
MORTGAGE BROKERAGES,
MORTGAGE LENDERS AND
MORTGAGE ADMINISTRATORS ACT

A Consultation Draft

*Proposed by the
Ministry of Finance
March, 2005*

**MORTGAGE BROKERAGES,
MORTGAGE LENDERS AND
MORTGAGE ADMINISTRATORS ACT:**

A Consultation Draft

*Proposed by the
Ministry of Finance*

*This Consultation Draft is intended to
facilitate constructive dialogue concerning
its contents.*

*Note that it will only become law if the
Legislative Assembly passes the legislation.*

Dear Stakeholder:

I am pleased to enclose for your review and comment a copy of *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act: A Consultation Draft* which proposes to replace the *Mortgage Brokers Act*. I also include draft licensing regulations for your review and comment.

In the 2004 Ontario Budget, the government made a commitment to review the *Mortgage Brokers Act* with a view to introducing a bill to replace the Act in 2005. A consultation paper titled *Improving the Mortgage Brokers Act* was released in June 2004 and public comment was invited on ways to improve consumer protection, streamline regulatory approaches, ensure cost-effective regulation, and harmonize with other regulatory bodies and jurisdictions where appropriate. The enclosed document is the result of those public consultations held in the summer and fall of 2004.

Your views are important and will assist the government in finalizing legislative and regulatory proposals in this area. The ministry welcomes suggestions from consumers, businesses, and professionals to help us meet the objective of providing better consumer protection in a way that is fair and practical for individuals and businesses.

The enclosure contains information on how you can comment on these proposals.

Thank you for taking the time to read this consultation draft. I very much appreciate your input.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Colle". The signature is fluid and cursive, written in a professional style.

Mike Colle
Parliamentary Assistant to the
Minister of Finance

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I. INVITATION FOR COMMENTS

The Ministry of Finance is seeking your views on *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act: A Consultation Draft* and a draft of related licensing regulations. Many of the proposals contained in these documents are based on feedback to the ministry's consultation paper *Improving the Mortgage Brokers Act*, released in June 2004.

This guide gives readers a brief outline of changes under consideration. The accompanying consultation draft contains detailed wording of the proposed legislation. The proposals are intended solely for discussion purposes and would only become law if the Legislative Assembly passes such legislation. Readers are encouraged to focus their attention on the actual wording of the consultation draft and not rely only on this guide.

This guide also identifies areas under consideration for regulations which could be proposed under a new act. It does not include detailed information about the proposed content of the remaining regulations under the new act. The ministry will consult on other proposed regulations at a later date.

Your views are important and will assist the ministry in finalizing these legislative proposals. The Ministry of Finance invites your comments on the issues outlined in this consultation draft. Interested parties are invited to make written submissions by **April 29, 2005**.

You may send comments by mail, fax or e-mail to:

*Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act:
– A Consultation Draft*

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This consultation paper can be reviewed online at www.gov.on.ca/FIN

Please note that this is a public consultation. All comments received will be considered public and may be used by the ministry to help evaluate and revise the proposed draft legislation and regulations. This may involve disclosing some or all comments or materials, or summaries of them, to other interested parties during and after the consultation.

Any personal information in submissions, such as names and contact details (i.e. home addresses and phone numbers, personal email addresses, etc.) – in addition to any other information that could be used to identify an individual – will not be disclosed without prior consent. However, records created by individuals acting in a professional capacity (i.e. on behalf of a group, association, business, commercial enterprise, etc.) may be disclosed, unless your covering letter states that such disclosure would be harmful and/or prejudicial.

Therefore, if for any reason you feel your comments should not be shared with other parties, please indicate this in your covering letter.

If you have any questions about this consultation or how any element of your submission may be used or disclosed, please contact:

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II. SUMMARY OF PROPOSALS

I. General

It is proposed that the *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* would replace the *Mortgage Brokers Act*. The new name of the act would more clearly describe the activities that are regulated under the proposed legislation.

The content, structure, and form of the draft legislation and regulations are subject to change as a result of the consultation process and as a result of review by the government. These proposals will only become law if they are passed by the Legislative Assembly.

The Superintendent of Financial Services (the “Superintendent”) would continue to have statutory powers and duties under the new act. The Financial Services Tribunal (the “Tribunal”) would continue to have an adjudicative role. The Minister of Finance would continue to be responsible for the new act.

Consistent with the current Act, the consultation draft would apply to mortgages within the meaning of the *Mortgages Act*. The consultation draft makes no specific reference to “reverse mortgages” because a reverse mortgage is a type of mortgage and therefore already covered by any reference to a mortgage. However, consideration will be given to whether the regulations should provide for any specific disclosure or other requirements regarding reverse mortgages.

2. Regulated Activities

The consultation draft proposes that the following activities be subject to licensing and the regulatory oversight of the Superintendent: dealing in mortgages, trading in mortgages, carrying on business as a mortgage lender, and carrying on business as a mortgage administrator. For each of these activities, it is proposed that regulations prescribe exemptions from the licensing requirements. It is anticipated that these and other draft regulations will be available for public comment at a later date. Suggestions regarding the licensing exemptions are welcome prior to the release of the draft regulations.

Dealing in Mortgages

It is proposed that “dealing in mortgages” encompass the following services: soliciting a person to lend or borrow money on the security of a mortgage,

negotiating or arranging a mortgage on behalf of another person, or helping another person enter into a mortgage. The regulations may prescribe other services that would constitute dealing in mortgages.

Only corporations, partnerships, or sole proprietors would be able to carry on the business of dealing in mortgages in Ontario. Unless specifically exempted from the licensing requirement, they would be required to obtain a brokerage licence.

Individuals who deal in mortgages would be required to obtain a mortgage broker's or agent's licence and could only act on behalf of one licensed brokerage.

The proposed legislation sets out several exemptions from the requirement to be licensed for those who deal in mortgages. For example, it is proposed that financial institutions, and directors, officers, or employees of financial institutions be exempt from the licensing requirement. The consultation draft defines a financial institution as a bank or authorized foreign bank, a credit union or caisse populaire, a league, an insurer, a loan or trust corporation, or a retail association.

An exemption from the requirement to have a mortgage broker's or agent's licence is proposed for directors, officers, and employees who deal in mortgages on behalf of a corporation, partnership, or sole proprietor that does not itself carry on the business of dealing in mortgages.

It is also proposed that lawyers be exempt from the licensing requirements if they negotiate or arrange a mortgage or assignment of a mortgage, or help another person enter into a mortgage, where those services constitute legal services.

Simple referrals to a source of mortgage financing would be exempt from licensing requirements if the referring person or entity does not deal in mortgages or engage in an activity that requires licensing under the proposed act.

Regulations may also prescribe other persons who would be exempt from licensing requirements.

Trading in Mortgages

The consultation draft provides that licences would be required for trading in mortgages. Trading in mortgages would include soliciting another person to trade in mortgages, or buying, selling, or exchanging mortgages on behalf of another person or one's own behalf.

Only corporations, partnerships, or sole proprietors would be able to carry on the business of trading in mortgages in Ontario and they would be required to obtain a brokerage licence.

Individuals who trade in mortgages would be required to obtain a mortgage broker's or agent's licence and could only act on behalf of a licensed brokerage.

An exemption from the requirement to have a brokerage licence is proposed where a person solicits and executes trades in mortgages through a licensed mortgage brokerage or through a person exempted from the requirement to have a brokerage licence.

It is proposed that financial institutions, and directors, officers, or employees of financial institutions be exempt from the licensing requirements.

Lawyers would also be exempt from the licensing requirements if their trading in mortgages constitutes providing legal services. This exemption would not apply in respect of lawyers buying, selling, or trading mortgages on their own behalf.

Regulations may prescribe other exemptions from the licensing requirements.

Carrying on Business as a Mortgage Lender

It is proposed that a brokerage licence be required for those who carry on the business of lending money on the security of real property in Ontario. Financial institutions would be exempt from the licensing requirement.

Only corporations, partnerships, or sole proprietors would be able to carry on business as mortgage lenders in Ontario and they would be required to obtain a brokerage licence.

Lenders would not be required to have a brokerage licence if they use an intermediary that is either a licensed brokerage or a person exempt from licensing under the act. The regulations may also prescribe other persons who carry on business as mortgage lenders to be exempt from licensing requirements.

Individuals who solicit, negotiate and arrange, or trade in mortgages on behalf of a lender, would be "dealing in mortgages" or "trading in mortgages" on behalf of the lender and therefore required to be licensed as a mortgage broker or agent.

Carrying on Business as a Mortgage Administrator

Under the proposed act, those carrying on the business of mortgage administration would require a licence. Mortgage administration would constitute collecting money payable under a mortgage on behalf of another person or providing other services that may be prescribed.

Only corporations, partnership or sole proprietors would be permitted to carry on business as a mortgage administrator in Ontario and they would be required to obtain a mortgage administrator's licence. Employees of licensed mortgage administrators would not be required to be licensed unless these persons are dealing or trading in mortgages.

Financial institutions would be exempt from the licensing requirement, as would lawyers administering mortgages on behalf of an estate where such services constitute legal services.

The regulations may prescribe other persons who carry on business as mortgage administrators to be exempt from the requirement to be licensed.

No Deemed Licensing of Real Estate Brokers

Unlike the current *Mortgage Brokers Act*, the consultation draft would not deem real estate brokers registered under the *Real Estate and Business Brokers Act* to be licensed as mortgage brokers. It is proposed that real estate brokers be required to be licensed under the *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* if they deal in mortgages, trade in mortgages, carry on business as mortgage lenders, or carry on business as mortgage administrators.

The proposed act would exempt from licensing anyone who refers a borrower to a lender for a fee, provided that the person does not otherwise deal in mortgages, trade in mortgages, or carry on business as a mortgage lender or administrator.

The transitional licensing requirements for real estate brokers registered under the *Real Estate and Business Brokers Act* are included in the draft regulations attached. It is proposed that real estate brokers registered under the *Real Estate and Business Brokers Act* be given a time-limited opportunity of one year after the coming into force of the regulations to apply to be licensed as a mortgage broker under the proposed act without having to meet additional educational and experience requirements.

3. Licences

The consultation draft proposes four main types of licences:

- brokerage licence
- mortgage administrator's licence
- mortgage broker's licence
- mortgage agent's licence

The Superintendent would be required to maintain a public register identifying all licensed mortgage brokerages, mortgage administrators, mortgage brokers, and mortgage agents.

It is proposed that the regulations establish classes of licences and requirements applicable to each class of licence. Licences would not be transferable.

Brokerages and Mortgage Administrators

A brokerage licence would be required for any entity which carries on the business of dealing in mortgages, trading in mortgages, or acting as a mortgage lender in Ontario. Only a corporation, partnership, or sole proprietor would be able to obtain a brokerage licence. A brokerage would be responsible for ensuring every mortgage broker and mortgage agent who deals or trades in mortgages on its behalf complies with the act.

A mortgage administrator's licence would be required for carrying on the business of administering mortgages in Ontario. Only a corporation, partnership, or sole proprietor would be able to obtain a mortgage administrator's licence.

Licensees would be able to have more than one type of licence. For example, one corporation might only administer mortgages and would therefore only be licensed as a mortgage administrator. Another corporation might both administer mortgages and deal in mortgages, so it would be required to be licensed as a mortgage administrator and a brokerage.

Mortgage Brokers and Agents

Individuals who deal or trade in mortgages would be required to obtain a mortgage broker's licence or a mortgage agent's licence.

A licensed mortgage broker or mortgage agent would only be authorized to deal or trade in mortgages for one brokerage at any given time.

It is contemplated that the primary difference between an agent and a broker is that an agent would be an entry-level position, whereas a broker would

have additional experience and educational courses (to be set out in the regulations) and would be able to supervise agents or be designated as principal broker. Agents would not be permitted to deal or trade in mortgages unless they are supervised by a licensed mortgage broker.

Principal Broker

Every brokerage would be required to designate a principal broker. The regulations would set out criteria that a person would need to meet in order to be designated as principal broker. These may include education and experience requirements in addition to the requirements for licensing as a mortgage broker.

It is intended that the principal broker be a chief compliance officer for the brokerage. The responsibilities of a principal broker would be set out in the regulations.

A mortgage administrator would not be required to designate a principal broker.

4. Licensing Process

Initial Application and Renewals

Anyone who wished to apply for a licence would be required to apply to the Superintendent. A consultation draft of the regulations containing the proposed licensing requirements is attached and discussed later in this document.

Brokerage licences and mortgage administrator licences would not have a fixed duration and would not require periodic renewal.

The duration of a mortgage broker's or mortgage agent's licence would be set out in the regulations. Consideration is being given to setting the licence duration at two years. Brokers and agents would be required to apply to the Superintendent to renew their licences before the expiry date.

Mortgage broker's or agent's licences would specify the name of the brokerage for whom they are authorized to deal or trade in mortgages. If the name of the brokerage changes, or the mortgage broker or agent changes brokerages, then the mortgage broker's or agent's licence would need to be amended by the Superintendent.

Notice of Proposal

A written notice would be required when the Superintendent proposes to refuse to issue or renew a licence, to impose conditions on a licence without the applicant's consent, to amend a licence without the licensee's consent, to refuse to renew a mortgage broker's or agent's licence, or to suspend or revoke a licence without the licensee's consent.

Upon receiving a notice of proposal, an applicant or licensee could request a hearing by the Tribunal. The Tribunal would have the power to direct the Superintendent to carry out the proposal, substitute its opinion, or impose conditions. If the Tribunal's decision was appealed, the Tribunal could grant a stay of the order until the outcome of the appeal was determined.

Where any delay in suspending or revoking a licence could harm the public, the Superintendent would be able to make an interim order suspending that licence, pending the outcome of any hearing by the Tribunal.

The Superintendent would be empowered to revoke a licence or refuse to issue or renew a licence without making a proposal in certain circumstances, for example, if the applicant or licensee failed to pay a fee or administrative penalty.

Automatic Suspension and Surrender

It is proposed that a brokerage licence be automatically suspended if the brokerage ceases to have a minimum of one mortgage broker authorized to deal or trade on its behalf.

As well a mortgage broker's or agent's licence would be automatically suspended if the brokerage no longer authorizes him or her to deal in mortgages on its behalf, or if the brokerage's licence is suspended, surrendered, or revoked.

It is also proposed that the holder of a brokerage licence or a mortgage administrator's licence be required to apply to the Superintendent for permission to surrender its licence. In these cases, the Superintendent could permit the surrender or, in accordance with the notice of proposal process, impose conditions on the surrender or propose to refuse the surrender. This would be an opportunity for the Superintendent to be satisfied that the surrender would not be contrary to the public interest.

5. Administration and Compliance

Licensees would be required to file information and documents with the Superintendent. Details of the filing requirements would be set out in the regulations.

The Superintendent would be able to impose set administrative penalties on licensees for failure to comply with filing requirements. The Superintendent's order for an administrative penalty could be appealed to the Tribunal.

To ensure compliance with the act, the Superintendent would be able to make inquiries and conduct examinations of licensees and persons who are required to be licensed.

For these purposes, the Superintendent or a designate could conduct inspections of the person's business premises and require a person to assist in accessing information, documents, or electronic records including, where necessary, providing documents under summons or giving information under oath. In certain circumstances the Superintendent or designate would be able to obtain a search warrant from a justice of the peace to enter premises to conduct an inquiry or examination.

6. Enforcement

The enforcement powers would be modernized to enable the Superintendent to make compliance ("cease and desist") orders requiring a person who is not complying with the act or regulations to stop their activities and take steps to remedy the situation.

The Superintendent would be required to give written notice of the proposed compliance order, and there would be a right to a hearing before the Tribunal. Interim orders could be made if the interests of the public may be adversely affected by any delay in issuing an order.

The Superintendent, through a freeze order, would be able to take steps to preserve the assets or trust funds held by a licensee or person required to be licensed where a notice of proposal or order has been or is about to be made and the Superintendent believes the order is required in the public interest. The person could request a hearing before the Tribunal. Affected parties would be able to apply to the court for directions on the application of the order or the disposition of the property under it. The Superintendent would also be able to seek the court's direction on the disposition of the property affected by the order.

The draft legislation also would enable the Superintendent to apply to the court to appoint a receiver, receiver-manager, liquidator, or substitute trustee. An order could be made without notice to affected parties, but it would expire after 15 days unless extended by the court.

The consultation draft proposes that the Superintendent have the power to impose administrative penalties in accordance with regulations for contraventions of the legislative requirements. This would provide an alternative administrative remedy to prosecution or other sanctions. A person who paid an administrative penalty as required would not be charged with an offence for the same contravention.

Under the draft legislation, administrative penalties could be imposed on licensees and on persons who are not licensed but should be. If the Superintendent proposes to impose an administrative penalty, other than the late filing penalty referred to previously, the person would have the right to a hearing before the Tribunal prior to the penalty being ordered.

The consultation draft proposes a maximum administrative penalty of \$10,000 for a contravention in the case of an individual and \$25,000 in the case of a corporation, partnership, or sole proprietor required to be licensed as a brokerage.

The draft act provides that regulations may prescribe unfair or deceptive practices in relation to dealing in mortgages, trading in mortgages, acting as a mortgage lender, or administering mortgages. These regulations could include such matters as non-compliance with disclosure requirements related to conflict of interest. These regulations will be released for public comment at a later date.

7. Offences

Not all infractions are treated as offences under the consultation draft. For example, a breach of a specific licence condition or of an undertaking given to the Superintendent could give rise to an administrative penalty or other sanction related to the licence, but would not necessarily constitute an offence.

It would be an offence under the proposed legislation for anyone to

- not be licensed as required
- contravene the regulations
- fail to comply with an order of the Superintendent or Tribunal
- not assist an inquiry or examination
- obstruct enforcement of the act
- provide false or misleading information to the Superintendent or a designate

- engage in reprisals against employees for providing information in connection with the act
- engage in unfair or deceptive acts or practices

The consultation draft also proposes penalties for offences. It is proposed that individuals be subject to a fine of not more than \$100,000 or one year imprisonment or both. It is proposed that corporations convicted of an offence be liable for a fine of not more than \$200,000. A partner or person carrying on business as a sole proprietor could be liable to the fine applicable to corporations if the offence related to the powers and duties of the brokerage or mortgage administrator.

Directors and officers of corporations would be liable separately for an offence if they participated in or failed to take reasonable care to prevent the corporation from committing the offence.

The court would also be able to order a person convicted of an offence to pay compensation or make restitution in addition to any other penalty.

8. Disclosure of Cost of Borrowing

The consultation draft contemplates harmonizing rules on cost of credit disclosure to consumers in accordance with the Federal-Provincial-Territorial Agreement on Internal Trade. The objectives of the harmonized requirements are to provide uniform consumer protection across Canada, modernize laws to reflect changes in the credit market, reduce compliance costs, allow businesses to use the same procedures, credit advertisements and disclosure statements in all parts of the country, and result in fairer competition between federally and provincially regulated lenders.

Separate consultation draft regulations are being released for the mortgage broker sector as well as other sectors such as credit unions and insurers. The consultation documents on cost of borrowing will be posted on the Ministry of Finance website.

III. PROPOSED REGULATIONS

The consultation draft of the legislation sets out matters that may be prescribed by regulations. These include:

- licensing requirements and exemptions from licensing
- establishing classes of licences
- licensing process (e.g. issuance, amendment, renewal, suspension etc.)
- public register
- information and filing requirements
- proposals by the Superintendent
- administrative penalties
- unfair and deceptive practices
- transitional matters for issuance of licences

It is anticipated that the regulations will be available for public consultation in draft form at a later date.

Included in this consultation document are a limited number of regulations dealing with the proposed licensing requirements for mortgage brokerages, mortgage administrators, mortgage brokers, and mortgage agents. As well, these regulations contain proposed transitional rules regarding educational requirements. The proposed regulations are described more fully below.

Licensing Requirements for Brokerages

Under the proposed regulations, a corporation would be eligible for a brokerage licence if it is incorporated in Canada, has a suitable mailing address, and has errors and omissions insurance or some other form of financial guarantee in a form approved by the Superintendent. The draft regulations propose that the insurance or guarantee would have to be sufficient to pay a minimum of \$500,000 per claim and \$1 million for all claims against employees or the brokerage in any one policy year. The Superintendent would be able to refuse to issue a licence where he or she believed, on reasonable grounds, that the applicant was not suitable to be licensed. It is proposed that, in assessing an applicant's suitability to be licensed, the Superintendent would consider the corporation's financial position, the past conduct of any director or officer, any activities of the corporation that may contravene the act, or whether false information has been submitted for the application. It is proposed that no foreign ownership restrictions be imposed on corporations.

Partnerships and sole proprietors would be eligible for a brokerage licence based on requirements similar to those applied to corporations. The key difference is that all partners of a partnership and sole proprietors would be required to be residents of Canada.

It is anticipated that mortgage brokers currently registered under the *Mortgage Brokers Act* would qualify to be licensed as brokerages under the proposed act provided they meet the prescribed licensing requirements.

Licensing Requirements for Mortgage Administrators

It is proposed that, for a corporation to obtain a mortgage administrator's licence, it would have to meet the requirements outlined above for a brokerage licence and also have three months' operating expenses readily available. No foreign ownership restrictions would be imposed on corporations.

Partnerships and sole proprietors would be eligible for a mortgage administrator's licence based on criteria similar to those applied to corporations. All partners of a partnership and sole proprietors would be required to be residents of Canada.

It is anticipated that registered mortgage brokers currently authorized to administer mortgages would qualify to be licensed as mortgage administrators under the proposed act if they meet the prescribed licensing requirements for mortgage administrators.

Licensing Requirements for Mortgage Brokers

Under the proposed regulations, an individual would be eligible to be licensed as a mortgage broker if she or he is at least 18 years of age, has a suitable mailing address, is a resident of Canada, and is authorized by a brokerage to deal or trade in mortgages on its behalf. Unless exempted on a transitional basis (see below), the applicant would also be required to successfully complete an approved educational program within the three years prior to first applying for a licence, or have experience and education which the Superintendent considers equivalent to the approved educational program. It is further proposed that an additional requirement, that the applicant must have been licensed as a mortgage agent for at least two years in the three years prior to the application, be effective two years after proclamation of the proposed legislation.

The Superintendent would be empowered to refuse to issue a licence where he or she believed, on reasonable grounds, that an applicant was not suitable to be licensed. It is proposed that, in assessing an applicant's suitability to be licensed, the Superintendent would have regard to the individual's past conduct, whether the applicant's activities contravene the act, or whether the applicant has made a false statement or submitted false information with the application.

As a transitional measure, it is proposed that certain individuals would qualify as mortgage brokers without being required to satisfy additional

educational or experience criteria, provided they meet the proposed new licensing requirements (including sponsorship by a brokerage) and apply for a licence within one year. These individuals would include sole proprietors, partners, and active officers or directors associated with a mortgage broker registered under the *Mortgage Brokers Act*, and listed agents of registered mortgage brokers who have completed certain educational programs. Please note that based on the outcome of the education review, the educational requirements for new mortgage brokers may change (see section below on education review).

Similarly, real estate brokers registered under the *Real Estate and Business Brokers Act* would be given a time-limited opportunity of one year after the coming into force of the regulations to apply to be licensed as a mortgage broker under the proposed act without having to meet additional educational and experience requirements.

Licensing Requirements for Mortgage Agents

Under the proposed regulations, an individual would be eligible to be licensed as a mortgage agent if she or he is at least 18 years of age, has a suitable mailing address, is a resident of Canada, and is authorized by a brokerage to deal or trade in mortgages on its behalf. Unless exempted on a transitional basis (see below), the applicant would also be required to successfully complete an approved educational program no more than two years before applying for the licence. An individual who is authorized to deal or trade in mortgages for a finance company may be exempt from the educational requirements if the Superintendent is satisfied that the finance company will provide the individual with adequate training.

Individuals who are currently listed with the Superintendent as authorized to deal in mortgages on behalf of a registered mortgage broker may be eligible for one of three transitional measures that are proposed under the agent licensing regulations.

1. A person who has successfully completed one of several courses specified in the draft regulation would not need to satisfy any further educational requirements, provided the person was listed with the Superintendent immediately before the proclamation of the proposed legislation.
2. Individuals who have not successfully completed one of the recognized courses, but have at least 24 months of experience in the three years before proclamation of the proposed legislation as authorized to deal in mortgages on behalf of a mortgage broker, would not be required to complete any courses.

3. Individuals who have not successfully completed one of the recognized courses and who do not have 24 months of experience would be eligible for licensing, but would be required to successfully complete an approved program of education before the expiry date of their licence.

IV. OTHER MATTERS

Syndicated Mortgages

As a general rule, trades in mortgages are not subject to the registration and prospectus requirements of the *Securities Act* if the mortgages are sold by a person who is registered, or exempt from registration, under the *Mortgage Brokers Act*. Currently syndicated mortgages, (i.e. those in which there are two or more lenders) are treated in the same manner as other mortgages.

Concerns have arisen that the current syndicated mortgage exemption does not provide adequate protection to investors given the potential complexity of these investments. To respond to these concerns, the Ontario Securities Commission, together with the other members of the Canadian Securities Administrators, recently published for comment a proposal to eliminate the registration and prospectus exemption for syndicated mortgages. The change is contained in proposed National Instrument 45-106 Prospectus and Registration Exemptions and proposed OSC Rule 45-501 Ontario Prospectus and Registration Exemptions.

The Ontario Securities Commission, together with the other members of the Canadian Securities Administrators, published these proposals on December 17, 2004 for a 90-day comment period expiring on March 17, 2005.

If the Canadian Securities Administrators' proposals are implemented, it is proposed that no duplicative regulation of syndicated mortgages be contained in the new *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act*.

Education Review

A full review of the educational qualifications that will be required of licensed mortgage brokers and agents, and delivery mechanisms for educational courses, is under way. The goal of this review is to ensure that all participants in the mortgage broker industry have education and skills commensurate with their roles and responsibilities.

The Superintendent will develop a skills profile for licensees, measurable learning objectives and a course delivery process. Stakeholders will be consulted throughout the education review. The review will take into

account equivalencies that could be given to individuals with education or training from other sectors such as law, accounting, and real estate brokering. The review will also need to take into account the importance of province-wide delivery of programs.

It should not be assumed that, if a course has been determined acceptable for transitional licensing purposes, it will satisfy future educational requirements. The future course requirements will be determined by the education review.

Practice Standards

Consumers also need to be assured that they are treated fairly by mortgage brokers or agents and that they have all necessary information to enable them to make an informed decision. For these reasons, practice standards applicable to brokerages, brokers, agents and mortgage administrators will be more clearly articulated in the draft regulations to follow. Many requirements currently in the regulations under the *Mortgage Brokers Act* would likely be included and updated under the proposed new regulations. It is anticipated that these and other draft regulations will be available for public comment at a later date.

V. CONSULTATION DRAFT — LEGISLATION

Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act *A Consultation Draft*

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GENERAL

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INTERPRETATION

Definitions

1. (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, mortgage broker or agent or lender,
- (c) any amount charged in connection with the mortgage that is payable by the borrower to a person other than the brokerage, mortgage broker, agent or lender, where the amount is chargeable, directly or indirectly, by the person to the brokerage, mortgage broker, agent 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;

“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)*;

“lawyer” means a person who is authorized to practice law in Ontario;

“licence” means a licence issued under this Act;

“licensed” means licensed under this Act;

“mortgage administrator” means a corporation, partnership or sole proprietorship that has a mortgage administrator’s licence;

“mortgage agent” or “agent” means an individual who has a mortgage agent’s licence;

“mortgage broker” means an individual who has a mortgage broker’s licence;

“mortgage brokerage” or “brokerage” means a corporation, partnership or sole proprietorship that has a brokerage licence;

“prescribed” means prescribed by a regulation made under this Act;

“requirement established under this Act” includes a condition of a licence, a requirement imposed by order or an obligation assumed by way of an undertaking;

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

“Tribunal” means the Financial Services Tribunal established under the *Financial Services Commission of Ontario Act, 1997*.

Mortgage

(2) This Act applies with respect to mortgages within the meaning of the *Mortgages Act*.

REGULATED ACTIVITIES

Dealing in mortgages

2. (1) For the purposes of this Act, a person is dealing in mortgages when the person provides any of the following services, or holds themselves out as doing so:

1. Soliciting another person to lend or borrow money on the security of real property.
2. Negotiating or arranging a mortgage or the assignment of a mortgage on behalf of another person.
3. Helping another person to enter into a mortgage or to attempt to enter into a mortgage.
4. Providing such other services as may be prescribed to another person.

Prohibition re carrying on business

(2) No corporation, partnership or sole proprietorship shall carry on the business of dealing in mortgages in Ontario unless it has a brokerage licence and is acting within the scope of its licence or it is exempted from the requirement to have such a licence.

Same

(3) No person or entity other than a corporation, partnership or sole proprietorship shall carry on the business of dealing in mortgages in Ontario.

Prohibition re employees, etc.

(4) No individual shall deal in mortgages for remuneration, as an employee or otherwise, unless the individual has a mortgage broker’s or agent’s licence and is acting on behalf of a mortgage brokerage and within the scope of his or her licence or the individual is exempted from the requirement to have such a licence.

Exemption for financial institutions

(5) Every financial institution is exempted from the requirement to have a brokerage licence when dealing in mortgages in Ontario.

Same

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

Exemption for certain employees, etc.

(7) A director, officer or employee of a corporation, partnership or sole proprietorship is exempted from the requirement to have a mortgage broker's or agent's licence when, in the ordinary course of his or her duties, he or she deals in mortgages on behalf of the corporation, partnership or sole proprietorship but only if the corporation, partnership or sole proprietorship itself does not carry on the business of dealing in mortgages in Ontario or carry on business as a mortgage lender in Ontario.

Exemption for lawyers

(8) A lawyer is exempted from the requirement to have a brokerage licence or a mortgage broker's or agent's licence when the lawyer provides a service described in paragraph 2 or 3 of subsection (1), but only when this also constitutes providing a legal service.

Exemption, simple referrals

(9) A person is exempted from the requirement to have a brokerage licence or a mortgage broker's or agent's licence when the person refers a prospective borrower to a prospective lender for a fee, but only if the person does not otherwise deal in mortgages in Ontario, trade in mortgages in Ontario or carry on business as a mortgage lender or mortgage administrator in Ontario.

Other exemptions

(10) Such other persons as may be prescribed are exempted from the requirement to have a brokerage licence or a mortgage broker's or agent's licence when dealing in mortgages in Ontario in such circumstances as may be prescribed.

Trading in mortgages

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

1. Soliciting another person to trade in mortgages.
2. Buying, selling or exchanging mortgages on behalf of another person.
3. Buying, selling or exchanging mortgages on the person's own behalf.

Prohibition re carrying on business

(2) No corporation, partnership or sole proprietorship shall carry on the business of trading in mortgages in Ontario unless it has a brokerage licence and is acting within the scope of its licence or is exempted from the requirement to have such a licence.

Same

(3) No person or entity other than a corporation, partnership or sole proprietorship shall carry on the business of trading in mortgages in Ontario.

Prohibition re employees, etc.

(4) No individual shall trade in mortgages for remuneration, as an employee or otherwise, by engaging in an activity described in paragraph 1 or 2 of subsection (1) unless the individual has a mortgage broker's or agent's licence and is acting on behalf of a mortgage brokerage and within the scope of his or her licence or the individual is exempted from the requirement to have such a licence.

Exemption re authorized intermediary

(5) A person is exempted from the requirement to have a brokerage licence when trading in mortgages if the person solicits and executes trades through a mortgage brokerage or through another person who is exempted from the requirement to have a brokerage licence.

Exemption for financial institutions

(6) Every financial institution is exempted from the requirement to have a brokerage licence when trading in mortgages in Ontario.

Same

(7) A director, officer or employee of a financial institution is exempted from the requirement to have a mortgage broker's or agent's licence when, in the ordinary course of his or her duties, the individual trades in mortgages on behalf of the financial institution.

Exemption for lawyers

(8) A lawyer is exempted from the requirement to have a brokerage licence or a mortgage broker's or agent's licence when the lawyer engages in an activity described in paragraph 1 or 2 of subsection (1), but only when this also constitutes providing a legal service.

Other exemptions

(9) Such other persons as may be prescribed are exempted from the requirement to have a brokerage licence or a mortgage broker's or agent's licence when trading in mortgages in Ontario in such circumstances as may be prescribed.

Carrying on business as a mortgage lender

4. (1) For the purposes of this Act, a person is carrying on business as a mortgage lender in Ontario when the person carries on the business of lending money in Ontario on the security of real property, or holds themselves out as doing so.

Prohibition

(2) No corporation, partnership or sole proprietorship shall carry on business as a mortgage lender in Ontario unless it has a brokerage licence and is acting within the scope of its licence or it is exempted from the requirement to have such a licence.

Same

(3) No person or entity other than a corporation, partnership or sole proprietorship shall carry on business as a mortgage lender in Ontario.

Exemption re authorized intermediary

(4) A person is exempted from the requirement to have a brokerage licence when carrying on business as a mortgage lender if, when doing so, the person uses the services of a mortgage brokerage or another person who is exempted from the requirement to have a brokerage licence.

Exemption for financial institutions

(5) Every financial institution is exempted from the requirement to have a brokerage licence when carrying on business as a mortgage lender in Ontario.

Other exemptions

(6) Such other persons as may be prescribed are exempted from the requirement to have a brokerage licence when carrying on business as a mortgage lender in Ontario in such circumstances as may be prescribed.

Carrying on business as a mortgage administrator

5. (1) For the purposes of this Act, a person is carrying on business as a mortgage administrator in Ontario when the person carries on the business of providing any of the following services in Ontario, or holds themselves out as doing so:

1. On behalf of another person, collecting money payable under a mortgage.
2. Providing such other services as may be prescribed to another person.

Prohibition, carrying on business

(2) No corporation, partnership or sole proprietorship shall carry on business as a mortgage administrator in Ontario unless it has a mortgage administrator's licence and is acting within the scope of its licence or it is exempted from the requirement to have such a licence.

Same

(3) No person or entity other than a corporation, partnership or sole proprietorship shall carry on business as a mortgage administrator in Ontario.

Exemption for financial institutions

(4) Every financial institution is exempted from the requirement to have a mortgage administrator's licence when carrying on business as a mortgage administrator in Ontario.

Exemption for lawyers

(5) A lawyer is exempted from the requirement to have a mortgage administrator's licence when the person is providing a service described in paragraph 1 or 2 of

subsection (1) on behalf of an estate, but only when this also constitutes providing a legal service.

Other exemptions

(6) Such other persons as may be prescribed are exempted from the requirement to have a mortgage administrator's licence when carrying on business as a mortgage administrator in Ontario in such circumstances as may be prescribed.

LICENCES

Brokerage licence

6. (1) A corporation, partnership or sole proprietorship is entitled to apply for a brokerage licence.

Authorized activities

(2) A brokerage licence authorizes the licensee to deal in mortgages in Ontario, trade in mortgages in Ontario or carry on business as a mortgage lender in Ontario, as the case may be, by providing the services or engaging in the activities permitted under the licence, or class of licence, issued to the licensee.

Conditions

(3) A brokerage licence is subject to such conditions as may be imposed by the Superintendent or by the Tribunal and it is not transferable.

Prescribed duties

(4) The licensee shall comply with such requirements as may be prescribed for the licence, or class of licence, issued to the licensee.

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.

Principal broker

(6) A person who has a brokerage licence shall designate a principal broker to exercise such powers and perform such duties as may be prescribed.

Same

(7) A person who satisfies the prescribed criteria is eligible to be designated as a principal broker.

Mortgage broker's licence

7. (1) An individual is entitled to apply for a mortgage broker's licence.

Authorized activities

(2) A mortgage brokers' licence authorizes the licensee to deal in mortgages in Ontario or trade in mortgages in Ontario on behalf of a specified mortgage brokerage by providing the services permitted under the licence, or class of licence, issued to the licensee.

Conditions

(3) A mortgage broker's licence is subject to such conditions as may be imposed by the Superintendent or by the Tribunal and it is not transferable.

Prescribed duties

(4) The licensee shall comply with such requirements as may be prescribed for the licence, or class of licence, issued to the licensee.

Mortgage agent's licence

8. (1) An individual is entitled to apply for a mortgage agent's licence.

Authorized activities

(2) A mortgage agent's licence authorizes the agent to deal in mortgages in Ontario or trade in mortgages in Ontario on behalf of a specified brokerage by providing the services permitted under the licence, or class of licence, issued to the licensee.

Conditions

(3) A mortgage agent's licence is subject to such conditions as may be imposed by the Superintendent or by the Tribunal and it is not transferable.

Prescribed duties

(4) The licensee shall comply with such requirements as may be prescribed for the licence, or class of licence, issued to the licensee.

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 unless he or she is acting under the supervision of a mortgage broker when doing so.

Mortgage administrator's licence

9. (1) A corporation, partnership or sole proprietorship is entitled to apply for a mortgage administrator's licence.

Authorized activities

(2) A mortgage administrator's licence authorizes the licensee to carry on business as a mortgage administrator in Ontario by providing the services permitted under the licence, or class of licence, issued to the licensee.

Conditions

(3) A mortgage administrator's licence is subject to such requirements as may be prescribed and such conditions as may be imposed by the Superintendent or by the Tribunal and it is not transferable.

Prescribed duties

(4) The licensee shall comply with such requirements as may be prescribed for the licence, or class of licence, issued to the licensee.

Licence as prerequisite for enforcing payment

10. (1) A person is not entitled to commence an action or proceeding to be paid for dealing in mortgages or trading in mortgages in Ontario or for providing a service that constitutes carrying on business as a mortgage administrator in Ontario unless, at the time the person was dealing in mortgages, trading in mortgages or providing the service, the person was licensed to do so or was exempted from the licensing requirement.

Same

(2) The court may, upon motion, stay an action or proceeding described in subsection (1).

THE LICENSING PROCESS

Application for a licence

11. (1) A person 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.

Withdrawal of application

(2) The applicant may withdraw the application at any time before the licence is issued.

Issuance of licence

12. (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.

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 19 or 20.

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 19.

Amendment of licence

13. (1) The Superintendent may amend a licence at any time to change the conditions to which the licence is subject.

Same

(2) The Superintendent may also amend a mortgage broker's or agent's licence at any time to replace the name of the brokerage on whose behalf the mortgage broker or agent is authorized under the licence to deal in mortgages or trade in mortgages.

Proposal to amend

(3) If the Superintendent proposes to amend the licence without the licensee's consent, the Superintendent shall take the steps required by section 19.

Renewal of mortgage broker's or agent's licence

14. (1) A person who has a mortgage broker's or agent's licence may apply to the Superintendent to renew the licence.

Deadline

(2) The application must be made within the prescribed period before the expiry date of the licence or, if no period is prescribed, before the expiry date.

Information

(3) The applicant must give the Superintendent such information and documents as he or she may require and must pay the applicable fee.

Effect of application

(4) If the application is made by the deadline described in subsection (2), the licence that is being renewed continues in effect after the expiry date until the Superintendent notifies the applicant that the licence is renewed or is not being renewed.

Renewal

(5) 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.

Conditions

(6) Upon renewal, the licence may be made subject to different conditions than those to which it was subject before the renewal.

Proposal to refuse application

(7) If the Superintendent proposes to refuse to renew a licence, the Superintendent shall take the steps required by section 19 or 20.

Proposal to change conditions

(8) If the Superintendent proposes to renew the licence and, without the applicant's consent, to change the conditions to which the licence is subject, the Superintendent shall take the steps required by section 19.

Automatic suspension of licence

Brokerage licence

15. (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.

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.

Suspension of 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.

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.

Continuing obligations

(5) During the suspension, the mortgage brokerage, mortgage broker and agent are required to comply with the requirements established under this Act as if the licence were in effect.

Suspension by Superintendent

16. (1) The Superintendent may 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 12 (1) or 14 (5), as the case may be, and such other matters as the Superintendent considers appropriate;
- (c) if the licensee fails to comply with a requirement established under this Act; or
- (d) in such other circumstances as may be prescribed.

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 19.

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 19, 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 19 (2) of the proposal to suspend the licence.

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.

Same

(5) Despite subsection (4), if before the end of such period as may be prescribed the Superintendent does not give the person the notice required by subsection 19 (2) of the proposal, the interim order expires at the end of the prescribed period.

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.

Revocation

(7) The Superintendent may revoke a suspension order or an interim order at any time.

Revocation of licence

17. (1) The Superintendent may revoke a licence in any of the circumstances in which he or she is authorized by clauses 16 (1) (a) to (d) to suspend the licence.

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 19 or 20.

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 19, 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 19 (2) to revoke the licence.

Same

(4) Subsections 16 (4) to (7) apply, with necessary modifications, with respect to an interim order.

Surrender of licence

18. (1) A mortgage brokerage or mortgage administrator may apply to the Superintendent for permission to surrender his, her or its licence.

Same

(2) The applicant must give the Superintendent such information and documents as he or she may require and must pay the applicable fee, if any.

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.

Same

(4) The Superintendent may impose conditions relating to the surrender of the licence.

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 19.

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 19.

Withdrawal of application

(7) The applicant may withdraw the application at any time.

Superintendent's proposal to refuse application, etc.

19. (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, change 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 16 (3) or 17 (3).
7. Revoke a licence without the licensee's consent.
8. Refuse to allow the surrender of a brokerage licence or mortgage administrator's licence.
9. Allow the surrender of a brokerage licence or mortgage administrator's licence and, without the applicant's consent, impose conditions concerning its surrender.

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.

Hearing requested

(3) If the applicant or licensee requests a hearing and makes the request in the prescribed manner within 15 days after receiving notice of the proposal, the Tribunal shall hold a hearing.

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.

Appeal

(5) A party to a proceeding before the Tribunal under subsection (4) may appeal the order of the Tribunal to the Divisional Court.

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.

Hearing not requested

(7) If the applicant or licensee does not request a hearing or does not make the request in the prescribed manner and within 15 days after receiving notice of the proposal, the Superintendent may carry out the proposal.

Circumstances in which proposal not required

20. (1) The Superintendent may revoke a licence or refuse to issue or renew a licence without making a proposal to do so and without taking the steps required by section 19,

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

Notice

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

Public register of licensees

21. (1) The Superintendent shall maintain a register containing the name, licence number and business address of every person who has a licence and may maintain separate registers for different types and classes of licence.

Same

(2) The register must also include the expiry date of each mortgage broker's or agent's licence and the name and business address of the mortgage brokerage on whose behalf the mortgage broker or agent is authorized to deal in mortgages or trade in mortgages.

Same

(3) The register shall be made available for inspection by the public without charge in accordance with the regulations.

ADMINISTRATION**Information requirements**

22. (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.

Additional information

(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.

Failure to comply

(3) The Superintendent may, by order, impose an administrative penalty on a person who fails to comply with subsection (1) or (2) and shall do so in accordance with the regulations.

Same

(4) Before imposing a penalty, the Superintendent shall give the person a reasonable opportunity to make written submissions.

Appeal

(5) The person may appeal the Superintendent's order to the Tribunal in the prescribed manner within 15 days after the receiving the order, and an appeal operates as a stay of the order until the matter is finally disposed of.

Same

(6) The Tribunal may confirm, revoke or vary the order within the limits, if any, established by the regulations made under subsection (3).

Inquiries and examinations

Of licensees

23. (1) The Superintendent or a person designated by the Superintendent may make inquiries and conduct examinations of the affairs of each licensee to ensure that the licensee is complying with the requirements established under this Act.

Of other persons

(2) If, in the Superintendent's opinion, a person 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 person's affairs as the Superintendent or designate considers appropriate in the circumstances.

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 licensee's or person's business or activities.
2. Inspect money, valuables, documents and records of the licensee or person that may be relevant to the inquiry or examination.
3. Require a person 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 licensee's or person's business or activities.

5. Require a person 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.

Entry into dwelling

(3) The Superintendent or designate shall not enter any part of a premises 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 a warrant issued under section 25.

Use of force

(4) The Superintendent or designate shall not use force to enter or inspect premises.

Duty to assist

(5) If 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.

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.

Identification

(7) Upon request, the designate shall produce evidence of his or her designation.

Power to summon persons, etc.

24. (1) The Superintendent or a person designated by the Superintendent may, by summons, require a person to produce such documents and things as the Superintendent or designate may specify and to give such information on oath or affirmation as the Superintendent or designate considers relevant for the purpose of determining whether a person is complying with a requirement established under this Act.

Same

(2) The Superintendent or designate may exercise the power described in subsection (1) if the Superintendent or designate believes it to be necessary in order to determine whether a person is complying with a requirement established under this Act and if the Superintendent or designate believes that exercising the power is, in the circumstances, in the public interest.

Identification

(3) Upon request, the designate shall produce evidence of his or her designation.

Right to counsel

(4) A person may be represented by counsel when giving information on oath or affirmation.

Stated case

(5) 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.

Search warrant

25. (1) A justice of the peace may issue a warrant under this section if he or she is satisfied on information under oath,

- (a) that there are reasonable grounds for believing that a person has contravened a requirement established under this Act or has committed an offence under the law of any jurisdiction that is relevant to the person's fitness to be licensed; and
- (b) that, in a building, dwelling, receptacle or place, there is anything related to the contravention or to the person's fitness to be licensed.

Same, entry or access refused

(2) A justice of the peace may also issue a warrant under this section if he or she is satisfied on information under oath that the Superintendent or a person designated by the Superintendent has been refused entry or access to a building, dwelling, receptacle or place.

Application for warrant

(3) The Superintendent or a person designated by the Superintendent may, without notice, apply to a justice of the peace for a warrant under this section.

Powers under warrant

(4) The justice of the peace may issue a warrant under this section and the warrant authorizes the Superintendent or designate to exercise the following powers and such other powers as may be specified in the warrant:

1. To enter or access the building, dwelling, receptacle or place specified in the warrant for the purpose of conducting an inquiry or examination under this Act.
2. To exercise such of the powers described in section 23 as may be specified in the warrant.

Expert help

(5) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the Superintendent or designate.

Restriction re dwelling

(6) The Superintendent or designate shall not enter a place, or part of a place, used as a dwelling unless the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling and he or she authorizes the entry into the dwelling.

Time of execution

(7) Entry or access under a warrant shall be made between 6 a.m. and 9 p.m. unless the warrant specifies otherwise.

Use of force

(8) The Superintendent or designate may call upon police officers for assistance in executing the warrant and may use whatever force is reasonably necessary to execute the warrant.

Expiry of warrant

(9) A warrant shall specify an expiry date, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the warrant for an additional period of no more than 30 days upon application without notice.

Immunity re disclosures

26. A person who gives information or documents to the Tribunal, the Superintendent or any other person acting under the authority of this Act is not liable in any civil action for having done so if the person giving the information or documents was acting in good faith and if the information or documents were relevant to the duties of the Tribunal, Superintendent, designate or other person.

ENFORCEMENT**Compliance order**

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

Proposal re order

(2) The Superintendent may propose to order the person 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.

Notice of proposal

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

Hearing requested

(4) If the person requests a hearing and makes the request in the prescribed manner within 15 days after receiving notice of the proposal, the Tribunal shall hold a hearing.

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.

Hearing not requested

(6) If the person does not request a hearing or does not make the request in the prescribed manner within 15 days after receiving notice of the proposal, the Superintendent may carry out the proposal.

Interim order

(7) If, in the opinion of the Superintendent, the interests of the public may be adversely affected by any delay in the issuance of 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.

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.

Same

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

Extension of interim order

(10) If the person requests a hearing about the proposal to make the permanent order, the Superintendent may extend the interim order until the proposal is finally determined.

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 subsection (8), (9) and (10).

Amendment of permanent order

(12) The Superintendent may amend a permanent order and, if the Superintendent proposes to amend it, subsections (2) to (6) apply with respect to the proposal.

Revocation of permanent order

(13) The Superintendent may revoke a permanent order.

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.

Order to freeze assets and trust funds

Circumstances

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

1. The Superintendent has notified, or is about to notify, a person (the “designated person”) under subsection 19 (2) that the Superintendent proposes to refuse the designated person’s application for a licence or application to renew a licence or that the Superintendent proposes to suspend or revoke the designated person’s licence without his, her or its consent.
2. The Superintendent has, or is about to, make an interim order under subsection 16 (3) or 17 (3) suspending the designated person’s licence.
3. The Superintendent has notified, or is about to notify, the designated person under subsection 27 (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 27 (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 or a director, officer or employee of the designated person.
6. The Superintendent believes that proceedings in relation to a contravention of any other Act have been or are about to be instituted against the designated person in connection with or arising out of activities for which a licence under this Act is required.

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.

Order to third party

(3) The Superintendent may order a person who holds assets or trust funds on deposit or controls them for or on behalf of the designated person to hold them.

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 who has them on deposit or controls them.

Order to have assets, etc., in trust

(5) The Superintendent may order the designated person to hold assets or trust funds of another person in trust for the person entitled to them.

Orders given to financial institution

(6) An order given to a financial institution, other than an insurer, applies only with respect to the offices and branches named in the order.

Effect

(7) An order takes effect immediately and may be made subject to such conditions as the Superintendent considers appropriate.

Release of assets

(8) The Superintendent may consent to the release of any particular asset or trust fund from the order or may wholly revoke the order.

Effect of giving security

(9) 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 prescribed form of security.

Same

(10) If an order is made under subsection (3), (4) or (5) before the designated person gives the Superintendent the security described in subsection (9), the Superintendent shall revoke the order.

Notice in land registry office

(11) The Superintendent may register in the appropriate land registry office a notice that an order has been made under this section and that the order may affect land

belonging to the person referred to in the notice; and 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.

Application to court

(12) A person in receipt of an order under this section may apply to the Superior Court of Justice if the person is in doubt about whether the order applies to a particular asset or trust fund.

Same

(13) A person who claims an interest in an asset or a trust fund that is subject to an order under this section may apply to the Superior Court of Justice for a decision concerning the disposition of the asset or trust fund.

Same, by Superintendent

(14) 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 (11), and the application may be made without notice to any other person.

Court order

(15) On an application under subsection (12), (13) or (14), the court may make any order the court considers appropriate in the circumstances.

Application to Tribunal

(16) A designated person in respect of whom an order under this section is made may apply to the Tribunal for cancellation of the order in whole or in part and the Tribunal may, by order, do so if the Tribunal is satisfied that the order or the part of the order is not required in the public interest.

Same

(17) A person who has an interest in land affected by a notice filed under subsection (11) 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 if the Tribunal is satisfied that registration of the notice or the part of the notice is not required to protect other persons having an interest in the land.

Appeal

(18) A party to a proceeding before the Tribunal under subsection (16) or (17) may appeal the order of the Tribunal to the Divisional Court.

Appointment of receiver, etc.

29. (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 person (the “designated person”) who the Superintendent believes, on reasonable grounds, is or was required to be licensed.

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.

Application without notice

(3) The court may make an order on an application without notice, but the period of the appointment shall not exceed 15 days.

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.

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.

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; and when the appointee is discharged by the court, the directors become entitled to exercise those powers once again.

Fees and expenses

(7) The appointee's fees and expenses are in the discretion of the court.

Variation or discharge of order

(8) The court may vary or discharge an order made under this section.

General administrative penalties

30. (1) This section applies if the Superintendent is satisfied that a person is contravening or has contravened a requirement established under this Act, other than a requirement described in subsection 22 (1), (2) or (3).

Amount of penalty

(2) An administrative penalty for a contravention may be imposed in accordance with the regulations and shall not exceed \$25,000 for a contravention by a person who is, or is required to be, licensed as a mortgage brokerage or a mortgage administrator and \$10,000 for a contravention by a person who is, or is required to be, licensed as a mortgage broker or agent.

Proposal to impose penalty

(3) If the Superintendent proposes to impose an administrative penalty on a person for a contravention, the Superintendent shall give written notice of the proposal to the person, including the details of contravention, the amount of the penalty and the payment requirements; the Superintendent shall also inform the person that he, she or it can request

a hearing by the Tribunal about the proposal and shall advise the person about the process for requesting a hearing.

Limitation

(4) The Superintendent shall not make a proposal more than two years after the later of the day on which the contravention occurred or the day on which the Superintendent became aware of the contravention.

Hearing requested

(5) If the person requests a hearing and makes the request in the prescribed manner within 15 days after receiving notice of the proposal, the Tribunal shall hold a hearing.

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.

Hearing not requested

(7) If the person does not request a hearing or does not make the request within the prescribed period or in the prescribed manner, the Superintendent may, by order, carry out the proposal.

Effect of paying penalty

(9) If the person pays the administrative penalty in accordance with the terms of the order, the person cannot be charged with an offence under this Act in respect of the same contravention.

Enforcement of administrative penalties

31. (1) If a person fails to pay an administrative penalty imposed under section 22 or 30 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.

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.

OFFENCES

Prohibition against obstruction

32. (1) No person shall hinder or obstruct a designate in the performance of his or her duties under this Act.

Same

(2) No person shall withhold from a designate or conceal, alter or destroy anything relevant to an examination under this Act.

Prohibition re false or misleading information

33. (1) No person shall give false or misleading information to the Superintendent or a designate in respect of any matter related to this Act or the regulations.

Same

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

Prohibition against reprisals

34. No person shall take adverse employment action against any employee of any person because the employee, acting in good faith, has given information or documents to the Tribunal, the Superintendent, a designate or any other person acting under the authority of this Act.

Prohibition against unfair or deceptive acts or practices

35. (1) No person shall engage in any unfair or deceptive act or practice with respect to dealing in mortgages in Ontario, trading in mortgages in Ontario, acting as a mortgage lender in Ontario or administering a mortgage in Ontario.

Definition

(2) For the purposes of this section,

“unfair or deceptive act or practice” means an activity or failure to act that is prescribed as an unfair or deceptive act or practice.

List of offences

36. (1) Every person who contravenes any of the following provisions of this Act is guilty of an offence:

1. Subsections 2 (2), (3) and (4) (Dealing in mortgages).
2. Subsections 3 (2), (3) and (4) (Trading in mortgages).
3. Subsections 4 (2) and (3) (Carrying on business as a mortgage lender).
4. Subsections 5 (2) and (3) (Carrying on business as a mortgage administrator).
5. Subsection 23 (5) (Inquiries and examinations).
6. Subsection 32 (1) or (2) (Prohibition against obstruction).
7. Subsection 33 (1) or (2) (Prohibition re false or misleading information).
8. Section 34 (Prohibition against reprisals).
9. Subsection 35 (1) (Prohibition against unfair or deceptive acts or practices).

Offence re regulation

(2) Every person who contravenes a provision of a regulation is guilty of an offence.

Offence re orders

(3) Every person who fails to comply with an order made under this Act is guilty of an offence.

Liability of directors and officers

(4) If a corporation commits an offence, 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 a party to and guilty of the offence and on conviction is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted and convicted.

Limitation

(5) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first come to the attention of the Superintendent.

Penalties for offences**For an individual**

37. (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.

For a corporation

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

For a partnership or sole proprietorship

(3) Despite subsection (1), if an individual is carrying on business as partner in a partnership or as a sole proprietorship and if the partnership or sole proprietorship has, or is required to have, a brokerage licence or a mortgage administrator's licence, the individual is liable to the penalties described in subsection (2) if he or she is convicted of an offence under this Act relating to the powers or duties of the brokerage or mortgage administrator, as the case may be.

Additional order for compensation or restitution

38. (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.

Civil remedy

(2) 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.

DUTY TO DISCLOSE THE COST OF BORROWING

Required disclosure

39. (1) A mortgage broker or agent shall disclose to each borrower the cost of borrowing and any other information prescribed for the purposes of this section.

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.

Additional disclosure – term mortgages

40. A mortgage broker or agent shall disclose the following to a borrower with respect to a mortgage 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 prescribed by the regulations for the purposes of this section.
8. Any other information prescribed for the purposes of this section.

Additional disclosure – other mortgages

41. (1) A mortgage broker or agent shall disclose the following to a person if there is an arrangement to enter into a loan secured by a mortgage with the person in respect of which section 40 does not apply:

1. Particulars of any charges or penalties to be imposed on the person if he or she fails to pay an amount in accordance with the arrangement.
2. Particulars of any charges for which the person 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 person prescribed for the purposes of this section.
5. Any other information prescribed for the purposes of this section.

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.

Statement re mortgage renewal

42. The mortgage broker or agent shall disclose to the borrower such information respecting renewal of the mortgage as is prescribed.

Disclosure in advertising

43. No person 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 the information that may be required by the regulations and is in the form and manner that may be prescribed.

Disclosure on behalf of other persons

44. Subject to the regulations, sections 39 to 42 and the regulations under those sections do not apply to a mortgage broker or agent where one of the persons set out in Column 1 of the following Table, acting as a lender, authorizes the mortgage broker or agent, or the brokerage, to provide a disclosure statement on the person's behalf, that disclosure statement meets the disclosure requirements under the legislation set out in Column 2 of

the Table, opposite to that person, and the mortgage broker or agent, or the brokerage, does so:

TABLE

COLUMN 1	COLUMN 2
A bank or authorized foreign bank within the meaning of section 2 of the <i>Bank Act</i> (Canada)	<i>Bank Act</i> (Canada)
A credit union or caisse populaire to which the <i>Credit Unions and Caisses Populaires Act, 1994</i> applies or a league within the meaning of that Act	<i>Credit Unions and Caisses Populaires Act, 1994</i>
An insurer licensed under the <i>Insurance Act</i>	<i>Insurance Act</i>
A corporation registered under the <i>Loan and Trust Corporations Act</i>	<i>Loan and Trust Corporations Act</i>
A retail association as defined under the <i>Cooperative Credit Associations Act</i> (Canada)	<i>Cooperative Credit Associations Act</i> (Canada)
Another person licensed under this Act	This Act

Regulations re cost of borrowing

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

- (a) prescribing, for the purposes of the definition of the “cost of borrowing” in subsection 1 (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 39;
- (c) prescribing the manner of calculating the cost of borrowing for the purposes of section 39;
- (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 39;
- (e) prescribing the manner of calculating any rebate referred to in paragraph 4 of section 40;
- (f) prescribing changes for the purposes of paragraph 6 of section 40 and paragraph 3 of subsection 41 (1);
- (g) prescribing rights and obligations of borrowers for the purposes of paragraph 7 of section 40 and paragraph 4 of subsection 41 (1);
- (h) prescribing information that must be disclosed under paragraph 8 of section 40 and paragraph 5 of subsection 41 (1);
- (i) prescribing information for the purposes of section 42;

- (j) prescribing matters for the purposes of section 43 and respecting the form, manner and content of advertisements for the purposes of section 43;
- (k) prescribing the time, manner and form of any disclosure required under sections 40 to 42;
- (l) prescribing classes of mortgages in respect of which some or all of the requirements of sections 39 to 42 do not apply;
- (m) prohibiting the imposition by a brokerage who is the lender of any charge or penalty referred to in section 40 or 41;
- (n) governing the nature and amount of any charge or penalty referred to in section 40 or 41 that may be imposed by a brokerage who is the lender, including but not limited to,
 - (i) regulations providing that such a charge or penalty shall not exceed an amount prescribed in the regulation, and
 - (ii) regulations 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;
- (o) respecting information to be disclosed under the circumstances set out in section 42 and the form and manner of disclosing that information;
- (p) respecting any other matter or thing that is necessary to carry out the purposes of sections 39 to 42.

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 subsection 1 (1).

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 or of lenders set out in the regulation.

GENERAL

Approved methods of delivering information and documents

46. (1) Any information or document to be given to a person under this Act must be given to the person in writing and may be delivered personally, sent by registered mail or sent by any other method that permits the sender to prove that the information or document was received by the person.

Deemed receipt

(2) If information or a document is sent by registered mail to the addressee's most recent address as set out in the records maintained by the Superintendent, it shall be deemed to have been received by the addressee on the third day after mailing, unless the addressee establishes that he, she or it, acting in good faith, did not receive it until a later date because of an absence, illness or other cause beyond the addressee's control.

Matters of evidence

47. A copy of a document or record certified by the Superintendent or a person designated by the Superintendent to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Joint and several liability

48. (1) If a licence is issued to a partnership, the partners are jointly and severally liable to comply with all conditions in the licence.

Same

(2) If an order is issued to a partnership, the partners are jointly and severally liable to comply with all requirements of the order.

Fees

49. The Minister of Finance may establish fees that are payable under this Act with respect to licensing and other administrative matters.

Forms

50. (1) The Superintendent may approve the use of forms for any purpose under this Act.

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.

Regulations, general

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

- (a) 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) establishing classes of licences and governing the requirements relating to each class of licence;
- (c) governing the issuance, amendment, renewal, suspension, revocation and surrender of licences;
- (d) governing the public register of licences;

- (e) governing the provision of information and documents to the Superintendent by licensees;
- (f) governing proposals by the Superintendent that are referred to in sections 19, 27 and 30 with respect to licences;
- (g) governing the administrative penalties that may be imposed under section 22 and those that may be imposed under section 30;
- (h) providing for transitional matters relating to the requirements to be satisfied for issuance of licences.

Classes of persons

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

Exemptions, etc.

(3) A regulation may exempt a class from a specified requirement imposed by the Act or a regulation or provide that a specified provision of the Act or a regulation does not apply to the class.

Administrative penalties

(4) Without limiting the generality of clause (1) (g) and subsection 22 (3), a regulation governing the administrative penalties referred to in subsection 22 (3) may,

- (a) establish different fines or ranges of fines for different types of contraventions and for different classes of licensees and persons;
- (b) authorize a fine to be levied for each day or part of a day on which a contravention continues;
- (c) authorize higher fines for a second or subsequent contravention by a person;
- (d) require that a fine be paid before a specified deadline;
- (e) authorize the imposition of late payment fees respecting fines that are not paid before the specified deadline;
- (f) establish the maximum cumulative fine payable in respect of a contravention or in respect of contraventions during a specified period.

VI. Consultation Draft — Licensing Regulations

CONSULTATION DRAFT REGULATION

under the

MORTGAGE BROKERAGES, MORTGAGE LENDERS AND MORTGAGE ADMINISTRATORS ACT *A CONSULTATION DRAFT*

MORTGAGE BROKERAGES: THE LICENSING PROCESS

REQUIREMENTS FOR A BROKERAGE LICENCE

Corporations

1. (1) A corporation is eligible to have a brokerage licence if all of the following requirements are satisfied:

1. It must be incorporated under an Act of any jurisdiction in Canada.
2. It must have a mailing address in Ontario that is suitable to permit service by registered mail.
3. It must have errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it must have some other form of financial guarantee in a form approved by the Superintendent for such losses. The insurance or guarantee must be sufficient to pay a minimum of \$500,000 per claim and \$1 million for all claims made in any policy year against the corporation and against each mortgage broker and agent authorized to deal in mortgages or trade in mortgages on behalf of the corporation at any time during the year.

(2) A corporation is not suitable to have a brokerage licence if any of the following circumstances apply:

1. Having regard to its financial position, the corporation cannot reasonably be expected to be financially responsible in the conduct of its business.
2. 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 law and with integrity and honesty.

3. The corporation is carrying on activities that will contravene the Act or the regulations if the corporation is licensed.
4. 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.

Partnerships

2. (1) A partnership is eligible to have a brokerage licence if all of the following requirements are satisfied:

1. Every partner must be a resident of Canada.
2. The partnership must have a mailing address in Ontario that is suitable to permit service by registered mail.
3. It must have errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it must have some other form of financial guarantee in a form approved by the Superintendent for such losses. The insurance or guarantee must be sufficient to pay a minimum of \$500,000 per claim and \$1 million for all claims made in any policy year against the partnership and against each mortgage broker and agent authorized to deal in mortgages or trade in mortgages on behalf of the partnership at any time during the year.

(2) A partnership is not suitable to have a brokerage licence if any of the following circumstances apply:

1. Having regard to its financial position, the partnership cannot reasonably be expected to be financially responsible in the conduct of its business.
2. 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 law and with integrity and honesty.
3. The partnership or any partner is carrying on activities that will contravene the Act or the regulations if the partnership is licensed.
4. A partner has made a false statement or has provided false information to the Superintendent with respect to the application for a licence.

Sole proprietorships

3. (1) A sole proprietorship is eligible to have a brokerage licence if all of the following requirements are satisfied:

1. The proprietor must be a resident of Canada.

2. The sole proprietorship must have a mailing address in Ontario that is suitable to permit service by registered mail.
3. It must have errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it must have some other form of financial guarantee in a form approved by the Superintendent for such losses. The insurance or guarantee must be sufficient to pay a minimum of \$500,000 per claim and \$1 million for all claims made in any policy year against the sole proprietorship and against each mortgage broker and agent authorized to deal in mortgages or trade in mortgages on behalf of the sole proprietorship at any time during the year.

(2) A sole proprietorship is not suitable to have a brokerage licence if any of the following circumstances apply:

1. Having regard to its financial position, the sole proprietorship cannot reasonably be expected to be financially responsible in the conduct of its business.
2. 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 law and with integrity and honesty.
3. The sole proprietorship or the proprietor is carrying on activities that will contravene the Act or the regulations if the sole proprietorship is licensed.
4. The proprietor has made a false statement or has provided false information to the Superintendent with respect to the application for a licence.

CONSULTATION DRAFT REGULATION

under the

MORTGAGE BROKERAGES, MORTGAGE LENDERS AND MORTGAGE ADMINISTRATORS ACT *A CONSULTATION DRAFT*

MORTGAGE ADMINISTRATORS: THE LICENSING PROCESS

REQUIREMENTS FOR A MORTGAGE ADMINISTRATOR'S LICENCE

Corporations

1. (1) A corporation is eligible to have a mortgage administrator's licence if all of the following requirements are satisfied:

1. It must be incorporated under an Act of any jurisdiction in Canada.
2. It must have a mailing address in Ontario that is suitable to permit service by registered mail.
3. It must have errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it must have some other form of financial guarantee in a form approved by the Superintendent for such losses. The insurance or guarantee must be sufficient to pay a minimum of \$500,000 per claim and \$1 million for all claims made in any policy year against the corporation.
4. It must have an irrevocable line of credit with a financial institution, unencumbered assets or some other form of financial guarantee in a form approved by the Superintendent, in an amount equal to the corporation's operating costs for three months as determined from the corporation's most recent audited financial statements or by such other means approved by the Superintendent.

(2) A corporation is not suitable to have a mortgage administrator's licence if any of the following circumstances apply:

1. Having regard to its financial position, the corporation cannot reasonably be expected to be financially responsible in the conduct of its business.
2. 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 law and with integrity and honesty.
3. The corporation is carrying on activities that will contravene the Act or the regulations if the corporation is licensed.

4. 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.

Partnerships

2. (1) A partnership is eligible to have a mortgage administrator's licence if all of the following requirements are satisfied:

1. Every partner must be a resident of Canada.
2. The partnership must have a mailing address in Ontario that is suitable to permit service by registered mail.
3. It must have errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it must have some other form of financial guarantee in a form approved by the Superintendent for such losses. The insurance or guarantee must be sufficient to pay a minimum of \$500,000 per claim and \$1 million for all claims made in any policy year against the partnership.
4. It must have an irrevocable line of credit with a financial institution, unencumbered assets or some other form of financial guarantee in a form approved by the Superintendent, in an amount equal to the partnership's operating costs for three months as determined from the partnership's most recent audited financial statements or by such other means approved by the Superintendent.

(2) A partnership is not suitable to have a mortgage administrator's licence if any of the following circumstances apply:

1. Having regard to its financial position, the partnership cannot reasonably be expected to be financially responsible in the conduct of its business.
2. 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 law and with integrity and honesty.
3. The partnership or any partner is carrying on activities that will contravene the Act or the regulations if the partnership is licensed.
4. A partner has made a false statement or has provided false information to the Superintendent with respect to the application for a licence.

Sole proprietorships

3. (1) A sole proprietorship is eligible to have a mortgage administrator's licence if all of the following requirements are satisfied:

1. The proprietor must be a resident of Canada.
2. The sole proprietorship must have a mailing address in Ontario that is suitable to permit service by registered mail.
3. It must have errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or it must have some other form of financial guarantee in a form approved by the Superintendent for such losses. The insurance or guarantee must be sufficient to pay a minimum of \$500,000 per claim and \$1 million for all claims made in any policy year against the sole proprietorship.
4. It must have an irrevocable line of credit with a financial institution, unencumbered assets or some other form of financial guarantee in a form approved by the Superintendent, in an amount equal to the sole proprietorship's operating costs for three months as determined from the sole proprietorship's most recent audited financial statements or by such other means approved by the Superintendent.

(2) A sole proprietorship is not suitable to have a mortgage administrator's licence if any of the following circumstances apply:

1. Having regard to its financial position, the sole proprietorship cannot reasonably be expected to be financially responsible in the conduct of its business.
2. 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 law and with integrity and honesty.
3. The sole proprietorship or the proprietor is carrying on activities that will contravene the Act or the regulations if the sole proprietorship is licensed.
4. The proprietor has made a false statement or has provided false information to the Superintendent with respect to the application for a licence.

CONSULTATION DRAFT REGULATION
under the
**MORTGAGE BROKERAGES, MORTGAGE LENDERS
AND MORTGAGE ADMINISTRATORS ACT**
A CONSULTATION DRAFT
**MORTGAGE BROKERS AND AGENTS:
THE LICENSING PROCESS**

INTERPRETATION

Definitions

1. In this Regulation,

“affiliate”, with respect to a corporation, has the same meaning as in the *Business Corporations Act*;

“approved program of education” means an education program approved by the Superintendent;

“effective date” means the day on which subsection 2 (4) of the Act comes into force;

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

1. A material business activity of the corporation involves,
 - i. purchasing, discounting or otherwise acquiring promissory notes, acceptances, accounts receivable, bills of sale, chattel mortgages, conditional sales contracts, drafts and other obligations representing part or all of the sales price of merchandise, or services,
 - ii. factoring or purchasing and leasing personal property as part of a hire purchase or similar business, or
 - iii. making secured and unsecured loans.
2. The shares of the corporation, or a corporation with which the corporation 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).

REQUIREMENTS FOR A MORTGAGE BROKER'S LICENCE

Requirements

2. (1) An individual is eligible to have a mortgage broker's licence if all of the following requirements are satisfied:

1. The individual must be at least 18 years old and be a resident of Canada.
2. He or she must have a mailing address that is suitable to permit service by registered mail.
3. He or she must be authorized by a brokerage to deal in mortgages or trade in mortgages on its behalf.
4. He or she must have successfully completed an approved program of education within three years before applying for the licence.
5. If the individual applies for the licence more than 24 months after the effective date, he or she must have been licensed as a mortgage agent for at least 24 months of the 36 months immediately before the date he or she applies for the mortgage broker's licence.

(2) An individual shall be deemed to satisfy the education requirement of paragraph 4 of subsection (1) or the experience requirement of paragraph 5 of subsection (1), or both, if the Superintendent is satisfied that the individual has a combination of education and experience that is equivalent to the requirement or requirements.

Transition

3. (1) An individual shall be deemed to satisfy the education requirement of paragraph 4 of subsection 2 (1) if all of the following circumstances apply:

1. The individual makes his or her first application for a mortgage broker's licence before the first anniversary of the effective date.
2. The individual was, immediately before the effective date,
 - i. a director or officer of a corporation registered under the *Mortgage Brokers Act*,
 - ii. a partner in a partnership registered under the *Mortgage Brokers Act*,
 - iii. the proprietor of a sole proprietorship registered under the *Mortgage Brokers Act*, or
 - iv. employed or authorized to arrange or deal in mortgages on behalf of a person who was registered under the *Mortgage Brokers Act*,

and the Superintendent had been notified under the *Mortgage Brokers Act* before the effective date of the individual's status as described in subparagraph i, ii, iii or iv.

3. The individual,
 - i. has successfully completed one of the following courses:
 - A. Financial Services Underwriting Program offered by Seneca College after 1998;
 - B. Mortgage Brokers Program offered by Seneca College in 1994, 1995, 1996, 1997 and 1998;
 - C. Education course sponsored by the Ontario Mortgage Brokers Association before 1995, or
 - ii. was, immediately before the effective date, exempt under subsection 4 (3), (4) or (7) of Regulation 798 of the Revised Regulations of Ontario, 1990 (General) made under the *Mortgage Brokers Act* from the requirement in subsection 4 (1) of that regulation to have successfully completed an educational program approved by the Superintendent.

(2) An individual shall be deemed to satisfy the education requirement of paragraph 4 of subsection 2 (1) if both of the following circumstances apply:

1. The individual applies for a mortgage broker's licence before the first anniversary of the effective date.
2. The individual was registered as a real estate broker under the *Real Estate and Business Brokers Act, 2002* immediately before the effective date.

Non-suitability

4. An individual is not suitable to have a mortgage broker's licence if any of the following circumstances apply:

1. The individual's past conduct affords reasonable grounds for belief that he or she will not carry on business in accordance with law and integrity and honesty.
2. He or she is carrying on activities that will contravene the Act or the regulations if he or she is licensed.
3. He or she has made a false statement or has provided false information to the Superintendent with respect to the application for a licence.

REQUIREMENTS FOR AN AGENT'S LICENCE

Requirements

5. (1) An individual is eligible to have an agent's licence if all of the following requirements are satisfied:

1. The individual must be at least 18 years old and be a resident of Canada.
2. He or she must have a mailing address that is suitable to permit service by registered mail.
3. He or she must be authorized by a brokerage to deal in mortgages or trade in mortgages on its behalf.
4. He or she must have successfully completed an approved program of education within two years before applying for the licence.

(2) An individual shall be deemed to satisfy the education requirement of paragraph 4 of subsection (1) if the Superintendent is satisfied that the individual has a combination of education and experience that is equivalent to it.

Education exemption

6. (1) An individual is exempt from satisfying the education requirement of paragraph 4 of subsection 5 (1) if both of the following circumstances apply:

1. The individual is authorized to deal in mortgages on behalf of a brokerage that,
 - i. is licensed to carry on business as a mortgage lender,
 - ii. is a finance company, and
 - iii. is, or is an affiliate of, the lender for all the mortgages that brokers or agents authorized to deal in mortgages on behalf of the brokerage deal in.
2. The Superintendent is satisfied that the brokerage will provide the individual with such training as the Superintendent considers adequate.

(2) An agent's licence issued to an individual who is exempt from the education requirement of paragraph 4 of subsection 5 (1) by virtue of subsection (1) shall not be amended to replace the name of the brokerage on whose behalf the individual is authorized to deal in mortgages or trade in mortgages with the name of another brokerage unless,

- (a) the individual successfully completes an approved program of education required by paragraph 4 of subsection 5 (1); or

(b) subsection (1) applies to the individual in respect of the other brokerage as well.

(3) An individual shall be deemed to satisfy the education requirement of clause (2) (a) if the Superintendent is satisfied that the individual has a combination of education and experience that is equivalent to it.

Transition

7. (1) An individual shall be deemed to satisfy the education requirement of paragraph 4 of subsection 5 (1) if all of the following circumstances apply:

1. The individual makes his or her first application for an agent's licence before the first anniversary of the effective date.
2. The individual was, immediately before the effective date, employed or authorized to arrange or deal in mortgages on behalf of a person who was registered under the *Mortgage Brokers Act* and the Superintendent had been notified under the *Mortgage Brokers Act* before the effective date that the individual was so employed or authorized.
3. The individual has successfully completed one of the following courses:
 - i. Introduction to the Canadian Mortgage Industry offered by Seneca College, Conestoga College or Durham College after 2001.
 - ii. Introduction to the Canadian Mortgage Industry offered by Fanshawe College after 2002.
 - iii. Introduction to the Canadian Mortgage Industry offered by Sheridan College after 2003.
 - iv. Mortgage Brokering for Agents offered by Georgian College after 2003.
 - v. Mortgage Agent offered by Algonquin College after 2003.
 - vi. Mortgage Brokering – Principles and Practices for Agents offered by Sheridan College in 2003 and 2004.
 - vii. Mortgage Brokering I offered by Seneca College after 1994 and before 2003.
 - viii. Mortgage Brokering 101 offered by Conestoga College in 2000, 2001 and 2002.
 - ix. Mortgage Brokering I offered by Durham College in 2001 and 2002.

(2) An individual shall be deemed to satisfy the education requirement of paragraph 4 of subsection 5 (1) if both of the following circumstances apply:

1. The individual applies for an agent's licence before the first anniversary of the effective date.
2. The individual was employed or authorized to deal in mortgages on behalf of a person who was registered under the *Mortgage Brokers Act* for at least 24 of the 36 months immediately before the effective date, and the Superintendent had been notified under the *Mortgage Brokers Act* before the effective date that the individual was so employed or authorized.

(3) Subject to subsection (4), an individual shall be deemed to satisfy the education requirement of paragraph 4 of subsection 5 (1) if both of the following circumstances apply:

1. The individual makes his or her first application for an agent's licence before the first anniversary of the effective date.
2. The individual was, immediately before the effective date, employed or authorized to arrange or deal in mortgages on behalf of a person who was registered under the *Mortgage Brokers Act*, and the Superintendent had been notified under the *Mortgage Brokers Act* before the effective date that the individual was so employed or authorized.

(4) An agent's licence issued to an individual who is qualified by virtue of subsection (3) shall not be renewed unless the individual successfully completes an approved program of education required by paragraph 4 of subsection 5 (1) before the expiry date of the licence.

Non-suitability

8. An individual is not suitable to have an agent's licence if any of the following circumstances apply:

1. The individual's past conduct affords reasonable grounds for belief that he or she will not carry on business in accordance with law and integrity and honesty.
2. He or she is carrying on activities that will contravene the Act or the regulations if he or she is licensed.
3. He or she has made a false statement or has provided false information to the Superintendent with respect to the application for a licence.

*This Consultation Draft is intended to facilitate
constructive dialogue concerning its contents.*

*Note that it will only become law if the Legislative
Assembly passes the legislation.*

