (1) does not apply when the brokerage is the mortgage lender. O. Reg. 188/08, s. 18 (2).

Disclosure of brokerage's relationship with lenders

19. (1) A brokerage shall disclose in writing to a borrower the number of lenders on whose behalf the brokerage acted as a representative during the previous fiscal year and shall indicate whether the brokerage itself was a lender. O. Reg. 188/08, s. 19 (1).

(2) When there are two or more lenders under one mortgage, they are deemed to be one lender for the purposes of subsection (1). O. Reg. 188/08, s. 19 (2).

(3) Upon request, a brokerage shall disclose the following information in writing to a borrower:

1. Whether the brokerage itself was the lender for more than 50 per cent of the total number of mortgages and mortgage renewals completed by the brokerage during the previous fiscal year.
2. The name of the lender, if any, with whom the brokerage arranged mortgages during the previous fiscal year if the mortgages constituted more than 50 per cent of the total number of mortgages and mortgage renewals completed by the brokerage during the previous fiscal year. O. Reg. 188/08, s. 19 (3).

INFORMATION ABOUT FEES AND OTHER PAYMENTS

Representations re status of payments

20. (1) A brokerage shall not, directly or indirectly, represent to any person or entity that any amounts payable to the brokerage in connection with carrying on the business of dealing or trading in mortgages or carrying on business as a mortgage lender are set or approved by any government authority. O. Reg. 188/08, s. 20 (1).

(2) Subsection (1) does not apply with respect to disbursements that may be made by a brokerage for fees payable to register or deposit instruments under the *Land Titles Act* or the *Registry Act*. O. Reg. 188/08, s. 20 (2).

Fees, etc., payable by others

21. (1) A brokerage shall give the following information, in writing, to a borrower in connection with a mortgage or renewal that it presents for the borrower's consideration:

1. Whether the brokerage has received, may receive or will receive a fee or other remuneration, directly or indirectly, from another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.

2. If a fee or other remuneration is or may be payable to the brokerage, the identity of the other person or entity, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.
3. Whether a broker or agent who is authorized to deal or trade in mortgages on the brokerage's behalf has received, may receive or will receive payment of an incentive from another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.
4. If an incentive is or may be payable to a broker or agent, the nature of the incentive and the identity of the other person or entity. O. Reg. 188/08, s. 21 (1).

(2) The brokerage shall obtain the borrower's written acknowledgement that the brokerage made the disclosure required by this section. O. Reg. 188/08, s. 21 (2).

Fees, etc., payable by the brokerage to others

22. (1) A brokerage shall give the following information, in writing, to a borrower in connection with a mortgage or renewal that it presents for the borrower's consideration:

1. Whether the brokerage has paid, may pay or will pay a fee or other remuneration, directly or indirectly, to another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.
2. If a fee or other remuneration is or may be payable, the identity of the other person or entity, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit. O. Reg. 188/08, s. 22 (1).

(2) The brokerage shall obtain the borrower's written acknowledgement that the brokerage made the disclosure required by this section. O. Reg. 188/08, s. 22 (2).

Fees, etc., receivable by brokerage for referral

23. If a brokerage refers a borrower, lender or investor or a prospective borrower, lender or investor to another person or entity for a fee or other remuneration, the brokerage shall give the following information, in writing, to the borrower, lender or investor or prospective borrower, lender or investor either before or when making the referral:

1. A description of the nature of the relationship between the brokerage and the other person or entity.
2. A statement concerning whether the brokerage has received, may receive or will receive a fee or other remuneration, directly or indirectly, for making the referral. O. Reg. 188/08, s. 23.

DUTIES IN PARTICULAR TRANSACTIONS

Duty re suitability of mortgage for customer

24. (1) A brokerage shall take reasonable steps to ensure that any mortgage or investment in a mortgage that it presents for the consideration of a borrower, lender or investor, as the case may be, is suitable for the borrower, lender or investor having regard to the needs and circumstances of the borrower, lender or investor. O. Reg. 188/08, s. 24 (1).

(2) Subsection (1) does not apply if the borrower, lender or investor, as the case may be, is another brokerage or a financial institution. O. Reg. 188/08, s. 24 (2).

Disclosure of material risks

25. (1) A brokerage shall disclose in writing to a borrower, lender or investor, as the case may be, the material risks of each mortgage or investment in a mortgage that the brokerage presents for the consideration of the borrower, lender or investor. O. Reg. 188/08, s. 25 (1).

(2) Subsection (1) does not apply if the lender or investor, as the case may be, is a member of a designated class of lenders and investors. O. Reg. 188/08, s. 25 (2).

(3) The brokerage shall obtain the written acknowledgement of the borrower, lender or investor, as the case may be, that the brokerage made the disclosure required by this section. O. Reg. 188/08, s. 25 (3).

Disclosure of brokerage's relationships

26. (1) A brokerage shall disclose in writing to a borrower the nature of the relationship between the brokerage and each lender under a mortgage that it presents for the borrower's consideration, including whether the brokerage itself is a lender under the mortgage. O. Reg. 188/08, s. 26 (1).

(2) A brokerage shall disclose in writing to each lender the nature of the relationship between the brokerage and each borrower under a mortgage that it presents for the lender's consideration. O. Reg. 188/08, s. 26 (2).

(3) A brokerage shall disclose in writing to an investor the nature of the relationship between the brokerage and each party to the trade in a mortgage that it presents for the investor's consideration. O. Reg. 188/08, s. 26 (3).

(4) The brokerage shall obtain the written acknowledgement of the borrower, lender or investor, as the case may be, that the brokerage made the disclosure required by this section. O. Reg. 188/08, s. 26 (4).

Disclosure of potential conflicts of interest

27. (1) A brokerage shall disclose in writing to a borrower, lender or investor, as the case may be, any conflict of interest that the brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf may have in connection with a mortgage or a trade in a mortgage that the brokerage presents for the consideration of the borrower, lender or investor. O. Reg. 188/08, s. 27 (1).

Note: On January 1, 2016, subsection 27 (1) of the Regulation is amended by striking out "any conflict of interest" and substituting "any conflict of interest or potential conflict of interest". (See: O. Reg. 153/15, s. 3)

(2) The brokerage shall obtain the written acknowledgement of the borrower, lender or investor, as the case may be, that the brokerage made the disclosure required by this section. O. Reg. 188/08, s. 27 (2).

(3) Subsection (1) does not apply if the lender is another brokerage. O. Reg. 188/08, s. 27 (3).

(4) Subsection (1) does not apply if the investor is another brokerage or a financial institution. O. Reg. 188/08, s. 27 (4).

Duty re mortgage previously in default

28. (1) A brokerage shall not sell or attempt to sell or arrange or attempt to arrange the sale of a mortgage that has been in default at any time in the preceding 12 months unless the brokerage informs the investor of the amount and duration of the default. O. Reg. 188/08, s. 28 (1).

(2) A brokerage shall obtain the investor's written acknowledgement that the brokerage has made the disclosure required by this section. O. Reg. 188/08, s. 28 (2).

Duties re reverse mortgages

29. (1) A brokerage shall not arrange or enter into a reverse mortgage with a borrower unless the brokerage receives from the borrower a written statement signed by a lawyer stating that the lawyer has given the borrower independent legal advice about the proposed reverse mortgage. O. Reg. 188/08, s. 29 (1).

(2) For the purposes of this section, a mortgage is a reverse mortgage if both of the following conditions are satisfied:

1. The money that is advanced under the mortgage does not have to be repaid until the occurrence of one or more of the following events:
 - i. The borrower's death or, if there is more than one borrower, the death of the last surviving borrower.
 - ii. The acquisition by the borrower or the last surviving borrower, as the case may be, of another dwelling to use as his or her principal residence.
 - iii. The sale of the mortgaged property.
 - iv. The borrower's or last surviving borrower's vacating the mortgaged property to live elsewhere with no reasonable prospect of returning.
 - v. An event of default under the conditions of the mortgage.
2. One or more of the following conditions applies while the borrower or last surviving borrower, as the case may be, continues to occupy the mortgaged property as his or her principal residence and otherwise complies with the terms of the mortgage:
 - i. No instalment repayments of the principal and no payment of interest on the principal are due or capable of becoming due.
 - ii. Although interest payments may become due, no repayment of all or part of the principal is due or capable of becoming due.

iii. Although interest payments and repayment of part of the principal may become due, repayment of all of the principal is not due or capable of becoming due. O. Reg. 188/08, s. 29 (2).

30. REVOKED: O. Reg. 188/08, s. 30 (6).

Disclosure form for lenders and investors re mortgages

31. (1) A brokerage shall give each lender or investor the following information and documents with respect to a mortgage or a trade in a mortgage that the brokerage presents for the consideration of the lender or investor:

1. A completed disclosure form, in a form approved by the Superintendent, signed by a broker.
2. If the investment is in an existing mortgage, a copy of the mortgage instrument.
3. If an appraisal of the applicable property has been done in the preceding 12 months and is available to the brokerage, a copy of the appraisal.
4. If an appraisal of the applicable property is not available as described in paragraph 3, documentary evidence of the value of the property, other than an agreement of purchase and sale.
5. If an agreement of purchase and sale in respect of the property has been entered into in the preceding 12 months and is available to the brokerage, a copy of the agreement of purchase and sale.
6. Documentary evidence of the borrower's ability to meet the mortgage payments.
7. A copy of the application for the mortgage and of any document submitted in support of the application.
8. If the mortgage is a new mortgage, documentary evidence of any down payment made by the borrower for the purchase of the property.
9. A copy of any agreement that the lender or investor may be asked to enter into with the brokerage.
10. All other information, in writing, that a lender or investor of ordinary prudence would consider to be material to a decision about whether to lend money on the security of the property or to invest in the mortgage. O. Reg. 188/08, s. 31 (1).

(2) Subsection (1) does not apply if the lender or investor is a member of a designated class of lenders and investors. O. Reg. 188/08, s. 31 (2).

(3) A brokerage shall obtain the lender's or investor's written acknowledgement that the brokerage has disclosed the information and documents required by this section. O. Reg. 188/08, s. 31 (3).

Disclosure form for lenders re mortgage renewals

32. (1) A brokerage shall give each lender the following information and documents with respect to a renewal of a mortgage that the brokerage presents for the lender's consideration:

1. A completed renewal disclosure form, in a form approved by the Superintendent, signed by a broker.
2. If an appraisal of the property has been done in the preceding 12 months and is available to the brokerage, a copy of the appraisal.
3. If an agreement of purchase and sale in respect of the property has been entered into in the preceding 12 months and is available to the brokerage, a copy of the agreement of purchase and sale.
4. All other information, in writing, that a lender of ordinary prudence would consider to be material to a decision about whether to renew the mortgage. O. Reg. 188/08, s. 32 (1).

(2) Subsection (1) does not apply if the lender is a member of a designated class of lenders and investors. O. Reg. 188/08, s. 32 (2).

(3) A brokerage shall obtain the lender's written acknowledgement that the brokerage has disclosed the information and documents required by this section. O. Reg. 188/08, s. 32 (3).

GENERAL REQUIREMENTS FOR DISCLOSURES

Clarity of disclosure, etc.

33. A written disclosure, consent or acknowledgement required by this Regulation must be expressed in plain language that is clear and concise and it must be presented in a manner that is logical and is likely to bring to the

attention of the borrower, lender or investor, as the case may be, the information that is required to be conveyed. O. Reg. 188/08, s. 33.

Disclosure based on estimate, etc.

34. (1) The information to be disclosed under this Regulation to a borrower, lender or investor may be an estimate or may be based upon an assumption if, when the disclosure is made, the brokerage cannot know the actual information to be disclosed and if the estimate or assumption is reasonable. O. Reg. 188/08, s. 34 (1).

(2) If the information disclosed under this Regulation to a borrower, lender or investor is an estimate or is based upon an assumption, the brokerage shall so notify the borrower, lender or investor, as the case may be, in writing. O. Reg. 188/08, s. 34 (2).

Deadline for disclosures to borrowers

35. (1) Unless the context requires otherwise, every disclosure of information to a borrower that is required by this Regulation must be made at the earliest opportunity and, in any case, no later than two business days before the borrower enters into a mortgage agreement or signs a mortgage instrument, whichever is the earlier. O. Reg. 188/08, s. 35 (1).

(2) If the borrower consents in writing to receiving the disclosure after the deadline described in subsection (1), the disclosure may instead be made at any time before the borrower signs a mortgage instrument. O. Reg. 188/08, s. 35 (2).

Deadline for disclosures to lenders and investors

36. (1) Unless the context requires otherwise, every disclosure of information to a lender or investor that is required by this Regulation must be made at the earliest opportunity and, in any case, no later than two business days before the earliest of the following events:

1. The brokerage receives money from the lender or investor.
2. The brokerage enters into an agreement to receive money from the lender or investor.
3. The lender enters into an agreement to enter into a mortgage or the investor enters into an agreement to purchase, exchange or sell a mortgage.
4. The money is advanced to the borrower under the mortgage.
5. The trade completion date. O. Reg. 188/08, s. 36 (1).

(2) If the lender or investor consents in writing to receiving the disclosure after the deadline described in subsection (1), the disclosure may instead be made no later than one business day before the earliest of the events described in that subsection. O. Reg. 188/08, s. 36 (2).

PAYMENTS BY BORROWERS, LENDERS, INVESTORS

Advance payment by borrower

37. (1) If the principal amount of a mortgage is \$300,000 or less, a brokerage shall not require a borrower to make, and shall not accept, an advance payment or deposit for services to be rendered or expenses to be incurred by the brokerage or any other person. O. Reg. 188/08, s. 37 (1).

Note: On January 1, 2016, subsection 37 (1) of the Regulation is amended by striking out “\$300,000” and substituting “\$400,000”. (See: O. Reg. 153/15, s. 4)

(2) REVOKED: O. Reg. 188/08, s. 37 (3).

(3) SPENT: O. Reg. 188/08, s. 37 (3).

Payment, etc., by lender or investor

38. (1) A brokerage shall not receive money from a lender or enter into an agreement to receive money from a lender in connection with any activity requiring a brokerage licence unless an application has been made for a mortgage on a specific property. O. Reg. 188/08, s. 38 (1).

(2) A brokerage shall not receive money from an investor or enter into an agreement to receive money from an investor in connection with any activity requiring a brokerage licence unless an existing mortgage is available on a specific property. O. Reg. 188/08, s. 38 (2).

Receipt for deemed trust funds

39. Upon receiving from a person or entity money that constitutes deemed trust funds, the brokerage shall give the person or entity a written statement setting out the following information:

1. The amount of the money received by the brokerage.
2. The date on which the brokerage received the money.
3. The name of the person or entity from whom the money was received and, if the money was received on behalf of another person or entity, the name of that person or entity.
4. The purpose for which the money was received, including particulars of the mortgage, if any, to which the money relates.
5. The terms on which the brokerage holds the money.
6. The name of the broker or agent who received the money on behalf of the brokerage. O. Reg. 188/08, s. 39.

MANAGING THE BROKERAGE

Duty to establish policies and procedures

40. (1) A brokerage shall establish and implement policies and procedures that are reasonably designed to ensure that the brokerage and every broker and agent who is authorized to deal or trade in mortgages on its behalf complies with the requirements established under the Act. O. Reg. 188/08, s. 40 (1).

(2) A brokerage shall establish and implement policies and procedures providing for the adequate supervision of every broker and agent who is authorized to deal or trade in mortgages on its behalf. O. Reg. 188/08, s. 40 (2).

(3) Without limiting the generality of subsections (1) and (2), the brokerage shall establish and implement policies and procedures in respect of the following matters:

1. The description of the role of the brokerage in relation to borrowers and lenders and its disclosure to borrowers and lenders as required by this Regulation.
2. The verification of the identity of borrowers, lenders and investors in the circumstances required by this Regulation.
3. The determination of the suitability of a mortgage or investment in a mortgage for a borrower, lender or investor, as the case may be.
4. The identification of the material risks of a mortgage or investment in a mortgage for a borrower, lender or investor, as the case may be, and their disclosure to the borrower, lender or investor, as the case may be, as required by this Regulation.
5. The identification of potential conflicts of interest between the brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf and a borrower, lender or investor who is represented by the brokerage, and their disclosure to the borrower, lender or investor, as the case may be, as required by this Regulation.

Note: On January 1, 2016, paragraph 5 of subsection 40 (3) of the Regulation is amended by striking out “potential conflicts of interest” and substituting “conflicts of interest or potential conflicts of interest”. (See: O. Reg. 153/15, s. 5 (1))

6. The provision of incentives other than money for dealing or trading in mortgages to its brokers and agents by other persons and entities, if the brokerage permits any of its brokers or agents to receive such incentives.
7. The provision of incentives other than money for dealing or trading in mortgages to brokers and agents who are authorized by another brokerage to deal or trade in mortgages on the other brokerage’s behalf, if the brokerage provides incentives to any brokers or agents of the other brokerage. O. Reg. 188/08, s. 40 (3).

Note: On January 1, 2016, subsection 40 (3) of the Regulation is amended by adding the following paragraph: (See: O. Reg. 153/15, s. 5 (2))

8. Fraud prevention, including ensuring compliance with sections 12 to 14.2.

Duty to establish complaints process

41. (1) A brokerage shall establish a process for resolving complaints from the public about the mortgage business activities of the brokerage or of any broker or agent authorized to deal or trade in mortgages on its behalf. O. Reg. 188/08, s. 41 (1).

(2) The brokerage shall designate one or more individuals to receive and attempt to resolve complaints from the public, and each designated individual must be an employee of the brokerage or someone who is otherwise authorized to act on its behalf. O. Reg. 188/08, s. 41 (2).

(3) The brokerage shall keep a record of all written complaints received from the public by the brokerage and all written responses by the brokerage. O. Reg. 188/08, s. 41 (3).

Duty to have insurance

42. (1) A brokerage shall maintain errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or shall have some other form of assurance in a form approved by the Superintendent. O. Reg. 188/08, s. 42 (1).

(2) The insurance or other assurance must be sufficient to pay a minimum of \$500,000 in respect of any one occurrence involving the brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf and \$1 million in respect of all occurrences during a 365-day period involving the brokerage or any such broker or agent. O. Reg. 188/08, s. 42 (2).

Duty re authorization of brokers, agents

43. (1) A brokerage shall not authorize an individual to deal or trade in mortgages on its behalf unless the brokerage takes reasonable steps to satisfy itself that the individual is eligible to be licensed as a broker or agent. O. Reg. 188/08, s. 43 (1).

(2) A brokerage shall not authorize an individual to deal or trade in mortgages on its behalf if the brokerage knows, or reasonably ought to know, that the individual is a broker or agent who is authorized to deal or trade in mortgages on behalf of another brokerage. O. Reg. 188/08, s. 43 (2).

(3) A brokerage shall immediately notify the Superintendent if the brokerage believes that there may be reasonable grounds upon which the Superintendent could determine that a broker or agent is not suitable to be licensed under the Act. O. Reg. 188/08, s. 43 (3).

Restrictions on payments by brokerage

44. (1) A brokerage shall not pay a fee or other remuneration for dealing or trading in mortgages on its behalf to another person or entity that carries on the business of dealing or trading in mortgages unless the other person or entity either has a brokerage licence or is exempted from the requirement to have such a licence. O. Reg. 188/08, s. 44 (1).

(2) A brokerage shall not pay a fee or other remuneration to an individual for dealing or trading in mortgages on its behalf if the brokerage knows, or reasonably ought to know, that the individual is a broker or agent who is authorized to deal or trade in mortgages on behalf of another brokerage. O. Reg. 188/08, s. 44 (2).

Payment of incentives other than money

45. (1) Despite subsection 44 (2), a brokerage is permitted to provide an incentive other than money for dealing or trading in mortgages to a broker or agent who is authorized to deal or trade in mortgages on behalf of another brokerage if all of the following conditions are satisfied:

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 agent during the applicable period, and
 - 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. O. Reg. 188/08, s. 45 (1).

(2) REVOKED: O. Reg. 188/08, s. 45 (3).

(3) SPENT: O. Reg. 188/08, s. 45 (3).

Required records

46. (1) A brokerage shall 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. O. Reg. 188/08, s. 46 (1).

(2) The financial records maintained by a brokerage must distinguish between the deemed trust funds held by the brokerage and any other assets pertaining to other activities. O. Reg. 188/08, s. 46 (2).

Security of records

47. A brokerage shall take adequate precautions, appropriate to the form of its records, to guard against the falsification of the records. O. Reg. 188/08, s. 47.

Records retention

48. (1) A brokerage shall retain all records that relate to a mortgage or mortgage renewal agreement, as the case may be, for at least six years after the expiry of the term of the mortgage or renewal or other expiry of the mortgage transaction. O. Reg. 188/08, s. 48 (1).

(2) A brokerage shall retain all records that relate to a purchase, sale or trade in a mortgage for at least six years after the trade completion date or other expiry of the transaction. O. Reg. 188/08, s. 48 (2).

(3) A brokerage shall retain for at least six years all other records that are required by subsection 46 (1) or that the brokerage is otherwise required to create or maintain under the Act. O. Reg. 188/08, s. 48 (3).

(4) A brokerage shall retain the records described in subsections (1), (2) and (3) at its principal place of business in Ontario, if any, or, if the brokerage has notified the Superintendent that it keeps records at other specified premises in Ontario, at those premises. O. Reg. 188/08, s. 48 (4).

(5) If the records described in subsection (1), (2) or (3) originate at another place of business, the brokerage shall forward them to its principal place of business in Ontario, if any, or to the other premises described in subsection (4). O. Reg. 188/08, s. 48 (5).

(6) Despite subsection (4), records in electronic form need not be retained at the premises described in that subsection if those records can be retrieved from those premises in an understandable electronic and paper form promptly upon request. O. Reg. 188/08, s. 48 (6).

(7) A brokerage shall ensure that it maintains the capacity to retrieve its electronic records throughout the period during which this section requires the records to be retained. O. Reg. 188/08, s. 48 (7).

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).

OTHER MATTERS

Duty re concurrent businesses

56. A brokerage that engages in another business concurrently with carrying on the business of dealing or trading in mortgages or carrying on business as a mortgage lender shall not allow the other business to jeopardize its integrity, independence or competence when carrying on the business of dealing or trading in mortgages or carrying on business as a mortgage lender. O. Reg. 188/08, s. 56.

Use of certain information

57. A brokerage shall not use information obtained in the course of carrying on business for any purpose other than that for which the information was obtained unless the brokerage has the written consent of the person or entity who is the subject of the information. O. Reg. 188/08, s. 57.

Required addresses

58. (1) A brokerage shall maintain a mailing address in Ontario that is suitable to permit service by registered mail. O. Reg. 188/08, s. 58 (1).

(2) A brokerage shall maintain an e-mail address. O. Reg. 188/08, s. 58 (2).

Use of forms

59. If a form is approved by the Superintendent for a purpose under the Act, a brokerage shall ensure that the brokerage and its brokers and agents use the current approved version of the form. O. Reg. 188/08, s. 59.

60. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THE ENGLISH VERSION OF THIS REGULATION). O. Reg. 188/08, s. 60.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 189/08

MORTGAGE ADMINISTRATORS: STANDARDS OF PRACTICE

Consolidation Period: From June 18, 2015 to the [e-Laws currency date](#).

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INTERPRETATION

Definitions

1. In this Regulation,

“authorized name” means, in relation to a mortgage administrator, any name in which it is licensed; (“nom autorisé”)

“authorized trust account” means, in relation to a mortgage administrator, its mortgage administrator’s trust account established in accordance with section 34; (“compte en fiducie autorisé”)

“business day” means a day that is not a Saturday or holiday within the meaning of section 87 of the *Legislation Act, 2006*; (“jour ouvrable”)

“deemed trust funds” means, in relation to a mortgage administrator, money that is deemed by section 33 to be held in trust by the mortgage administrator; (“fonds réputés détenus en fiducie”)

“investor” means a person or entity who makes an investment in a mortgage through the purchase or exchange of a loan or an interest in a loan on the security of real estate; (“investisseur”)

“public relations materials” means, in relation to a mortgage administrator,

- (a) any advertisement by the mortgage administrator in connection with its business as a mortgage administrator that is published, circulated or broadcast by any means, or
- (b) any material that a mortgage administrator makes available to the public in connection with its business as a mortgage administrator. (“document de relations publiques”) O. Reg. 189/08, s. 1.

Duties re syndicated mortgages

2. If there is more than one lender under a mortgage or if there is more than one investor who makes an investment in a mortgage, a mortgage administrator owes to each of the lenders or investors the duties imposed by this Regulation in respect of the mortgage. O. Reg. 189/08, s. 2.

STANDARDS OF PRACTICE

Standards of practice

3. The requirements set out in this Regulation are prescribed as standards of practice for every mortgage administrator’s licence that is issued under the Act. O. Reg. 189/08, s. 3.

PUBLIC RELATIONS

Use of authorized name

4. A mortgage administrator shall not carry on business in a name other than its authorized name. O. Reg. 189/08, s. 4.

Use of name, etc., in public relations materials

5. (1) A mortgage administrator shall disclose its authorized name and its licence number in all of its public relations materials and the name and number must be clearly and prominently disclosed. O. Reg. 189/08, s. 5 (1).

(2) If the authorized name of a mortgage administrator is, or includes, a franchise name that the mortgage administrator is permitted to use under a franchise agreement, the public relations materials must clearly indicate that the mortgage administrator is independently owned and operated. O. Reg. 189/08, s. 5 (2).

Prohibition re public relations materials

6. A mortgage administrator shall not include false, misleading or deceptive information in its public relations materials. O. Reg. 189/08, s. 6.

Duty to provide licence information

7. Upon request, a mortgage administrator shall give a person its licence number. O. Reg. 189/08, s. 7.

Complaints by the public

8. (1) If a person makes a complaint to a mortgage administrator in writing about its mortgage administration activities, the mortgage administrator shall give the person a written response to the complaint setting out the mortgage administrator's proposed resolution of the complaint. O. Reg. 189/08, s. 8 (1).

(2) The written response must also tell the person who made the complaint that, if the person is not satisfied with the proposed resolution and if the person believes that the complaint relates to a contravention of the Act or a regulation, the person may refer the complaint to the Superintendent. O. Reg. 189/08, s. 8 (2).

CUSTOMER RELATIONS

Duty to verify customer's identity

9. (1) A mortgage administrator shall take reasonable steps to verify the identity of each lender or investor under a mortgage before entering into an agreement with the lender or investor to administer the mortgage. O. Reg. 189/08, s. 9 (1).

(2) Subsection (1) does not apply if a mortgage brokerage was required by law to verify the lender's or investor's identity in connection with the mortgage. O. Reg. 189/08, s. 9 (2).

Duty re unlawful transactions

10. A mortgage administrator shall not administer a mortgage for a lender or investor if the mortgage administrator has reasonable grounds to believe that the mortgage, its renewal or the investment in it is unlawful. O. Reg. 189/08, s. 10.

Note: On January 1, 2016, section 10 of the Regulation is revoked and the following substituted: (See: O. Reg. 154/15, s. 1)

Duty re unlawful transactions

10. A mortgage administrator shall not administer a mortgage for a lender or investor if the mortgage administrator has reason to doubt that the mortgage, its renewal or the investment in it is lawful. O. Reg. 154/15, s. 1.

Dishonesty, fraud, etc.

10.1 A mortgage administrator shall not act, or do anything or omit to do anything, in circumstances where the mortgage administrator ought to know that by acting, doing the thing or omitting to do the thing, the mortgage administrator is being used by a borrower, lender, investor or any other person to facilitate dishonesty, fraud, crime or illegal conduct. O. Reg. 154/15, s. 1.

Restriction re tied selling

11. (1) A mortgage administrator shall not coerce a lender or investor to obtain a product or service from a particular person or entity, including the mortgage administrator, as a condition for obtaining another service from the mortgage administrator. O. Reg. 189/08, s. 11 (1).

(2) For the purposes of subsection (1), a mortgage administrator does not coerce a lender or investor, as the case may be, by virtue of offering a service to the lender or investor on more favourable terms than it would otherwise offer, if the more favourable terms are offered on the condition that the lender or investor obtains another product or service from a particular person or entity, including the mortgage administrator. O. Reg. 189/08, s. 11 (2).

Restriction re guarantees

12. A mortgage administrator shall not, directly or indirectly, offer or make any guarantee to a lender in respect of a mortgage or to an investor in respect of an investment in a mortgage. O. Reg. 189/08, s. 12.

Duty to return certain documents

13. (1) A mortgage administrator shall not unreasonably withhold any deed, instruments or other documents from their owner. O. Reg. 189/08, s. 13 (1).

(2) A mortgage administrator shall promptly, without charge, return deeds, instruments or other documents to their owner when requested in writing to do so by the Superintendent, the owner or the owner's agent. O. Reg. 189/08, s. 13 (2).

INFORMATION ABOUT FEES AND OTHER PAYMENTS

Representations re status of payments

14. (1) A mortgage administrator shall not, directly or indirectly, represent to any person or entity that any amounts payable to the mortgage administrator in connection with administering mortgages are set or approved by any government authority. O. Reg. 189/08, s. 14 (1).

(2) Subsection (1) does not apply with respect to disbursements that may be made by a mortgage administrator for fees payable to register or deposit instruments under the *Land Titles Act* or the *Registry Act*. O. Reg. 189/08, s. 14 (2).

Fees, etc., payable by others

15. (1) A mortgage administrator shall give the following information, in writing, to a lender or investor in connection with the administration of a mortgage:

1. Whether the mortgage administrator has received, may receive or will receive a fee or other remuneration, directly or indirectly, from another person or entity in connection with the administration of the mortgage.
2. If a fee or other remuneration is or may be payable, the identity of the other person or entity, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit. O. Reg. 189/08, s. 15 (1).

(2) The mortgage administrator shall obtain the written acknowledgement of the lender or investor that the mortgage administrator made the disclosure required by this section. O. Reg. 189/08, s. 15 (2).

Fees, etc., payable by the mortgage administrator to others

16. (1) A mortgage administrator shall give the following information, in writing, to a lender or investor in connection with the administration of a mortgage:

1. Whether the mortgage administrator has paid, may pay or will pay a fee or other remuneration, directly or indirectly, to another person or entity in connection with the administration of the mortgage.
2. If a fee or other remuneration is or may be payable, the identity of the other person or entity, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit. O. Reg. 189/08, s. 16 (1).

(2) The mortgage administrator shall obtain the written acknowledgement of the lender or investor that the mortgage administrator made the disclosure required by this section. O. Reg. 189/08, s. 16 (2).

Fees, etc., receivable by mortgage administrator for referral

17. If a mortgage administrator refers a lender or investor or a prospective lender or investor to another person or entity for a fee or other remuneration, the mortgage administrator shall give the following information, in writing, to the lender or investor or prospective lender or investor either before or when making the referral:

1. A description of the nature of the relationship between the mortgage administrator and the other person or entity.
2. A statement concerning whether the mortgage administrator has received, may receive or will receive a fee or other remuneration, directly or indirectly, for making the referral. O. Reg. 189/08, s. 17.

DUTIES IN PARTICULAR TRANSACTIONS

Duty re administration agreement

18. (1) A mortgage administrator shall not administer a mortgage for a lender or investor unless the mortgage administrator and each lender or investor have entered into an agreement in writing governing the administration of the mortgage. O. Reg. 189/08, s. 18 (1).

(2) The administration agreement must include the following information:

1. The name in which the mortgage is or will be registered under the *Land Titles Act* or the *Registry Act* or registered under the laws of another jurisdiction, as the case may be.

2. If the mortgage is held in trust, the details of the trust.
 3. Particulars of the circumstances in which a lender or investor is permitted to dispose of all or part of the lender's or investor's interest in the mortgage.
 4. The disposition to be made of all payments made under the mortgage by the borrower, including penalties and bonuses.
 5. The rights and duties of each lender or investor under the agreement if the borrower defaults under the mortgage, and the costs for which each lender or investor will be responsible.
 6. The procedures to be followed under the agreement in the event of a foreclosure or in the exercise of a power of sale under the mortgage, and the rights and duties of each lender or investor in either case.
 7. The amount of the fees payable by each lender or investor for the administration of the mortgage, including how the fees are to be calculated, and the method of payment. O. Reg. 189/08, s. 18 (2).
- (3) The administration agreement must include provisions imposing the following duties and, if it does not, the agreement is deemed to include them:
1. The duty of the mortgage administrator to promptly notify each lender or investor if the mortgage administrator becomes aware of a subsequent encumbrance on the mortgaged property or any other significant change in circumstances affecting the mortgage.
 2. The duty of the mortgage administrator to promptly notify each lender or investor if the borrower defaults under the mortgage. O. Reg. 189/08, s. 18 (3).

Disclosure of mortgage administrator's relationships

19. (1) A mortgage administrator shall disclose in writing to each lender or investor in a mortgage the nature of the relationship, if any, between the mortgage administrator and each borrower under the mortgage. O. Reg. 189/08, s. 19 (1).

(2) Subsection (1) does not apply if the lender or investor is a brokerage, a financial institution or another mortgage administrator. O. Reg. 189/08, s. 19 (2).

(3) The mortgage administrator shall obtain the written acknowledgement of each lender or investor that the mortgage administrator made the disclosure required by this section. O. Reg. 189/08, s. 19 (3).

Disclosure of potential conflicts of interest

20. (1) A mortgage administrator shall disclose in writing to each lender or investor in a mortgage any conflict of interest that the mortgage administrator or an employee engaged in administering the mortgage may have in connection with the mortgage. O. Reg. 189/08, s. 20 (1).

(2) Subsection (1) does not apply if the lender or investor is a brokerage, a financial institution or another mortgage administrator. O. Reg. 189/08, s. 20 (2).

(3) The mortgage administrator shall obtain the written acknowledgement of each lender or investor that the mortgage administrator made the disclosure required by this section. O. Reg. 189/08, s. 20 (3).

Clarity of disclosure, etc.

21. A written disclosure, consent or acknowledgement required by this Regulation must be expressed in plain language that is clear and concise and it must be presented in a manner that is logical and is likely to bring to the attention of the lender or investor, as the case may be, the information that is required to be conveyed. O. Reg. 189/08, s. 21.

Deadline for disclosures

22. (1) Unless the context requires otherwise, every disclosure of information to a lender or investor that is required by this Regulation must be made at the earliest opportunity and, in any case, no later than two business days before the mortgage administrator and the lender or investor enter into a mortgage administration agreement for the applicable mortgage. O. Reg. 189/08, s. 22 (1).

(2) If the lender or investor consents in writing to receiving the disclosure after the deadline described in subsection (1), the disclosure may instead be made no later than one business day before the mortgage administrator and the lender or investor enter into the mortgage administration agreement. O. Reg. 189/08, s. 22 (2).

MORTGAGE ADMINISTRATION

Payments to lender, investor

23. (1) A mortgage administrator shall not make a payment to a lender or investor in connection with the administration of a mortgage unless the payment is made from the funds paid under the mortgage by a borrower. O. Reg. 189/08, s. 23 (1).

(2) If a borrower pays an amount by cheque, other than a certified cheque, to the mortgage administrator, the mortgage administrator shall not make a payment from the amount to a lender or investor until after the cheque has cleared and the mortgage administrator has received the funds. O. Reg. 189/08, s. 23 (2).

Payment on redemption of mortgage

24. If a mortgage administrator receives proceeds from the redemption or partial redemption of a mortgage, the mortgage administrator shall promptly pay the full amount owing to the lender or investor. O. Reg. 189/08, s. 24.

MANAGING THE MORTGAGE ADMINISTRATOR

Duty to establish policies and procedures

25. (1) A mortgage administrator shall establish and implement policies and procedures that are reasonably designed to ensure that the mortgage administrator and every person acting on its behalf in the business of mortgage administration complies with the requirements established under the Act. O. Reg. 189/08, s. 25 (1).

(2) A mortgage administrator shall establish and implement policies and procedures providing for the adequate supervision of every person acting on its behalf in the business of mortgage administration. O. Reg. 189/08, s. 25 (2).

(3) Without limiting the generality of subsections (1) and (2), the mortgage administrator shall establish and implement policies and procedures in respect of the following matters:

1. The verification of the identity of lenders and investors in the circumstances required by this Regulation.
2. The identification of potential conflicts of interest that the mortgage administrator or any employee engaged in administering a particular mortgage may have in connection with the mortgage, and their disclosure to the lender or investor, as the case may be, as required by this Regulation. O. Reg. 189/08, s. 25 (3).

Duty to establish complaints process

26. (1) A mortgage administrator shall establish a process for resolving complaints from the public about its mortgage administration activities. O. Reg. 189/08, s. 26 (1).

(2) The mortgage administrator shall designate one or more individuals to receive and attempt to resolve complaints from the public, and each designated individual must be an employee of the mortgage administrator or someone who is otherwise authorized to act on its behalf. O. Reg. 189/08, s. 26 (2).

(3) The mortgage administrator shall keep a record of all written complaints received from the public and all written responses by the mortgage administrator. O. Reg. 189/08, s. 26 (3).

Duty to have insurance

27. (1) A mortgage administrator shall maintain errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or shall have some other form of assurance in a form approved by the Superintendent. O. Reg. 189/08, s. 27 (1).

(2) The insurance or other assurance must be sufficient to pay a minimum of \$500,000 in respect of any one occurrence involving the mortgage administrator and \$1 million in respect of all occurrences during a 365-day period involving the mortgage administrator. O. Reg. 189/08, s. 27 (2).

Duty to have financial guarantee

28. (1) A mortgage administrator shall maintain a financial guarantee in an amount equal to \$25,000. O. Reg. 189/08, s. 28 (1).

(2) The financial guarantee may be unimpaired working capital or it may be another form of financial guarantee acceptable to the Superintendent. O. Reg. 189/08, s. 28 (2).

Required records

29. (1) A mortgage administrator shall maintain the following records:

1. Complete and accurate financial records of its licensed activities in Ontario.
2. Complete and accurate records of all documents or written information given to or obtained from a lender or prospective lender, an investor or prospective investor or any other person or entity pursuant to a requirement established under the Act.
3. Complete and accurate records of every agreement entered into by the mortgage administrator in the course of administering mortgages. O. Reg. 189/08, s. 29 (1).

(2) The financial records maintained by a mortgage administrator must distinguish between the deemed trust funds held by it, mortgages held in trust by it for a lender or investor and any other assets pertaining to other activities. O. Reg. 189/08, s. 29 (2).

Security of records

30. A mortgage administrator shall take adequate precautions, appropriate to the form of its records, to guard against the falsification of the records. O. Reg. 189/08, s. 30.

Records retention

31. (1) A mortgage administrator shall retain all records that relate to an agreement to administer a mortgage for at least six years after the expiry of the agreement. O. Reg. 189/08, s. 31 (1).

(2) A mortgage administrator shall retain for at least six years all other records that it is required to create pursuant to a requirement established under the Act. O. Reg. 189/08, s. 31 (2).

(3) A mortgage administrator shall retain the records described in subsections (1) and (2) at its principal place of business in Ontario, if any, or, if the mortgage administrator has notified the Superintendent that it keeps records at other specified premises in Ontario, at those premises. O. Reg. 189/08, s. 31 (3).

(4) If the records described in subsection (1) or (2) originate at another place of business, the mortgage administrator shall forward them at the earliest opportunity to its principal place of business in Ontario, if any, or to the other premises described in subsection (3). O. Reg. 189/08, s. 31 (4).

(5) Despite subsection (3), records in electronic form need not be retained at the premises described in that subsection if those records can be retrieved from that location in an understandable electronic and paper form promptly upon request. O. Reg. 189/08, s. 31 (5).

(6) A mortgage administrator shall ensure that it maintains the capacity to retrieve its electronic records throughout the period during which this section requires the records to be retained. O. Reg. 189/08, s. 31 (6).

Monthly reconciliation, certain financial matters

32. (1) Every month, a mortgage administrator shall prepare a record that reconciles the total of outstanding principal balances due from borrowers on mortgages under administration and the total of principal balances held by the mortgage administrator on behalf of lenders and investors under those mortgages, as the balances appear in the books and records of the mortgage administrator. O. Reg. 189/08, s. 32 (1).

(2) The record for a month must set out the difference, if any, between the balances as of the last day of the month and must describe the reasons for the difference. O. Reg. 189/08, s. 32 (2).

MANAGING DEEMED TRUST FUNDS

Deemed trust funds

33. (1) Money received by a mortgage administrator directly or indirectly from a borrower under an agreement to administer a mortgage on behalf of a lender or investor is deemed, for the purposes of this Regulation, to be held in trust by the mortgage administrator. O. Reg. 189/08, s. 33 (1).

(2) Subject to subsection (3), money received by a mortgage administrator directly or indirectly from a lender or investor in connection with carrying on the business of administering mortgages is deemed, for the purposes of this Regulation, to be held in trust by the mortgage administrator. O. Reg. 189/08, s. 33 (2).

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

1. Money earned by the mortgage administrator for its services.
2. Money received to reimburse the mortgage administrator for its expenses. O. Reg. 189/08, s. 33 (3).

Authorized trust account

34. (1) A mortgage administrator shall maintain a trust account designated as its mortgage administrator's 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. 189/08, s. 34 (1).

(2) A mortgage administrator shall not establish or maintain more than one mortgage administrator's trust account unless it has the prior written consent of the Superintendent to do so. O. Reg. 189/08, s. 34 (2).

Administration of trust account

35. (1) A mortgage administrator shall deposit deemed trust funds that it receives into its authorized trust account within two business days after receiving the funds. O. Reg. 189/08, s. 35 (1).

(2) A mortgage administrator shall keep deemed trust funds separate from money that does not constitute deemed trust funds. O. Reg. 189/08, s. 35 (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. 189/08, s. 35 (3).

(4) A mortgage administrator shall not disburse any deemed trust funds except in accordance with the terms upon which the funds were received by the mortgage administrator. O. Reg. 189/08, s. 35 (4).

Record of trust account transactions

36. A mortgage administrator 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. 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 to which the deposit relates.
2. 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 to which the disbursement relates.
3. 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 entitled to it. O. Reg. 189/08, s. 36.

Monthly reconciliation statement for trust account

37. (1) Every month, a mortgage administrator shall prepare a reconciliation statement for the authorized trust account and an officer of the mortgage administrator shall review the statement and sign and date it to indicate that he or she certifies that it is accurate. O. Reg. 189/08, s. 37 (1).

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

1. If the mortgage administrator receives a monthly account statement from the financial institution where the account is maintained, 30 days after the mortgage administrator receives the monthly account statement.
2. In any other case, 30 days after the end of the month. O. Reg. 189/08, s. 37 (2).

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

1. The differences, if any, between the records of the mortgage administrator and the records of the applicable financial institution as of the following date:
 - i. if the mortgage administrator 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 i or ii. O. Reg. 189/08, s. 37 (3).

Duty to report shortfall in trust account

38. If a mortgage administrator determines that there is a shortfall in the authorized trust account, the mortgage administrator shall immediately notify the Superintendent. O. Reg. 189/08, s. 38.

Annual reconciliation statement for trust account

39. (1) A mortgage administrator shall prepare an annual reconciliation statement for the authorized trust account for a fiscal year within 90 days after the end of the year. O. Reg. 189/08, s. 39 (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. 189/08, s. 39 (2).

OTHER MATTERS

Duty re concurrent businesses

40. A mortgage administrator that engages in another business concurrently with carrying on the business of administering mortgages shall not allow the other business to jeopardize its integrity, independence or competence when carrying on the business of administering mortgages. O. Reg. 189/08, s. 40.

Use of certain information

41. A mortgage administrator shall not use information obtained in the course of carrying on business for any purpose other than that for which the information was obtained unless the mortgage administrator has the written consent of the person or entity who is the subject of the information. O. Reg. 189/08, s. 41.

Required addresses

42. (1) A mortgage administrator shall maintain a mailing address in Ontario that is suitable to permit service by registered mail. O. Reg. 189/08, s. 42 (1).

(2) A mortgage administrator shall maintain an e-mail address. O. Reg. 189/08, s. 42 (2).

Use of forms

43. If a form is approved by the Superintendent for a purpose under the Act, a mortgage administrator shall use the current approved version of the form. O. Reg. 189/08, s. 43.

44. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THE ENGLISH VERSION OF THIS REGULATION). O. Reg. 189/08, s. 44.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 190/08

GENERAL

Consolidation Period: From March 6, 2009 to the [e-Laws currency date](#).

Last amendment: O. Reg. 79/09.

PUBLIC REGISTER OF LICENSEES

Public register of brokerages, mortgage administrators

1. (1) The public register of brokerages and mortgage administrators that is to be maintained under subsection 28 (1) of the Act must contain the following information about each brokerage and mortgage administrator:

1. Each name in which it is licensed and its licence number.
2. The type of licence that it holds and whether the licence is in good standing or is suspended.
3. Its mailing address in Ontario as it appears in the records maintained by the Superintendent.
4. Its telephone number as it appears in the records maintained by the Superintendent.
5. Any conditions that apply to the licence.
6. For a brokerage, the name of its principal broker. O. Reg. 190/08, s. 1 (1).

(2) For two years after a brokerage or mortgage administrator ceases to be licensed, the register must contain the following information about the former brokerage or mortgage administrator:

1. Each name in which it was licensed and its former licence number.
2. The type of licence that it held.
3. The date on which it ceased to be licensed.
4. Whether the licence was surrendered or revoked. O. Reg. 190/08, s. 1 (2).

Public register of brokers and agents

2. (1) The public register of mortgage brokers and agents that is to be maintained under subsection 28 (1) of the Act must contain the following information about each broker and agent:

1. The name in which he or she is licensed and the licence number.
2. The type of licence that he or she holds, its expiry date and whether the licence is in good standing or is suspended.
3. The name of the brokerage on whose behalf he or she is authorized to deal or trade in mortgages.
4. Any conditions that apply to the licence, other than conditions relating to educational requirements. O. Reg. 190/08, s. 2 (1).

(2) If a broker or agent ceases to be licensed, the register must contain the following information about the former broker or agent until the date described in subsection (3):

1. The name in which he or she was licensed and his or her former licence number.
2. The type of licence that he or she held.
3. The name of the brokerage on whose behalf he or she was authorized to deal or trade in mortgages immediately before ceasing to be licensed.
4. The date on which he or she ceased to be licensed.
5. Whether the licence expired, renewal of the licence was refused, the licence was surrendered or the licence was revoked. O. Reg. 190/08, s. 2 (2).

(3) The information required by subsection (2) must be kept on the register until two years after the expiry date of the individual's licence or, if the licence was surrendered or revoked before the expiry date, until two years after the date on which the licence would have expired if it had not been surrendered or revoked. O. Reg. 190/08, s. 2 (3).

EXPIRY OF INTERIM ORDERS

Interim order to suspend a licence

3. If an interim order suspending a licence is made under subsection 18 (3) of the Act, the prescribed period after which the interim order expires in the circumstances described in subsection 18 (5) of the Act is 21 days after the date on which the order is made. O. Reg. 190/08, s. 3.

Interim compliance order

4. If an interim order is made under subsection 35 (7) of the Act, the prescribed period after which the interim order expires in the circumstances described in subsection 35 (9) of the Act is 21 days after the date on which the order is made. O. Reg. 190/08, s. 4.

DELIVERY OF ORDERS, INTERIM ORDERS AND NOTICES

Application

5. Sections 6 and 7 apply with respect to the delivery of orders and interim orders made under the Act and notices that the Superintendent is required under the Act to give to a person or entity. O. Reg. 190/08, s. 5.

Deemed delivery to licensee, applicant

6. (1) An order, interim order or notice is deemed to have been delivered to a licensee or applicant by the Superintendent if it is delivered in either of the following ways:

1. By registered mail addressed to the mailing address in Ontario of the licensee or applicant as it appears in the records maintained by the Superintendent.
2. By fax sent to the fax number, if any, of the licensee or applicant as it appears in the records maintained by the Superintendent. O. Reg. 190/08, s. 6 (1).

(2) Delivery of an order, interim order or notice by the Superintendent is effective on the day indicated:

1. If sent by registered mail, on the earlier of the fifth day after mailing or the day after its receipt was acknowledged by the addressee or an individual accepting it on behalf of the addressee.
2. If sent by fax, on the same day it is sent. O. Reg. 190/08, s. 6 (2).

(3) An order, interim order or notice that is delivered after 5 p.m. is deemed to have been delivered on the following day. O. Reg. 190/08, s. 6 (3).

Deemed delivery to others

7. An order, interim order or notice is deemed to have been delivered to a person or entity other than a licensee or applicant by the Superintendent if it is reasonable in all the circumstances to conclude that it came to the attention of the person or entity or that it would have but for the person's or entity's attempt to evade delivery. O. Reg. 190/08, s. 7.

8. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 190/08, s. 8.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 191/08

COST OF BORROWING AND DISCLOSURE TO BORROWERS

Consolidation Period: From March 6, 2009 to the [e-Laws currency date](#).

Last amendment: O. Reg. 77/09.

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APPLICATION AND INTERPRETATION

Application

1. (1) This Regulation applies to every mortgage other than a mortgage entered into with a borrower who is not a natural person, or a mortgage that a borrower enters into for business purposes. O. Reg. 191/08, s. 1 (1).

(2) Sections 3 to 16 do not apply to a mortgage brokerage if the brokerage gives a disclosure statement to a borrower on behalf of a person described in Column 1 of the following Table who is acting as a mortgage lender and if the disclosure statement meets the disclosure requirements under the corresponding legislation set out in Column 2.

TABLE

| Column 1 | Column 2 |
|---|---|
| A bank | <i>Bank Act (Canada)</i> |
| A retail association as defined under the <i>Cooperative Credit Associations Act (Canada)</i> | <i>Cooperative Credit Associations Act (Canada)</i> |
| A credit union | <i>Credit Unions and Caisses Populaires Act, 1994</i> |
| An insurance company | <i>Insurance Act</i> |

| | |
|----------------------------|--|
| An insurance company | <i>Insurance Companies Act (Canada)</i> |
| A trust corporation | <i>Trust and Loan Companies Act (Canada)</i> |
| A loan corporation | <i>Trust and Loan Companies Act (Canada)</i> |
| Another mortgage brokerage | <i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i> |

O. Reg. 191/08, s. 1 (2).

(3) Despite subsection (2), sections 3 to 16 continue to apply to a mortgage brokerage if the brokerage requires the borrower to pay for any of its services or for any of its disbursements, transactions or other activities in relation to the mortgage. O. Reg. 191/08, s. 1 (3).

Definitions

2. In this Regulation,

“APR” means the cost of borrowing expressed as an annual rate on the principal referred to in subsection 3 (1); (“TAC”)

“disbursement charge” means a charge, other than one referred to in subsection 5 (1), to recover an expense incurred by the lender to arrange, document, insure or secure a mortgage and includes charges referred to in clauses 5 (2) (c) and (f) to (h); (“frais de débours”)

“high-ratio mortgage” means a mortgage under which the amount advanced, together with the amount outstanding under any other mortgage that ranks equally with, or prior to, the mortgage loan exceeds 80 per cent of the market value of the property securing the loan; (“hypothèque à ratio élevé”)

“principal” means the amount borrowed under a mortgage but does not include any cost of borrowing; (“principal”)

“public index” means an interest rate, or a variable base rate for an interest rate, that is published at least weekly in a newspaper or magazine of general circulation, or in some media of general circulation or distribution, in areas where borrowers whose mortgages are governed by that interest rate reside. (“indice publié”) O. Reg. 191/08, s. 2.

COST OF BORROWING

Calculation of the APR

3. (1) For the purpose of subsection 23 (2) of the Act, the cost of borrowing for a mortgage is the annual rate on the principal as calculated using the formula,

$$APR = 100 \times C / (T \times P)$$

in which,

“APR” is the annual percentage rate cost of borrowing,

“C” is the cost of borrowing within the meaning of section 5 over the term of the mortgage,

“P” is the average of the principal of the mortgage outstanding at the end of each period for the calculation of interest under the mortgage, before subtracting any payment that is due at that time, and

“T” is the term of the mortgage in years, expressed to at least two decimal points of significance.

O. Reg. 191/08, s. 3 (1).

(2) For the purpose of subsection (1),

(a) the APR may be rounded off to the nearest eighth of a per cent;

(b) each instalment payment made on the mortgage must be applied first to the accumulated cost of borrowing and then to the outstanding principal;

(c) a period of,

(i) one month is 1/12 of a year,

(ii) one week is 1/52 of a year, and

(iii) one day is 1/365 of a year;

- (d) if the annual interest rate underlying the calculation is variable over the period of the mortgage, it must be set as the annual interest rate that applies on the day that the calculation is made;
 - (e) if there are no instalment payments under the mortgage, then the APR must be calculated on the basis that the outstanding principal is to be repaid in one lump sum at the end of the term of the mortgage; and
 - (f) a mortgage for an amount that comprises, in whole or in part, an outstanding balance from a prior mortgage is a new mortgage for the purpose of the calculation. O. Reg. 191/08, s. 3 (2).
- (3) The cost of borrowing for a line of credit or credit card that is secured under a mortgage is,
- (a) if the mortgage has a fixed annual interest rate, that annual interest rate; or
 - (b) if the mortgage has a variable annual interest rate, the annual interest rate that applies on the date of the disclosure. O. Reg. 191/08, s. 3 (3).

Annual interest rate as APR

4. (1) The APR for a mortgage is the annual interest rate if there is no cost of borrowing other than interest. O. Reg. 191/08, s. 4 (1).

(2) If an interest rate is disclosed in accordance with section 6 of the *Interest Act* (Canada), the APR must be calculated in a manner that is consistent with that section. O. Reg. 191/08, s. 4 (2).

Included and excluded charges

5. (1) Subject to subsection (2), the cost of borrowing for a mortgage, other than one that secures a line of credit, consists of all the costs of borrowing under the mortgage over its term and including the following charges:

- 1. Administrative charges, including charges for services, transactions or any other activity in relation to the mortgage.
- 2. Charges for the services, or disbursements, of a lawyer or notary hired by the lender and payable by the borrower.
- 3. Insurance charges other than those excluded under clauses (2) (a), (f) and (h).
- 4. Brokerage charges paid by the lender to another brokerage in connection with the mortgage, if the borrower is required to reimburse the lender for the charges.
- 5. Charges for appraisal, inspection or surveying services provided directly to the borrower in relation to property that is security for the mortgage, if those services are required by the lender. O. Reg. 191/08, s. 5 (1).

(2) The cost of borrowing for a mortgage does not include,

- (a) charges for insurance on the mortgage,
 - (i) if the insurance is optional, or
 - (ii) if the borrower is its beneficiary and the amount insured reflects the value of an asset that is security under the mortgage;
- (b) charges for an overdraft;
- (c) charges paid to register documents or obtain information from a public registry about security interests related to property given as security;
- (d) penalty charges for the prepayment of the mortgage;
- (e) charges for the services, or disbursements, of a lawyer or notary, other than those mentioned in paragraph 2 of subsection (1);
- (f) charges for insurance against defects in title to real property, if the borrower selects the insurer, if the insurance is paid for directly by the borrower and if the borrower is the beneficiary of the insurance;
- (g) charges for appraisal, inspection or surveying services provided directly to the borrower in relation to property that is security for the mortgage, if the borrower receives a report from the person providing the service and is entitled to give the report to third parties;
- (h) charges for insurance against default on a high-ratio mortgage;

- (i) charges to maintain a tax account that are required for a high-ratio mortgage or that are optional;
- (j) any charges to discharge a security interest; or
- (k) default charges. O. Reg. 191/08, s. 5 (2).

DISCLOSURE TO BORROWERS

Manner of making disclosures

6. (1) A mortgage brokerage must give the borrower a written disclosure statement that provides the information required by this Regulation. O. Reg. 191/08, s. 6 (1).

(2) A disclosure statement may be a separate document or it may be part of another document. O. Reg. 191/08, s. 6 (2).

(3) Information disclosed in a disclosure statement may be based on an assumption or estimate if the assumption or estimate is reasonable and if the information,

- (a) cannot be known by the brokerage or the lender when the brokerage makes the statement; and
- (b) is identified to the borrower as an assumption or estimate. O. Reg. 191/08, s. 6 (3).

(4) A disclosure statement, or a consent in relation to a disclosure statement, must be written in plain language that is clear and concise and it must be presented in a manner that is logical and likely to bring to the borrower's attention the information that is required to be disclosed. O. Reg. 191/08, s. 6 (4).

(5) If the borrower consents in writing, the disclosure statement may be provided by electronic means in an electronic form that the borrower can retrieve and retain. O. Reg. 191/08, s. 6 (5).

Timing of initial disclosure

7. (1) A mortgage brokerage that proposes to enter into or arrange a mortgage with a borrower must give the initial disclosure statement required by this Regulation to the borrower at least two business days before the earliest of,

- (a) the day on which the borrower makes any payment, other than a disbursement charge, in relation to the mortgage;
- (b) the day on which the borrower enters into the mortgage agreement; and
- (c) the day on which the borrower incurs any obligation in relation to the mortgage. O. Reg. 191/08, s. 7 (1).

(2) Subsection (1) does not apply if the borrower consents in writing before the earliest of the dates described in clauses (1) (a), (b) and (c). O. Reg. 191/08, s. 7 (2).

Disclosure — fixed interest mortgage for a fixed amount

8. (1) A mortgage brokerage that enters into or arranges a mortgage for a fixed interest rate for a fixed amount, to be repaid on a fixed future date or by instalment payments, must give the borrower an initial disclosure statement that includes the following information:

1. The principal amount of the mortgage.
2. The amount of each advance of the principal and when each advance is to be made.
3. The total amount of all payments.
4. The cost of borrowing over the term of the mortgage, expressed in dollars and cents.
5. The term of the mortgage, and the period of amortization if it is different from the term.
6. The annual interest rate and the circumstances, if any, under which it is compounded.
7. The APR, if it differs from the annual interest rate.
8. The date on and after which interest is charged and information concerning any period during which interest does not accrue.
9. The amount of each payment and when it is due.
10. The fact that each payment made on the mortgage must be applied first to the accumulated cost of borrowing and then to the outstanding principal.

11. An amortization schedule for the term of the mortgage showing the principal amount, the due date and amount of each periodic payment, the portion of each periodic payment that is charged as interest or is applied on principal, the outstanding balance of the mortgage after each periodic payment and the principal amount at maturity.
12. Information about any optional service in relation to the mortgage that the borrower accepts, the charges for each optional service and the conditions under which the borrower may cancel the service, if that information is not disclosed in a separate statement before the optional service is provided.
13. The information required by paragraphs 1 to 4 of section 24 of the Act, including a description of any components of a formula used to calculate a rebate, charge or penalty to be imposed on the borrower if the borrower exercises a right to repay the amount borrowed before the maturity of the mortgage.
14. If section 16 of this Regulation applies with respect to the mortgage, the formula set out in subsection 16 (3).
15. The particulars of the charges or penalties referred to in paragraph 5 of section 24 of the Act, including default charges that may be imposed under section 17 of this Regulation.
16. The property in which the lender takes a security interest under the mortgage.
17. Any charge for a brokerage, if the brokerage charges are included in the amount borrowed and are paid directly by the lender to the brokerage.
18. The fact that there is a charge to discharge a security interest and the amount of the charge on the day that the statement was provided.
19. The nature and amount of any charge other than an interest charge. O. Reg. 191/08, s. 8 (1).

(2) If the outstanding balance of the mortgage is increased because the borrower has missed a scheduled instalment payment or because a default charge is levied on the borrower for missing a scheduled instalment payment, such that the amount of each of the subsequently scheduled instalment payments does not cover the interest accrued during the period for which a payment is scheduled, and if the brokerage is a lender under the mortgage, the brokerage must give the borrower a subsequent disclosure statement not more than 30 days after the missed payment or the imposition of the default charge that describes the situation and its consequences. O. Reg. 191/08, s. 8 (2).

Disclosure — variable interest mortgage for a fixed amount

9. (1) A mortgage brokerage that enters into or arranges a mortgage with a variable interest rate for a fixed amount, to be repaid on a fixed future date or by instalment payments, must give the borrower an initial disclosure statement that includes the following information:

1. The information described in subsection 8 (1).
2. The annual rate of interest that applies on the date of the disclosure statement.
3. The method for determining the annual interest rate that applies after the date of the disclosure statement and when that determination is made.
4. The amount of each payment based on the annual interest rate that applies on the date of the disclosure statement and the dates when those payments are due.
5. The total amount of all payments and of the cost of borrowing based on the annual interest rate that applies on the date of the disclosure statement.
6. If the loan is to be paid by instalment payments and the amount to be paid is not adjusted automatically to reflect changes in the annual interest rate that apply to each instalment payment,
 - i. the annual interest rate above which the amount of a scheduled instalment payment on the initial principal does not cover the interest due on the instalment payment, and
 - ii. the fact that negative amortization is possible.
7. If the loan does not have regularly-scheduled payments,
 - i. the conditions that must occur for the entire outstanding balance, or part of it, to become due, or
 - ii. the provisions of the mortgage that set out those conditions. O. Reg. 191/08, s. 9 (1).

(2) If the variable interest rate for the loan is determined by adding or subtracting a fixed percentage rate of interest to or from a public index that is a variable rate, and if the brokerage is the lender under the mortgage, the brokerage must give the borrower an additional disclosure statement at least once every 12 months that contains the following information:

1. The annual interest rate at the beginning and end of the period covered by the disclosure statement.
2. The outstanding balance at the beginning and end of the period covered by the disclosure statement.
3. The amount of each instalment payment due under a payment schedule and the time when each payment is due, based on the annual interest rate that applies at the end of the period covered by the disclosure statement. O. Reg. 191/08, s. 9 (2).

(3) If the variable interest rate for the mortgage is determined by a method other than that referred to in subsection (2), and if the brokerage is the lender under the mortgage, the brokerage must give the borrower an additional disclosure statement no more than 30 days after increasing the annual interest rate by more than 1 per cent above the most recently disclosed rate and the disclosure statement must contain the following information:

1. The new annual interest rate and the date on which it takes effect.
2. The amount of each instalment payment and the time when each payment is due, for payments that are affected by the new annual interest rate. O. Reg. 191/08, s. 9 (3).

Disclosure — line of credit

10. (1) A mortgage brokerage that enters into or arranges a mortgage securing a line of credit must give the borrower an initial disclosure statement that includes the following information:

1. The initial credit limit, if it is known at the time the disclosure is made.
2. The annual interest rate, or the method for determining it if it is variable.
3. The nature and amounts of any non-interest charges.
4. The minimum payment during each payment period or the method for determining it.
5. Each period for which a statement of account is to be provided.
6. The date on and after which interest accrues and information concerning any grace period that applies.
7. The particulars of the charges or penalties referred to in paragraph 5 of section 24 of the Act, including default charges that may be imposed under section 17 of this Regulation.
8. The property in which the lender takes a security interest under the mortgage.
9. Information about any optional service in relation to the mortgage that the borrower accepts, the charges for each optional service and the conditions under which the borrower may cancel the service, if that information is not disclosed in a separate statement before the optional service is provided.
10. A local or toll-free telephone number, or a telephone number with a prominent indication that collect calls are accepted, that the borrower may use to get information about the account during the lender's regular business hours.
11. Any charge for a brokerage, if the brokerage's charges are included in the amount borrowed and are paid directly by the lender to the brokerage. O. Reg. 191/08, s. 10 (1).

(2) If the initial credit limit is not known when the initial disclosure statement is made, and if the brokerage is a lender under the mortgage, the brokerage must disclose it,

- (a) in the first statement of account provided to the borrower; or
- (b) in a separate statement that the borrower receives on or before the date on which the borrower receives that first statement of account. O. Reg. 191/08, s. 10 (2).

(3) Subject to subsection (4), if the brokerage is a lender under the mortgage, the brokerage must give the borrower an additional disclosure statement at least once a month that contains the following information:

1. The period covered by the disclosure statement and the opening and closing balances in the period.
2. An itemized statement of account that discloses each amount credited or charged, including interest, and the dates when those amounts were posted to the account.

3. The sum for payments and the sum for credit advances and interest and other charges.
4. The annual interest rate that applied on each day in the period and the total of interest charged at those rates in the period.
5. The credit limit and the amount of credit available at the end of the period.
6. The minimum payment and its due date.
7. The borrower's rights and obligations regarding any billing error that may appear in the statement of account.
8. A local or toll-free telephone number, or a telephone number with a prominent indication that collect calls are accepted, that the borrower may use to get information about the account during the brokerage's regular business hours. O. Reg. 191/08, s. 10 (3).

(4) The additional disclosure statements described in subsection (3) are not required for a period during which there are no advances or payments and,

- (a) there is no outstanding balance at the end of the period; or
- (b) the borrower has notice that the mortgage has been suspended or cancelled due to default and the lender has demanded payment of the outstanding balance. O. Reg. 191/08, s. 10 (4).

Disclosure — credit card applications

11. (1) A mortgage brokerage that issues a credit card secured by a mortgage or arranges a mortgage securing a credit card and distributes an application form for credit cards must specify the following information in the application form or in a document accompanying it, including the date on which each of the matters mentioned takes effect:

1. The annual interest rate for a credit card with a fixed rate of interest.
2. If the credit card does not have a fixed rate of interest, the fact that the variable interest rate is determined by adding or subtracting a fixed percentage rate of interest to or from a public index, the public index and the fixed percentage rate to be added or subtracted from it.
3. The day on and after which interest accrues and information concerning any grace period that applies.
4. The amount of any charges other than interest charges. O. Reg. 191/08, s. 11 (1).

(2) Subsection (1) does not apply if, on the application form or in a document accompanying it, the mortgage brokerage prominently discloses,

- (a) a local or toll-free telephone number, or a telephone number with a prominent indication that collect calls are accepted, that the borrower may use to get information required by subsection (1) during the mortgage brokerage's regular business hours; and
- (b) the fact that the applicant may obtain the information otherwise required by subsection (1) at that telephone number. O. Reg. 191/08, s. 11 (2).

(3) If an individual applies for a credit card by telephone or any electronic means, the mortgage brokerage must give the applicant the information required by paragraphs 1 and 4 of subsection (1) when the application is made. O. Reg. 191/08, s. 11 (3).

(4) If a mortgage brokerage solicits applications for credit cards secured by a mortgage in person, by mail, by telephone or by any electronic means, the information required by paragraphs 1 and 4 of subsection (1) must be disclosed at the time of the solicitation. O. Reg. 191/08, s. 11 (4).

Disclosure — credit cards

12. (1) A mortgage brokerage that enters into or arranges a mortgage secured by a credit card must give the borrower an initial disclosure statement that includes the following information:

1. The information described in paragraphs 1 and 3 to 11 of subsection 10 (1).
2. The manner in which interest is calculated and the information required by paragraph 1 or 2, as the case may be, of subsection 11 (1).
3. If the credit agreement requires the borrower to pay the outstanding balance in full on receiving a statement of account,

- i. mention of that requirement,
 - ii. the grace period by the end of which the borrower must have paid that balance, and
 - iii. the annual interest rate charged on any outstanding balance not paid when due.
4. If a lost or stolen credit card is used in an unauthorized manner, the fact that the maximum liability of the borrower is the lesser of \$50 and the maximum set by the credit agreement.
 5. If a transaction is entered into at an automated teller machine by using the borrower's personal identification number, the fact that the liability incurred by the transaction is the borrower's maximum liability, despite paragraph 4.
 6. If the mortgage brokerage has received a report from the borrower, whether written or verbal, of a lost or stolen credit card, the fact that the borrower is not liable for any transaction entered into through the use of the card after the mortgage brokerage receives the report. O. Reg. 191/08, s. 12 (1).
- (2) If the initial credit limit is not known when the initial disclosure statement is made, the mortgage brokerage must disclose it,
- (a) in the first statement of account provided to the borrower; or
 - (b) in a separate statement that the borrower receives on or before the date on which the borrower receives that first statement of account. O. Reg. 191/08, s. 12 (2).
- (3) Despite section 13, if a credit agreement for a credit card is amended, the mortgage brokerage must give the borrower a written statement at least 30 days before the amendment takes effect, and the statement must set out the changes to the information that was required to be given to the borrower in the initial disclosure statement, excluding information about the following changes:
1. Any change in the credit limit.
 2. Any extension to the grace period.
 3. Any decrease in charges other than interest charges and default charges referred to in paragraphs 3 and 7 of subsection 10 (1).
 4. Any change concerning information about any optional service in relation to the credit agreement that is referred to in paragraph 9 of subsection 10 (1).
 5. Any change in a variable interest rate referred to in paragraph 2 of subsection 11 (1) as a result of a change in the public index referred to in that paragraph. O. Reg. 191/08, s. 12 (3).
- (4) A change described in paragraphs 1 to 4 of subsection (3) must be disclosed in the first periodic disclosure statement that is given to the borrower after the amendment to the credit agreement is made. O. Reg. 191/08, s. 12 (4).
- (5) A mortgage brokerage that issues credit cards must give each borrower additional disclosure statements on a regular periodic basis, at least once a month that contain the following information:
1. The information described in subsections 10 (3) and (4), other than paragraphs 2 and 3 of subsection 10 (3).
 2. An itemized statement of account that describes each transaction and discloses each amount credited or charged, including interest, and the dates when those amounts were posted to the account.
 3. The amount that the borrower must pay, on or before a specified due date, in order to have the benefit of a grace period.
 4. The sum for payments and the sum for purchases, credit advances and interest and other charges. O. Reg. 191/08, s. 12 (5).
- (6) For the purpose of paragraph 2 of subsection (5), an itemized statement of account is adequate if it permits the borrower to verify each transaction described by linking it with a transaction record provided to the borrower. O. Reg. 191/08, s. 12 (6).

Disclosure after amendment to a mortgage

13. (1) This section applies if a mortgage brokerage is a lender under the mortgage. O. Reg. 191/08, s. 13 (1).

(2) Subject to subsection (3), if a mortgage is amended by a subsequent agreement, the brokerage must give the borrower a written statement within 30 days after the borrower enters into the subsequent agreement, and the statement must describe the changes to the information required to be disclosed in the initial disclosure statement for the mortgage. O. Reg. 191/08, s. 13 (2).

(3) If a mortgage for a fixed amount has a schedule for instalment payments and the schedule is amended by a subsequent agreement, the brokerage must give the borrower a written statement within 30 days after entering into the subsequent agreement, and the statement must set out the new payment schedule and any increase in the total amount to be paid or the cost of borrowing. O. Reg. 191/08, s. 13 (3).

Disclosure — renewal of a mortgage

14. (1) This section applies if a mortgage brokerage is a lender under the mortgage. O. Reg. 191/08, s. 14 (1).

(2) If a mortgage is to be renewed on a specified date, the brokerage must give the borrower a subsequent disclosure statement at least 21 days before the specified renewal date, and the statement must contain the information required by,

(a) section 8, if the mortgage is for a fixed interest rate; or

(b) section 9, if the mortgage is for a variable interest rate. O. Reg. 191/08, s. 14 (2).

(3) The subsequent disclosure statement must specify that,

(a) the cost of borrowing will not be increased after the disclosure statement is given to the borrower and before the mortgage is renewed; and

(b) the borrower's rights under the mortgage continue, and the renewal does not take effect, until the day that is the later of the specified renewal date and the day that is 21 days after the borrower receives the statement. O. Reg. 191/08, s. 14 (3).

(4) If the brokerage does not intend to renew a mortgage after its term ends, the brokerage shall so notify the borrower at least 21 days before the end of the term. O. Reg. 191/08, s. 14 (4).

Disclosure — offer to waive payment

15. (1) This section applies if a mortgage brokerage is a lender under the mortgage. O. Reg. 191/08, s. 15 (1).

(2) If, under a mortgage for a fixed amount, the brokerage offers to waive a payment without waiving the accrual of interest during the period covered by the payment, the brokerage must disclose to the borrower in a prominent manner in the offer that interest will continue to accrue during that period if the borrower accepts the offer. O. Reg. 191/08, s. 15 (2).

(3) If the brokerage offers to waive a payment under a mortgage that secures a line of credit or a credit card, the brokerage must disclose to the borrower in a prominent manner in the offer whether interest will continue to accrue during any period covered by the offer if the borrower accepts the offer. O. Reg. 191/08, s. 15 (3).

Disclosure — cancellation of optional services

16. (1) This section applies if a mortgage brokerage is a lender under the mortgage and if the brokerage provides optional services, including insurance services, to a borrower on an ongoing basis in connection with the mortgage. O. Reg. 191/08, s. 16 (1).

(2) A disclosure statement in relation to the mortgage must specify that,

(a) the borrower may cancel the optional service by notifying the brokerage that the service is to be cancelled effective as of the day that is the earlier of one month after the day that the disclosure statement was provided to the borrower and the last day of a notice period provided for under the mortgage agreement; and

(b) the brokerage shall, without delay, refund or credit the borrower with the proportional amount, calculated in accordance with the formula set out in subsection (3), of any charges for the service paid for by the borrower and added to the balance of the mortgage loan, but unused as of the cancellation day referred to in the notice. O. Reg. 191/08, s. 16 (2).

(3) The proportion of charges to be refunded or credited to a borrower are calculated using the formula,

$$R = A \times (n - m) / n$$

in which,

“R” is the amount to be refunded or credited,

“A” is the amount of the charges,

“n” is the period between the imposition of the charge and the time when the services were, before the cancellation, scheduled to end, and

“m” is the period between the imposition of the charge and the cancellation.

O. Reg. 191/08, s. 16 (3).

DEFAULT CHARGES

Default charges

17. If a mortgage brokerage is a lender under a mortgage and if a borrower fails to make a payment when it becomes due or fails to comply with an obligation under the mortgage, in addition to interest, the brokerage may impose charges for the sole purpose of recovering the costs reasonably incurred,

- (a) for legal services required to collect or attempt to collect the payment;
- (b) for expenses incurred to realize on a security interest taken under the mortgage or to protect such a security interest, including the cost of legal services required for that purpose; or
- (c) for expenses incurred to process a cheque or other payment instrument that the borrower used to make a payment under the mortgage but that was dishonoured. O. Reg. 191/08, s. 17.

ADVERTISING

Advertising — mortgage for a fixed amount

18. (1) If a mortgage brokerage advertises a mortgage for a fixed amount and if the advertisement includes a representation about the interest rate or the amount of any payment or of any charge other than interest, the advertisement must also include the APR and the term of the mortgage and the APR must be provided at least as prominently as the representation and in the same manner as the representation is made, whether visually or aurally, or both. O. Reg. 191/08, s. 18 (1).

(2) If the APR or the term of the mortgage is 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 example of them. O. Reg. 191/08, s. 18 (2).

Advertising — line of credit

19. If a mortgage brokerage advertises a mortgage that secures a line of credit and if the advertisement includes a representation about the annual interest rate or the amount of any payment or of any charge other than interest, the advertisement must also include the annual rate of interest on the date of the advertisement and any initial or periodic charges other than interest and that information must be provided at least as prominently as the representation and in the same manner as the representation is made, whether visually or aurally, or both. O. Reg. 191/08, s. 19.

Advertising — interest-free periods

20. (1) If a mortgage brokerage advertises a mortgage and if the advertisement includes a representation, express or implied, that a period of the mortgage is free of any interest charges, the advertisement must indicate whether interest accrues during the period and is payable after the period and that information must be provided at least as prominently as the representation, if it was express, or in a prominent manner, if it was implied. O. Reg. 191/08, s. 20 (1).

(2) If interest does not accrue during the period, the advertisement must also disclose any conditions that apply to the forgiving of the accrued interest and the APR, or the annual interest rate in the case of a mortgage that secures a credit card or line of credit, for a period when those conditions are not met. O. Reg. 191/08, s. 20 (2).

PURCHASING INSURANCE

Insurance

21. (1) This section applies if a brokerage is a lender under the mortgage. O. Reg. 191/08, s. 21 (1).

(2) If the brokerage requires a borrower to purchase any insurance, and if the brokerage offers to provide or arrange the insurance, the brokerage must at the same time clearly disclose to the borrower in writing that the

borrower may purchase the required insurance through any insurer who may lawfully provide that type of insurance except that the brokerage may reserve the right to disapprove on reasonable grounds an insurer selected by the borrower. O. Reg. 191/08, s. 21 (2).

22. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THE ENGLISH VERSION OF THIS REGULATION). O. Reg. 191/08, s. 22.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 192/08 ADMINISTRATIVE PENALTIES

Consolidation Period: From March 6, 2009 to the [e-Laws currency date](#).

Last amendment: O. Reg. 76/09.

GENERAL ADMINISTRATIVE PENALTIES (SECTION 39 OF THE ACT)

Exclusions from s. 39 penalties

1. An administrative penalty cannot be imposed under section 39 of the Act for a contravention of section 46 of the Act (Prohibition re reprisals). O. Reg. 192/08, s. 1.

Superintendent's authority

2. The Superintendent is authorized to determine the amount of a penalty imposed under section 39 of the Act, subject to the limits set out in section 41 of the Act. O. Reg. 192/08, s. 2.

Criteria for determining amount of penalty

3. The Superintendent shall consider only the following criteria when determining the amount of an administrative penalty to be imposed under section 39 of the Act for a purpose set out in section 38 of the Act:

1. The degree to which the contravention or failure was intentional, reckless or negligent.
2. The extent of the harm or potential harm to others resulting from the contravention or failure.
3. The extent to which the person or entity tried to mitigate any loss or to take other remedial action.
4. The extent to which the person or entity derived or reasonably might have expected to derive, directly or indirectly, any economic benefit from the contravention or failure.
5. Any other contraventions or failures to comply with a requirement established under the Act or with any other financial services legislation of Ontario or of any jurisdiction during the preceding five years by the person or entity. O. Reg. 192/08, s. 3.

Deadline for paying s. 39 penalties

4. (1) A person or entity on whom a penalty has been imposed under section 39 of the Act shall pay the penalty no later than 30 days after the person or entity is given notice of the order imposing the penalty or such longer time as may be specified in the order. O. Reg. 192/08, s. 4 (1).

(2) If a person or entity requests a hearing on the notice of proposal to impose the order in accordance with subsection 39 (5) of the Act, the person or entity shall pay the penalty no later than 30 days after the matter is finally determined or such longer time as may be specified in the order. O. Reg. 192/08, s. 4 (2).

SUMMARY ADMINISTRATIVE PENALTIES (SECTION 40 OF THE ACT)

Deadline for paying s. 40 penalties

5. (1) A person or entity on whom a penalty has been imposed under section 40 of the Act shall pay the penalty no later than 30 days after the person or entity is given notice of the order imposing the penalty. O. Reg. 192/08, s. 5 (1).

(2) If a person or entity appeals the Superintendent's order in accordance with subsection 40 (4) of the Act, the person or entity shall pay the penalty no later than 30 days after the matter is finally determined or such longer time as may be specified in the varied or confirmed order. O. Reg. 192/08, s. 5 (2).

6. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THE ENGLISH VERSION OF THIS REGULATION). O. Reg. 192/08, s. 6.

Mortgage Brokerages, Lenders and Administrators Act, 2006

ONTARIO REGULATION 193/08 REPORTING REQUIREMENTS FOR LICENSEES

Consolidation Period: From March 6, 2009 to the [e-Laws currency date](#).

Last amendment: O. Reg. 88/09.

PRESCRIBED REPORTING REQUIREMENTS

Requirement to submit information, etc.

1. The requirements set out in this Regulation are prescribed for the purposes of subsection 29 (1) of the Act. O. Reg. 193/08, s. 1.

ANNUAL FILINGS

Annual information return

2. On or before March 31 of every year, every brokerage and every mortgage administrator shall give the Superintendent an annual information return for the previous year in a form approved by the Superintendent. O. Reg. 193/08, s. 2.

Financial information, mortgage administrator

3. (1) Within 90 days after the end of every fiscal year, every mortgage administrator shall give the Superintendent,

- (a) a copy of its audited financial statements for the year;
- (b) a copy of a report by the auditor about the books, records and accounts of the mortgage administrator for the year, in a form approved by the Superintendent; and
- (c) a copy of a report by the auditor about the mortgage administrator's trust account and the assets and liabilities under administration for the year, in a form approved by the Superintendent. O. Reg. 193/08, s. 3 (1).

(2) The financial statements must be prepared in accordance with generally accepted accounting principles as set out in the Handbook of the Canadian Institute of Chartered Accountants and must be audited by a licensed public accountant. O. Reg. 193/08, s. 3 (2).

(3) The reports required by clauses (1) (b) and (c) for a fiscal year must be prepared by the same person who audits the financial statements for the year. O. Reg. 193/08, s. 3 (3).

INFORMATION ABOUT OTHER MATTERS

Establishment of trust account

4. (1) If a brokerage is required by the standards of practice to establish a mortgage brokerage trust account, the brokerage shall notify the Superintendent as soon as practicable and, in any event, no later than five days after the brokerage is required to establish the account. O. Reg. 193/08, s. 4 (1).

(2) When a mortgage administrator is required by the standards of practice to establish a mortgage administrator's trust account, the mortgage administrator shall notify the Superintendent as soon as practicable and, in any event, no later than five days after the mortgage administrator is required to establish the account. O. Reg. 193/08, s. 4 (2).

Location of records

5. (1) If a brokerage or mortgage administrator intends to retain its records at premises in Ontario other than its principal place of business in Ontario, if any, the brokerage or mortgage administrator shall notify the Superintendent and shall specify the premises at which the records are to be kept. O. Reg. 193/08, s. 5 (1).

(2) Subsection (1) applies only with respect to the records that the brokerage or mortgage administrator is required to retain under the applicable standards of practice. O. Reg. 193/08, s. 5 (2).

REPORTING ABOUT OTHER CHANGES

Change of address for service

6. If a licensee changes the licensee's mailing address in Ontario, the licensee shall give the Superintendent particulars of the new address no later than five days after the change occurs. O. Reg. 193/08, s. 6.

Change of other contact information

7. If a licensee changes the licensee's e-mail address, phone number or fax number, the licensee shall give the Superintendent particulars of the new address or number no later than five days after the change occurs. O. Reg. 193/08, s. 7.

Change of principal place of business

8. If a brokerage or mortgage administrator changes the location of its principal place of business in Ontario, the brokerage or mortgage administrator shall notify the Superintendent no later than five days after the change occurs. O. Reg. 193/08, s. 8.

Change of offices open to the public

9. If a brokerage or mortgage administrator opens or closes an office in Ontario that is open to the public, the brokerage or mortgage administrator shall notify the Superintendent no later than five days after doing so. O. Reg. 193/08, s. 9.

Change of director, officer, partner

10. (1) If a licensee that is a corporation changes one or more of its directors or officers, the licensee shall notify the Superintendent no later than five days after the change occurs. O. Reg. 193/08, s. 10 (1).

(2) If a licensee that is a partnership changes one or more of its partners, the licensee shall notify the Superintendent no later than five days after the change occurs. O. Reg. 193/08, s. 10 (2).

Change of principal broker

11. If a brokerage changes its principal broker, the brokerage shall notify the Superintendent no later than five days after the change occurs. O. Reg. 193/08, s. 11.

Change of authority to act on behalf of brokerage

12. (1) If a mortgage broker or agent ceases to be authorized to deal or trade in mortgages on behalf of a brokerage, the brokerage shall notify the Superintendent no later than five days after the authority ceases. O. Reg. 193/08, s. 12 (1).

(2) A mortgage broker or agent who ceases to be authorized to deal or trade in mortgages on behalf of a brokerage shall notify the Superintendent no later than five days after the authority ceases. O. Reg. 193/08, s. 12 (2).

Change re insurance coverage

13. If the errors and omissions insurance or other assurance maintained by a brokerage or mortgage administrator in accordance with the applicable standards of practice is cancelled or is not renewed, the brokerage or mortgage administrator shall immediately notify the Superintendent. O. Reg. 193/08, s. 13.

Change re financial guarantee, mortgage administrator

14. If the financial guarantee maintained by a mortgage administrator in accordance with the standards of practice is cancelled or is reduced to an amount lower than the minimum amount required by the standards of practice, the mortgage administrator shall immediately notify the Superintendent. O. Reg. 193/08, s. 14.

ADMINISTRATIVE PENALTIES FOR NON-COMPLIANCE

Penalty amounts

15. (1) If a brokerage or mortgage administrator fails to comply with a requirement of this Regulation, the following summary administrative penalty may be imposed under section 40 of the Act:

1. \$1,000 for each failure to comply with section 2, 3, 4 or 13.
2. \$500 for each failure to comply with any other provision of this Regulation. O. Reg. 193/08, s. 15 (1).

(2) If a broker or agent fails to comply with a requirement of this Regulation, a summary administrative penalty of \$250 may be imposed under section 40 of the Act for each failure to comply with section 6 or 7 or subsection 12 (2) of this Regulation. O. Reg. 193/08, s. 15 (1).

16. OMITTED (REVOKES OTHER REGULATIONS). O. Reg. 193/08, s. 16.

17. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THE ENGLISH VERSION OF THIS REGULATION). O. Reg. 193/08, s. 17.