
Mortgage Brokerages, Lenders and Administrators Act, 2006

Additional Draft Regulations for Consultation

*Proposed by the
Ministry of Finance
January, 2008*

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Ministry of Finance*

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

Note that the draft regulations will become law only if the Lieutenant Governor in Council approves them.

JANUARY, 2008

Dear Stakeholder:

I am pleased to enclose for your review and comment a copy of *Draft Regulations for Consultation* proposed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*. The new Act will be fully proclaimed on July 1, 2008. The proposed new regulations and proposed amendments to existing regulations will support the implementation of the new regulatory framework.

These proposals are the result of on-going public consultations that were initially launched in June 2004. It has been a successful consultation process and I once again look forward to your input. Your views are important and will assist the government in finalizing the 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. Your input is appreciated and will be taken into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wayne Arthurs', written in a cursive style.

Wayne Arthurs
Parliamentary Assistant to the
Minister of Finance

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I. INVITATION FOR COMMENTS

The Ministry of Finance is seeking your views on draft regulations under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.

Your views are important and will assist the Ministry in finalizing these regulatory proposals. Interested parties are invited to make written submissions by **January 25th, 2008**.

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

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This consultation paper can be reviewed online at
<http://www.fin.gov.on.ca/english/consultations/mortgagebrokers/MBLAA2008.html>

A copy of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* can be obtained online at www.e-laws.gov.on.ca

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 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.

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 Luba Mycak by mail, fax or e-mail as indicated above.

II. SUMMARY OF PROPOSALS

I. General

On July 1, 2008, the *Mortgage Brokerages, Lenders and Administrators Act, 2006* will come into force and the *Mortgage Brokers Act* will be repealed. Prior to that, on March 1, 2008, selected provisions of the new Act will come into force to allow brokerages, administrators, brokers and agents to apply for licensing under the new Act. Seven regulations under the new Act have already been approved by the government. The approved regulations are:

- Exemptions From The Requirements To Be Licensed (O. Reg. 407/07)
- Mortgage Administrators: Licensing (O. Reg. 411/07)
- Mortgage Brokerages: Licensing (O. Reg. 408/07)
- Mortgage Brokers and Agents: Licensing (O. Reg. 409/07)
- Principal Brokers: Eligibility, Powers and Duties (O. Reg. 410/07)
- Regulated Activities: Additional Prescribed Activities (O. Reg. 406/07)
- Reporting Requirements for Licensees (O. Reg. 412/07)

Selected technical amendments to some of these approved regulations are being considered and are described in greater detail below.

As well, additional new regulations will be required to support the proclamation of the Act on July 1, 2008. The following are the proposed new regulations:

- Mortgage Brokerages: Standards of Practice
- Mortgage Administrators: Standards of Practice
- Mortgage Brokers and Agents: Standards of Practice
- Administrative Penalties
- Cost of Borrowing and Disclosure to Borrowers
- Document Delivery Rules
- General

A brief summary of the proposed new or amended regulations is provided in this consultation package. Readers are encouraged to focus their attention on the actual wording of the consultation draft regulations and not to rely only on this summary.

Please note that the content, structure and form of the draft regulations are subject to change as a result of the consultation process and as a result of review by the government. These proposals would only come into effect if the regulations are approved by the government.

2. Mortgage Brokerages: Standards of Practice

The Ministry consulted on a draft regulation dealing with the standards of practice for mortgage brokerages in November, 2006. The revised draft regulation has been reordered and restructured for greater clarity. A table of concordance between the current draft and the one previously consulted on is included at the end of this document.

The revised draft regulation contains a new requirement for a brokerage to disclose the nature of its relationship with borrowers and lenders. The brokerage would disclose information about whether and when it is acting as a representative of the lender but not the borrower, and information about whether and when it is acting for the borrower but not the lender. In addition to this new disclosure requirement which is set out in the draft regulation, the Ministry is seeking your views about whether to require a further disclosure – a disclosure of information about whether and when the brokerage is acting for both the borrower and the lender.

As well, a brokerage would be required to disclose to a prospective borrower the name of any lender who is a major customer of the brokerage and to disclose the number of lenders on whose behalf the brokerage acted as a representative during the preceding year.

The requirements regarding the administration and reconciliation of trust accounts have also been clarified.

3. Mortgage Administrators: Standards of Practice

This draft regulation sets out the standards of practice that a mortgage administrator must follow. These standards are based on those applicable to mortgage brokerages and are tailored to the activities undertaken by mortgage administrators.

4. Mortgage Brokers and Agents: Standards of Practice

Mortgage brokerages will be required by law to ensure that every mortgage broker or agent who is authorized to deal on their behalf complies with the requirements under the Act, including the brokerage's standards of practice. Consequently, the mortgage brokers and agents standards of practice do not reiterate those requirements. The draft regulation would require brokers and agents to disclose their licensee name and licence number in public relations materials, provide licensee information on request, and maintain a mailing address and an e-mail address. It also proposes to prohibit mortgage brokers or agents from receiving any fee or remuneration for dealing or trading in mortgages from anyone other than the single brokerage on whose behalf they are authorized to deal or trade in mortgages.

5. Administrative Penalties

This draft regulation sets out rules regarding the general and summary administrative penalties found in sections 39 and 40 respectively of the Act.

6. Cost of Borrowing and Disclosure to Borrowers

This draft regulation describes how the cost of borrowing is to be calculated and disclosed. It also proposes mandatory disclosure requirements and rules about advertisements related to the cost of borrowing. The draft regulation reflects the federal-provincial-territorial harmonization agreement that was created through a process of public consultations and intergovernmental negotiation. The proposals related to mortgage brokers were previously consulted on by the Ministry of Finance in July 2005.

7. Document Delivery Rules

This draft regulation sets out how information and documents are to be delivered or served by the Superintendent.

8. General

This draft regulation sets out the proposed rules regarding the expiry of interim orders. It also sets out the proposed contents of the public register that must be maintained by the Superintendent under the Act.

9. Proposed amendments to approved regulations

Exemptions from the Requirements to Be Licensed (O.Reg. 407/07)

It is proposed that this regulation be amended to exempt certain corporations established by brokers or agents from the requirement to be licensed as a brokerage if specific conditions are met. This exemption would permit the use of corporations by brokers and agents provided that the existence of the corporation does not impede the ability of the mortgage brokerage, its principal broker or the brokers and agents to comply with their duties under the Act. The conditions for the proposed exemption are set out in detail in the draft amendment and include the following:

- every broker or agent who is an employee or shareholder of the corporation (“member brokers and agents”) would be required to be authorized to deal on behalf of the same mortgage brokerage (“business brokerage”)
- the corporation would be restricted to dealing or trading in mortgages only for

the business brokerage and it would be prohibited from carrying on business as a mortgage lender

- the corporation would be prohibited from representing to the public that it carries on the business of dealing or trading in mortgages or carries on business as a mortgage lender
- the member brokers and agents would not be permitted to receive fees or remuneration from any person or entity other than the business brokerage
- a majority of the corporation's directors would be required to be member brokers and agents
- written agreements would be required to be in place between the business brokerage and the corporation, and between the business brokerage and each broker or agent

Mortgage Administrators: Licensing (O.Reg.411/07)

The proposed amendment would require applicants to have a trust account as a condition of licensing. As well, the amendment includes proposed criteria for the Superintendent to consider when determining whether the surrender of a mortgage administrator's licence is not in the public interest.

Mortgage Brokerages: Licensing (O. Reg. 409/07)

The proposed amendment provides criteria for the Superintendent to consider when determining whether the surrender of a brokerage licence is not in the public interest.

Mortgage Brokers and Agents: Licensing (O. Reg. 408/07)

Section 15(3)(c) of this approved regulation provides a transitional exemption from the agent education requirements in certain cases provided that the person undertakes as a condition of their licence to successfully complete an approved education program before July 1, 2010. This means the person would have two years after proclamation of the Act within which to complete the educational program. Now that the review of education requirements has been completed by the Financial Services Commission of Ontario, industry associations have indicated that a two year transitional period is not necessary and have urged the government to reduce the transitional exemption period from two years to one year. The proposed amendment would make this change.

Reporting Requirements for Licensees (O. Reg. 412/07)

The draft regulation would replace the one that has been approved. The proposed replacement regulation contains all of the provisions that are in the previously approved regulation but has been expanded to include reporting obligations related to the filing of an annual information return and financial information, as well as the reporting of changes such as address for service and insurance coverage. The administrative penalties for non-compliance with this regulation are also now included.

III. CONSULTATION DRAFT REGULATIONS

I) MORTGAGE BROKERAGES: STANDARDS OF PRACTICE

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

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INTERPRETATION**Definitions**

1. In this Regulation,

“authorized name” means, in relation to a brokerage, any name in which the brokerage is licensed;

“authorized trust account” means, in relation to a brokerage, its mortgage brokerage trust account established in accordance with section 50;

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

“deemed trust funds” means, in relation to a brokerage, money that is deemed by section 49 to be held in trust by the brokerage;

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

“trade completion date” means, in relation to a mortgage, the earlier of,

- (a) the date on which an investor, or a brokerage on behalf of an investor, enters into an agreement to trade in the mortgage, or

- (b) the date on which the trade in the mortgage is completed.

Designated classes of lenders and investors

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

1. The Crown in right of Ontario, Canada or any province or territory of Canada.
2. A brokerage acting on its own behalf.
3. A financial institution.
4. A corporation that is a subsidiary of a person or entity described in paragraph 1, 2 or 3.
5. A corporation that is an approved lender under the *National Housing Act* (Canada).
6. An administrator or trustee of a registered pension plan within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada).
7. A person or entity who is registered as an adviser or dealer under the *Securities Act* when the person or entity is acting as a principal or as an agent or trustee for accounts that are fully managed by the person or entity.
8. A person or entity who is registered under securities legislation in another province or territory of Canada with a status comparable to that described in paragraph 7 when the person or entity is acting as a principal or as an agent or trustee for accounts that are fully managed by the person or entity.
9. A person or entity, other than an individual, who has net assets of at least \$5 million as reflected in its most recently-prepared financial statements and who provides written confirmation of this to the brokerage, in a form approved by the Superintendent.
10. An individual who, alone or together with his or her spouse, has net assets of at least \$5 million and who provides written confirmation of this to the brokerage, in a form approved by the Superintendent.
11. An individual who, alone or together with his or her spouse, beneficially owns financial assets (being cash, securities within the meaning of the *Securities Act*, the cash surrender value of a life insurance contract, a deposit

or evidence of a deposit) that have an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1 million and who provides written confirmation of this to the brokerage, in a form approved by the Superintendent.

12. An individual whose net income before taxes in each of the two most recent years exceeded \$200,000 or whose net income before taxes in each of those years combined with that of his or her spouse in each of those years exceeded \$300,000, who has a reasonable expectation of exceeding the same net income or combined net income, as the case may be, in the current year and who provides written confirmation of this to the brokerage in a form approved by the Superintendent.
13. A person or entity in respect of which all of the owner or interests, other than the owners of voting securities required by law to be owned by directors, are persons or entities described in paragraphs 1 to 12.

(2) In this section,

“spouse” means spouse as defined in section 29 of the *Family Law Act*.

Duties re syndicated mortgages

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

STANDARDS OF PRACTICE

Standards of practice

4. The requirements set out in this Regulation are prescribed as standards of practice for every brokerage licence that is issued under the Act.

PUBLIC RELATIONS

Use of authorized name

5. A brokerage shall not carry on business in a name other than its authorized name.

Use of name, etc., in public relations materials

6. (1) A brokerage shall disclose its authorized name and its licence number in all of its public relations materials and the name and number must be clearly and prominently disclosed.

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

(3) If, in its public relations materials, a brokerage identifies a broker or agent by name, the brokerage shall use the name in which the broker or agent is licensed and the materials must also disclose his or her licence number.

(4) If, in its public relations materials, a brokerage refers to a broker or agent, the materials must include at least one reference to the broker or agent that includes one of the following titles:

1. When referring to a broker, the title “mortgage broker”, “broker”, “courtier en hypothèques” or “courtier”, an abbreviation of any of those titles or an equivalent title in another language.
2. When referring to an agent, the title “mortgage agent”, “agent” or “agent en hypothèques”, an abbreviation of any of those titles or an equivalent title in another language.

(5) In this section,

“public relations materials” means, in relation to a brokerage,

- (a) any advertisement by the brokerage that is published, circulated or broadcast by any means, or
- (b) any material that a brokerage makes available to the public in connection with its business as a brokerage.

Duty to provide licence information

7. Upon request, a brokerage shall give to a person the licence number of the brokerage and the name and licence number of any broker or agent who is authorized to deal or trade in mortgages on behalf of the brokerage.

Complaints by the public

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

(2) The written response must also tell the person who made the complaint that, if the person is not satisfied with the proposed resolution and if the person believes that

the complaint relates to a contravention of the Act or a regulation, the person may refer the complaint to the Superintendent.

CUSTOMER RELATIONS

Duty to verify borrower's identity

9. (1) A brokerage shall take reasonable steps to verify the identity of each borrower before submitting the borrower's mortgage application to a prospective lender or arranging for a mortgage renewal agreement with a lender, and the brokerage shall advise each lender if it is unable to do so.

(2) Subsection (1) does not apply if the lender is otherwise required by law to verify the borrower's identity.

(3) If the brokerage itself is the prospective lender, the brokerage shall take reasonable steps to verify the identity of each borrower for each mortgage loan that it makes or renews.

Duty to verify lender's identity

10. A brokerage shall take reasonable steps to verify the identify of each mortgage lender before the borrower enters into a mortgage agreement or signs a mortgage instrument or a mortgage renewal agreement, as the case may be, with the lender and the brokerage shall advise the borrower if it is unable to do so.

Duty to verify investor's identity

11. (1) A brokerage shall take reasonable steps to verify the identity of each investor in a trade in mortgages before the trade completion date.

(2) Subsection (1) does not apply with respect to an investor if another brokerage is acting as a representative of the investor in the trade.

Duty re unlawful transactions

12. A brokerage shall not act for a borrower, lender or investor in respect of a mortgage if the brokerage has reasonable grounds to believe that the mortgage, its renewal or the investment in it is unlawful.

Duty re borrower's legal authority

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

Duty re accuracy of mortgage application

14. If a brokerage has reason to doubt the accuracy of information contained in a borrower's mortgage application or in a document submitted in support of an

application, the brokerage shall so advise each prospective lender at the earliest opportunity.

Restriction re tied selling

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

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

Restriction re guarantees

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

Duty to return certain documents

17. (1) A brokerage shall promptly return deeds, instruments or agreements signed by or on behalf of a borrower, lender or investor and any other documents given to the brokerage by the borrower, lender or investor when the brokerage no longer needs the documents in connection with a particular transaction.

(2) A brokerage shall promptly, without charge, return the documents described in subsection (1) to a borrower, lender or investor upon a request made in writing.

INFORMATION ABOUT THE BROKERAGE

Disclosure re role of brokerage

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

1. Information about whether, and when, the brokerage is acting as a representative of the lender but not the borrower.
2. Information about whether, and when, the brokerage is acting as a representative of the borrower but not the lender.

Disclosure re lender as major customer

19. (1) Upon request, a brokerage shall disclose in writing to a prospective borrower the name of the lender, if any, who was a major customer of the brokerage during the previous fiscal year.

(2) For the purposes of subsection (1), a lender is a major customer of a brokerage during a fiscal year if the brokerage arranges mortgages for the lender and those mortgages constitute more than 50 per cent of the total number of mortgages and mortgage renewals completed by the brokerage during that fiscal year.

(3) If the brokerage itself is the mortgage lender for more than 50 per cent of the total number of mortgages and mortgage renewals completed by the brokerage during a fiscal year, the brokerage itself is deemed to have been a major customer of the brokerage during that fiscal year for the purposes of subsection (1).

Disclosure re business relationship with lenders

20. (1) A brokerage shall disclose in writing to a prospective borrower the number of lenders on whose behalf the brokerage acted as a representative during the previous fiscal year.

(2) When there are two or more lenders under one mortgage, they are deemed to be one lender for the purposes of subsection (1).

INFORMATION ABOUT FEES AND OTHER PAYMENTS**Representations re status of payments**

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

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

Fees, etc., payable by the customer

22. (1) A brokerage shall disclose in writing to a borrower, lender or investor, as the case may be, any amounts that will be payable by the borrower, lender or investor to the brokerage for its services or expenses, or the manner in which such amounts will be determined, the manner and time of payment of such amounts and the terms, if any, on which the payments are refundable.

(2) The disclosure must be made at the earliest opportunity and, in any event, before the brokerage provides any services to the borrower, lender or investor or incurs any

expenses on behalf of the borrower, lender or investor for which the brokerage will seek payment from him, her or it.

(3) This section does not apply with respect to a lender or investor, as the case may be, that is another brokerage or a financial institution.

Fees, etc., payable by others

23. (1) A brokerage shall give the following information, in writing, to a borrower in connection with a mortgage or renewal:

1. Whether the brokerage has received, may receive or will receive a fee or other remuneration, directly or indirectly, from another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.
2. If a fee or other remuneration or is or may be payable, the identity of the other person or entity, the method of calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.

(2) The brokerage shall obtain the borrower's written acknowledgement that the brokerage made the disclosure required by this section.

Fees, etc., payable by the brokerage to others

24. (1) A brokerage shall give the following information, in writing, to a borrower in connection with a mortgage or renewal:

1. Whether the brokerage has paid, may pay or will pay a fee or other remuneration, directly or indirectly, to another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.
2. If a fee or other remuneration or is or may be payable, the identity of the other person or entity, the method of calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.

(2) The brokerage shall obtain the borrower's written acknowledgement that the brokerage made the disclosure required by this section.

Fees, etc., for referral by brokerage

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

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

DUTIES IN PARTICULAR TRANSACTIONS

Duty re suitability of mortgage for customer

26. (1) A brokerage shall take reasonable steps to ensure that any mortgage or investment in a mortgage that it recommends to a borrower, lender or investor, as the case may be, is suitable for the borrower, lender or investor having regard to the needs and circumstances of the borrower, lender or investor.

(2) Subsection (1) does not apply if the borrower, lender or investor, as the case may be, is another brokerage or a financial institution.

Disclosure of risks

27. (1) A brokerage shall disclose in writing to a borrower, lender or investor, as the case may be, the risks of each mortgage or investment in a mortgage that the brokerage recommends to the borrower, lender or investor.

(2) Subsection (1) does not apply if the borrower, lender or investor, as the case may be, is a specified person or entity or, in the case of an investment, if the brokerage is not acting as a representative of the investor.

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

Disclosure of brokerage's relationships

28. (1) A brokerage shall disclose in writing to a borrower the nature of the relationship between the brokerage and each lender under a mortgage.

(2) A brokerage shall disclose in writing to each lender the nature of the relationship between the brokerage and each borrower under a mortgage.

(3) A brokerage shall disclose in writing to each investor the nature of the relationship between the brokerage and each party to the trade in a mortgage.

(4) Subsections (2) and (3) do not apply with respect to an investor if another brokerage is acting as a representative of the investor in a trade.

(5) The brokerage shall obtain the written acknowledgement of the borrower, lender or investor, as the case may be, that the brokerage made the disclosure required by this section.

Disclosure of potential conflicts of interest

29. (1) A brokerage shall disclose in writing to a borrower, lender or investor, as the case may be, any conflict of interest that the brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf may have in connection with a mortgage or in connection with a trade in a mortgage.

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

(3) This section does not apply with respect to a lender if the lender is another brokerage or a financial institution.

(4) This section does not apply with respect to an investor if the investor is another brokerage or a financial institution or if another brokerage is acting as a representative of the investor.

Duty re mortgage previously in default

30. (1) A brokerage shall not sell or attempt to sell or arrange or attempt to arrange the sale of a mortgage that has been in default at any time in the preceding 12 months unless the brokerage informs the investor of the amount and duration of the default.

(2) A brokerage shall obtain the investor's written acknowledgement that the brokerage has made the disclosure required by this section.

Duties re reverse mortgages

31. (1) A brokerage shall not arrange or enter into a reverse mortgage with a borrower unless the brokerage receives from the borrower a written statement signed by a lawyer stating that the lawyer has given the borrower independent legal advice about the proposed reverse mortgage.

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

1. The money that is advanced under the mortgage does not have to be repaid until the occurrence of one or more of the following events:
 - i. The borrower's death or, if there is more than one borrower, the death of the last surviving borrower.

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

Disclosure form, etc., re mortgages

32. (1) A brokerage shall give each lender or investor the following information and documents with respect to a mortgage or a trade in a mortgage:

- 1. A completed disclosure form, in a form approved by the Superintendent, signed by a broker.
- 2. If the investment is in an existing mortgage, a copy of the mortgage instrument.
- 3. If an appraisal of the applicable property has been done in the preceding 12 months and is available to the brokerage, a copy of the appraisal.
- 4. If an appraisal of the applicable property is not available as described in paragraph 3, documentary evidence of the value of the property, other than an agreement of purchase and sale.

5. If an agreement of purchase and sale in respect of the property has been entered into in the preceding 12 months and is available to the brokerage, a copy of the agreement of purchase and sale.
6. Documentary evidence of the borrower's ability to meet the mortgage payments.
7. A copy of the application for the mortgage and of any document submitted in support of the application.
8. If the mortgage is a new mortgage, documentary evidence of any down payment made by the borrower for the purchase of the property.
9. A copy of any agreement that the investor may be asked to enter into with the brokerage.
10. All other information, in writing, that a lender or investor of ordinary prudence would consider to be material to a decision about whether to lend money on the security of the property or to invest in the mortgage.

(2) Subsection (1) does not apply if the lender or investor is a member of a designated class of lenders and investors or if another brokerage is acting as a representative of the investor.

(3) A brokerage shall obtain the lender's or investor's written acknowledgement that the brokerage has disclosed the information and documents required by this section.

Disclosure form, etc., re mortgage renewals

33. (1) A brokerage shall give each lender the following information and documents with respect to a renewal of a mortgage:

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

(2) Subsection (1) does not apply if the lender is a member of a designated class of lenders and investors.

(3) A brokerage shall obtain the lender's written acknowledgement that the brokerage has disclosed the information and documents required by this section.

GENERAL REQUIREMENTS FOR DISCLOSURES

Clarity of disclosure, etc.

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

Disclosure based on estimate, etc.

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

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

Deadline for disclosures to borrowers

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

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

Deadline for disclosures to investors

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

1. The brokerage receives money from the lender or investor.

2. The brokerage enters into an agreement to receive money from the lender or investor.
3. The lender enters into an agreement to enter into a mortgage or the investor enters into an agreement to purchase, exchange or sell a mortgage.
4. The money is advanced to the borrower under the mortgage.
5. The trade completion date.

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

(3) The brokerage shall obtain the lender's or investor's written acknowledgement that the brokerage made the disclosure required by this section.

PAYMENTS BY BORROWERS, LENDERS, INVESTORS

Payment by borrower

38. (1) A brokerage shall not require, or accept, payment or security for payment, directly or indirectly, from or on behalf of a borrower for services provided or expenses incurred by the brokerage or by another person or entity until the borrower signs a mortgage instrument or, in the case of a mortgage renewal, until the borrower enters into a mortgage renewal agreement.

(2) Subsection (1) does not apply with respect to a mortgage the principal amount of which is greater than \$300,000.

Payment, etc., by lender or investor

39. (1) A brokerage shall not receive money from a lender or enter into an agreement to receive money from a lender unless an application has been made for a mortgage on a specific property.

(2) A brokerage shall not receive money from an investor or enter into an agreement to receive money from an investor unless an existing mortgage is available on a specific property.

Receipt for deemed trust funds

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

1. The amount of the money received by the brokerage.

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

MANAGING THE BROKERAGE

Duty to establish policies and procedures

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

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

Duty to establish complaints process

42. (1) A brokerage shall establish a process for resolving complaints from the public about the mortgage business activities of the brokerage or of any broker or agent authorized to deal or trade in mortgages on its behalf.

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

(3) The brokerage shall keep a record of all written complaints received from the public by the brokerage and all written responses by the brokerage.

Duty to have insurance

43. (1) A brokerage shall maintain errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or shall have some other form of assurance in a form approved by the Superintendent.

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

Duty re authorization of brokers, agents

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

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

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

Restrictions on payments by brokerage

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

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

Required records

46. (1) A brokerage shall maintain the following records:

1. Complete and accurate financial records of its licensed activities in Ontario.
2. Complete and accurate records of every mortgage application, mortgage instrument and mortgage renewal agreement received or arranged by the brokerage.
3. Complete and accurate records of every other agreement entered into by the brokerage in the course of dealing or trading in mortgages or in the course of mortgage lending.

4. Complete and accurate records of all documents or written information given to or obtained from a borrower or prospective borrower, a lender or prospective lender, an investor or prospective investor or any other person or entity pursuant to a requirement established under the Act.

(2) The financial records maintained by a brokerage must distinguish between the deemed trust funds held by the brokerage and any other assets pertaining to other activities.

Security of records

47. A brokerage shall take adequate precautions, appropriate to the form of its records, to guard against the falsification of the records.

Records retention

48. (1) A brokerage shall retain all records that relate to a mortgage or mortgage renewal agreement, as the case may be, for at least six years after the date of maturity of the mortgage or renewal or other expiry of the mortgage transaction.

(2) A brokerage shall retain for at least six years all other records that it is required to create pursuant to a requirement established under the Act.

(3) A brokerage shall retain the records described in subsections (1) and (2) at its principal place of business in Ontario or at another place approved in writing by the Superintendent and, if the records originate at another place of business, the brokerage shall forward them to its principal place of business or the other approved place at the earliest opportunity.

(4) Despite subsection (3), records in electronic form need not be retained at the location specified in that subsection if those records can be retrieved from that location in an understandable electronic and paper form promptly upon request.

(5) A brokerage shall ensure that it maintains the capacity to retrieve its electronic records throughout the period during which this section requires the records to be retained.

MANAGING DEEMED TRUST FUNDS

Deemed trust funds

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

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

1. Money earned by the brokerage for its services.
2. Money received to reimburse the brokerage for its expenses.
3. Money payable to the brokerage as a mortgage lender.

Authorized trust account

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

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

(2) A brokerage shall not establish or maintain more than one mortgage brokerage trust account unless it has the prior written consent of the Superintendent to do so.

Administration of trust account

51. (1) A brokerage shall deposit deemed trust funds that it receives into its authorized trust account within two business days after receiving the funds.

(2) A brokerage shall keep deemed trust funds separate from money that does not constitute deemed trust funds.

(3) Unless otherwise agreed to in writing by the beneficial owner of deemed trust funds, any interest earned on the deemed trust funds shall be paid to the beneficial owner.

(4) A brokerage shall not disburse any deemed trust funds except in accordance with the terms upon which the funds were received by the brokerage.

Record of trust account transactions

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

1. The contents of the written statement required by section 38 that is given to the person or entity from whom money is received.
2. With respect to every deposit made to the authorized trust account, the amount of the deposit, the date on which it was made, the name of the person or entity from whom the deposited money was received and the purpose for the deposit, including particulars of the mortgage, if any, to which the deposit relates.
3. With respect to every disbursement made from the authorized trust account, the amount of the disbursement, the date on which it was made, the name of the person or entity to whom the money was disbursed and the purpose for the disbursement, including particulars of the mortgage, if any, to which the disbursement relates.
4. With respect to every payment of interest on money in the authorized trust account, a way of identifying the deposit of deemed trust funds to which the interest relates, the amount of the interest associated with the deposit and the date, if any, on which the interest was paid to the person or entity from whom the deposit was received.

Monthly reconciliation statement for trust account

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

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

1. If the brokerage receives a monthly account statement from the financial institution where the account is maintained, 30 days after the brokerage receives the monthly account statement.
2. In any other case, 30 days after the end of the month.

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

1. The differences, if any, between the records of the brokerage and the records of the applicable financial institution as of the following date:

- i. if the brokerage receives a monthly account statement from the financial institution, the date of the monthly account statement, and
 - ii. in any other case, the last day of the month.
2. The balance in the account that is owing to each person or entity as of the applicable date described in subparagraph 1 i or ii.

Duty to report shortfall in trust account

54. If a brokerage determines that there is a shortfall in the authorized trust account, the brokerage shall immediately notify the Superintendent.

Annual reconciliation statement for trust account

55. (1) If, for any month during its fiscal year, a brokerage is required to prepare a reconciliation statement for the authorized trust account, the brokerage shall prepare an annual reconciliation statement for the account for the fiscal year within 90 days after the end of the year.

(2) The annual reconciliation statement must summarize the contents of each of the required monthly reconciliation statements for the account for the fiscal year.

OTHER MATTERS

Duty re concurrent businesses

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

Use of certain information

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

Designation when dwelling is place of business

58. If a brokerage's principal place of business in Ontario is a place that is used as a dwelling, the brokerage shall designate a room or area of the dwelling as the principal place of business and shall inform the Superintendent of the room or area so designated.

Required addresses

59. (1) A brokerage shall maintain a mailing address in Ontario that is suitable to permit service by registered mail.

(2) A brokerage shall maintain an e-mail address.

Use of forms

60. If a form is approved by the Superintendent for a purpose under the Act, a brokerage shall ensure that the brokerage and its brokers and agents use the current approved version of the form.

III. CONSULTATION DRAFT REGULATIONS

2) MORTGAGE ADMINISTRATORS: STANDARDS OF PRACTICE

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

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INTERPRETATION**Definitions**

1. In this Regulation,

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

“authorized trust account” means, in relation to a mortgage administrator, its mortgage administrator’s trust account established in accordance with section 33;

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

“deemed trust funds” means, in relation to a mortgage administrator, money that is deemed by section 32 to be held in trust by the mortgage administrator;

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

Duties re syndicated mortgages

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

STANDARDS OF PRACTICE

Standards of practice

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

PUBLIC RELATIONS

Use of authorized name

4. A mortgage administrator shall not carry on business in a name other than its authorized name.

Use of name, etc., in public relations materials

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

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

(3) In this section,

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

- (a) any advertisement by the mortgage administrator that is published, circulated or broadcast by any means, or

- (b) any material that a mortgage administrator makes available to the public in connection with its business as a mortgage administrator.

Duty to provide licence information

6. Upon request, a mortgage administrator shall give a person its licence number.

Complaints by the public

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

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

CUSTOMER RELATIONS

Duty re unlawful transactions

8. A mortgage administrator shall not administer a mortgage for a lender or investor if the mortgage administrator has reasonable grounds to believe that the mortgage, its renewal or the investment in it is unlawful.

Duty to verify identity of lender, investor

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

(2) Subsection (1) does not apply with respect to a lender or investor if a brokerage was required by law to verify the lender's or investor's identity in connection with the mortgage.

Restriction re tied selling

10. (1) A mortgage administrator shall not coerce a lender or investor to obtain a product or service from a particular person or entity, including the mortgage administrator, as a condition for obtaining another service from the mortgage administrator.

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

Restriction re guarantees

11. A mortgage administrator shall not, directly or indirectly, offer or make any guarantee to a lender in respect of a mortgage or to an investor in respect of an investment in a mortgage.

Duty to return certain documents

12. (1) A mortgage administrator shall promptly return deeds, instruments or agreements signed by or on behalf of a borrower, lender or investor and any other documents given to the mortgage administrator by a lender or investor when the mortgage administrator no longer needs the documents in connection with a particular transaction.

(2) A mortgage administrator shall promptly, without charge, return the documents described in subsection (1) to a lender or investor upon a request made in writing.

INFORMATION ABOUT FEES AND OTHER PAYMENTS

Representations re status of payments

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

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

Fees, etc., payable by others

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

1. Whether the mortgage administrator has received, may receive or will receive a fee or other remuneration, directly or indirectly, from another person or entity in connection with the administration of the mortgage.
2. If a fee or other remuneration or is or may be payable, the identity of the other person or entity, the method of calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.

(2) The mortgage administrator shall obtain the written acknowledgement of the lender or investor that the mortgage administrator made the disclosure required by this section.

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

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

1. Whether the mortgage administrator has paid, may pay or will pay a fee or other remuneration, directly or indirectly, to another person or entity in connection with the administration of the mortgage.
2. If a fee or other remuneration or is or may be payable, the identity of the other person or entity, the method of calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.

(2) The mortgage administrator shall obtain the written acknowledgement of the lender or investor that the mortgage administrator made the disclosure required by this section.

Fees, for referral by mortgage administrator

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

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

DUTIES IN PARTICULAR TRANSACTIONS

Duty re administration agreement

17. (1) A mortgage administrator shall not administer a mortgage for a lender or investor unless the mortgage administrator and each lender or investor have entered into an agreement in writing governing the administration of the mortgage.

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

1. The legal description of the mortgaged property and the name in which the mortgage is or will be registered under the *Land Titles Act* or the *Registry Act*.

2. If the mortgage is held in trust, the details of the trust.
3. Particulars of the circumstances in which a lender or investor is permitted to dispose of all or part of the lender's or investor's interest in the mortgage.
4. The disposition to be made of all payments made under the mortgage by the borrower, including penalties and bonuses.
5. The duty of the mortgage administrator to promptly notify each lender or investor if the mortgage administrator becomes aware of a subsequent encumbrance on the mortgaged property or any other significant change in circumstances affecting the mortgage.
6. The duty of the mortgage administrator to promptly notify each lender or investor if the borrower defaults under the mortgage.
7. The rights and duties of each lender or investor under the agreement if the borrower defaults under the mortgage, and the costs for which each lender or investor will be responsible.
8. The procedures to be followed under the agreement in the event of a foreclosure or in the exercise of a power of sale under the mortgage, and the rights and duties of each lender or investor in either case.
9. The amount of the fees payable by each lender or investor for the administration of the mortgage, including how the fees are to be calculated, and the method of payment.

Disclosure of mortgage administrator's relationships

18. (1) A mortgage administrator shall disclose in writing to each lender or investor in a mortgage the nature of the relationship, if any, between the mortgage administrator and each borrower under the mortgage.

(2) Subsection (1) does not apply with respect to a lender or investor who is a mortgage administrator, a brokerage or a financial institution.

(3) The mortgage administrator shall obtain the written acknowledgement of each lender or investor that the mortgage administrator made the disclosure required by this section.

Disclosure of potential conflicts of interest

19. (1) A mortgage administrator shall disclose in writing to each lender or investor in a mortgage any conflict of interest that the mortgage administrator or an employee engaged in administering the mortgage may have in connection with the mortgage.

(2) Subsection (1) does not apply with respect to a lender or investor who is a mortgage administrator, a brokerage or a financial institution.

(3) The mortgage administrator shall obtain the written acknowledgement of each lender or investor that the mortgage administrator made the disclosure required by this section.

Deadline for disclosures

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

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

Clarity of disclosure, etc.

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

MORTGAGE ADMINISTRATION

Receipt for deemed trust funds

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

1. The amount of the money received by the mortgage administrator.
2. The date on which the mortgage administrator received the money.
3. The name of the person or entity from whom the money was received and, if the money was received on behalf of another person or entity, the name of that person or entity.
4. The purpose for which the money was received, including particulars of the mortgage to which the money relates.

Payments to lender, investor

23. (1) A mortgage administrator shall not make a payment to a lender or investor in connection with the administration of a mortgage unless the payment is made from the principal and interest that has been paid under the mortgage by a borrower.

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

Payment on redemption of mortgage

24. If a mortgage administrator receives proceeds from the redemption or partial redemption of a mortgage, the mortgage administrator shall promptly pay the proceeds to the lender or investor.

MANAGING THE MORTGAGE ADMINISTRATOR

Duty to establish policies and procedures

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

(2) A mortgage administrator shall establish and implement policies and procedures providing for the adequate supervision of every person acting on its behalf in the business of mortgage administration.

Duty to establish complaints process

26. (1) A mortgage administrator shall establish a process for resolving complaints from the public about its mortgage administration activities.

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

(3) The mortgage administrator shall keep a record of all written complaints received from the public and all written responses by the mortgage administrator.

Duty to have insurance

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

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

Duty to have financial guarantee

28. (1) A mortgage administrator shall maintain a financial guarantee in an amount equal to \$25,000.

(2) The financial guarantee may be an irrevocable letter of credit with a financial institution, unimpaired working capital, a surety bond issued by an insurer licensed under the *Insurance Act* or some other form of financial guarantee in a form approved by the Superintendent.

Required records

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

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

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

Security of records

30. A mortgage administrator shall take adequate precautions, appropriate to the form of its records, to guard against the falsification of the records.

Records retention

31. (1) A mortgage administrator shall retain all records that relate to an agreement to administer a mortgage for at least six years after the date of maturity of the mortgage.

(2) A mortgage administrator shall retain for at least six years all other records that it is required to create pursuant to a requirement established under the Act.

(3) A mortgage administrator shall retain the records described in subsections (1) and (2) at its principal place of business in Ontario or at another place approved in writing by the Superintendent and, if the records originate at another place of business, the mortgage administrator shall forward them to its principal place of business or the other approved place at the earliest opportunity after they are no longer needed at the place of business where they originate.

(4) Despite subsection (3), records in electronic form need not be retained at the location specified in that subsection if those records can be retrieved from that location in an understandable electronic and paper form promptly upon request.

(5) A mortgage administrator shall ensure that it maintains the capacity to retrieve its electronic records throughout the period during which this section requires the records to be retained.

MANAGING DEEMED TRUST FUNDS

Deemed trust funds

32. (1) Subject to subsection (2), money received by a mortgage administrator directly or indirectly from a borrower, lender or investor in connection with carrying on the business of administering mortgages is deemed, for the purposes of this Regulation, to be held in trust by the mortgage administrator.

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

1. Money earned by the mortgage administrator for its services.
2. Money received to reimburse the mortgage administrator for its expenses.

Authorized trust account

33. (1) A mortgage administrator shall maintain a trust account designated as its mortgage administrator's trust account at one of the following types of financial institutions in Ontario:

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

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

Administration of trust account

34. (1) A mortgage administrator shall deposit deemed trust funds that it receives into its authorized trust account within two business days after receiving the funds.

(2) A mortgage administrator shall keep deemed trust funds separate from money that does not constitute deemed trust funds.

(3) Unless otherwise agreed to in writing by the beneficial owner of deemed trust funds, any interest earned on the deemed trust funds shall be paid to the beneficial owner.

(4) A mortgage administrator shall not disburse any deemed trust funds except in accordance with the terms upon which the funds were received by the mortgage administrator.

Record of trust account transactions

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

1. The contents of the written statement required by section 20 that is given to the person or entity from whom money is received.
2. With respect to every deposit made to the authorized trust account, the amount of the deposit, the date on which it was made, the name of the person or entity from whom the deposited money was received and the purpose for the deposit, including particulars of the mortgage, if any, to which the deposit relates.
3. With respect to every disbursement made from the authorized trust account, the amount of the disbursement, the date on which it was made, the name of the person or entity to whom the money was disbursed and the purpose for the disbursement, including particulars of the mortgage, if any, to which the disbursement relates.
4. With respect to every payment of interest on money in the authorized trust account, a way of identifying the deposit of deemed trust funds to which the interest relates, the amount of the interest associated with the deposit and the

date, if any, on which the interest was paid to the person or entity entitled to it.

Monthly reconciliation statement for trust account

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

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

1. If the mortgage administrator receives a monthly account statement from the financial institution where the account is maintained, 30 days after the mortgage administrator receives the monthly account statement.
2. In any other case, 30 days after the end of the month.

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

1. The differences, if any, between the records of the mortgage administrator and the records of the applicable financial institution as of the following date:
 - i. if the mortgage administrator receives a monthly account statement from the financial institution, the date of the monthly account statement, and
 - ii. in any other case, the last day of the month.
2. The balance in the account that is owing to each person or entity as of the applicable date described in subparagraph 1 i or ii.

Duty to report shortfall in trust account

37. If a mortgage administrator determines that there is a shortfall in the authorized trust account, the mortgage administrator shall immediately notify the Superintendent.

Annual reconciliation statement for trust account

38. (1) A mortgage administrator shall prepare an annual reconciliation statement for the authorized trust account for a fiscal year within 90 days after the end of the year.

(2) The annual reconciliation statement must summarize the contents of each of the required monthly reconciliation statements for the account for the fiscal year.

OTHER MATTERS

Duty re concurrent businesses

39. A mortgage administrator that engages in another business concurrently with carrying on the business of administering mortgages shall not allow the other business to jeopardize its integrity, independence or competence when carrying on the business of administering mortgages.

Use of certain information

40. A mortgage administrator shall not use information obtained in the course of carrying on business for any purpose other than that for which the information was obtained unless the mortgage administrator has the written consent of the person or entity who is the subject of the information.

Designation when dwelling is place of business

41. If a mortgage administrator's principal place of business in Ontario is a place that is used as a dwelling, the mortgage administrator shall designate a room or area of the dwelling as the principal place of business and shall inform the Superintendent of the room or area so designated.

Required addresses

42. (1) A mortgage administrator shall maintain a mailing address in Ontario that is suitable to permit service by registered mail.

(2) A mortgage administrator shall maintain an e-mail address.

Use of forms

43. If a form is approved by the Superintendent for a purpose under the Act, a mortgage administrator shall use the current approved version of the form.

III. CONSULTATION DRAFT REGULATIONS

3) MORTGAGE BROKERS AND AGENTS: STANDARDS OF PRACTICE

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

Interpretation

1. (1) Expressions used in this Regulation have the same meaning as in the standards of practice prescribed for brokerage licences.

(2) In this Regulation,

“licensee name” means, in relation to a mortgage broker or agent, the name in which the licence is issued;

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

- (a) any advertisement by the broker or agent that is published, circulated or broadcast by any means, or
- (b) any material that a broker or agent makes available to the public in connection with his or her status as a licensee or his or her dealing or trading in mortgages.

Standards of practice

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

Duty re authorizing brokerage

3. A mortgage broker or agent shall not do or omit to do anything that causes the brokerage on whose behalf he or she is authorized to deal or trade in mortgages to contravene or fail to comply with a requirement established under the Act.

Restriction re remuneration

4. A mortgage broker or agent is prohibited from receiving, directly or indirectly, any fee or other remuneration for dealing or trading in mortgages from a person or entity other than the brokerage on whose behalf he or she is authorized to deal or trade in mortgages.

Use of licensee name

5. A mortgage broker or agent shall not deal or trade in mortgages in a name other than his or her licensee name.

Use of name, etc., in public relations materials

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

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

(3) In the public relations materials, at least one of the references to the broker or agent must include one of the following titles:

1. When referring to a broker, the title “mortgage broker”, “broker”, “courtier en hypothèques” or “courtier”, an abbreviation of any of those titles or an equivalent title in another language.
2. When referring to an agent, the title “mortgage agent”, “agent” or “agent en hypothèques”, an abbreviation of any of those titles or an equivalent title in another language.

Duty to provide licence information

7. Upon request, a mortgage broker or agent shall give to a person the broker’s or agent’s licensee name, licence number and the authorized name and licence number of the brokerage on whose behalf the broker or agent is authorized to deal or trade in mortgages.

Required addresses

8. (1) A mortgage broker or agent shall maintain a mailing address in Ontario that is suitable to permit service by registered mail.

(2) A mortgage broker or agent shall maintain an e-mail address.

III. CONSULTATION DRAFT REGULATIONS

4) ADMINISTRATIVE PENALTIES

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

GENERAL ADMINISTRATIVE PENALTIES (SECTION 39 OF THE ACT)

Exclusions from s. 39 penalties

1. An administrative penalty cannot be imposed under section 39 of the Act for a contravention of section 46 of the Act (Prohibition re reprisals).

Criteria for determining amount of penalty

2. The Superintendent shall consider the following criteria when determining the amount of an administrative penalty to impose on a person or entity under section 39 of the Act for a contravention or failure to comply with a requirement established under the Act:

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

7. Such other criteria as the Superintendent may consider appropriate in the circumstances.

Deadline for paying s. 39 penalties

3. (1) A penalty imposed under section 39 of the Act must be paid no later than 30 days after the person or entity is given notice of the order imposing the penalty, unless the order specifies a later deadline.

(2) If a hearing on the notice of proposal to impose the order is requested in accordance with subsection 39 (5) of the Act, the penalty must be paid no later than 30 days after the matter is finally determined unless the order specifies a later deadline.

(3) If the order imposing the penalty specifies a later deadline, the penalty must be paid by the deadline specified in the order instead of the deadline described in subsection (1) or (2).

SUMMARY ADMINISTRATIVE PENALTIES (SECTION 40 OF THE ACT)

Deadline for paying s. 40 penalties

4. (1) A penalty imposed under section 40 of the Act must be paid no later than 30 days after the person or entity is given notice of the order imposing the penalty.

(2) If the Superintendent's order is appealed in accordance with subsection 40 (4) of the Act, the penalty must be paid no later than 30 days after the matter is finally determined unless the order as confirmed or varied on appeal specifies a later deadline.

(3) If the order as confirmed or varied on appeal specifies a later deadline, the penalty must be paid by the deadline specified in the order instead of the deadline described in subsection (1) or (2).

III. CONSULTATION DRAFT REGULATIONS

5) COST OF BORROWING AND DISCLOSURE TO BORROWERS

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

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APPLICATION AND INTERPRETATION

Application

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

(2) Sections 3 to 19 do not apply to a mortgage brokerage if the brokerage gives a disclosure statement to a borrower on behalf of a person described in Column 1 of the following Table who is acting as a mortgage lender and if the disclosure statement meets the disclosure requirements under the corresponding legislation set out in Column 2.

TABLE

| Column 1 | Column 2 |
|---|--|
| A bank | <i>Bank Act (Canada)</i> |
| A retail association as defined under the <i>Cooperative Credit Associations Act (Canada)</i> | <i>Cooperative Credit Associations Act (Canada)</i> |
| A credit union | <i>Credit Unions and Caisses Populaires Act, 1994</i> |
| An insurance company | <i>Insurance Act</i> |
| An insurance company | <i>Insurance Companies Act (Canada)</i> |
| A loan corporation | <i>Loan and Trust Corporations Act</i> |
| A trust corporation | <i>Loan and Trust Corporations Act</i> |
| A trust corporation | <i>Trust and Loan Companies Act (Canada)</i> |
| A loan corporation | <i>Trust and Loan Companies Act (Canada)</i> |
| Another mortgage brokerage | <i>Mortgage Brokerages, Lenders and Administrators Act, 2006</i> |

Definitions

2. In this Regulation,

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

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

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

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

“public index” means an interest rate, or a variable base rate for an interest rate, that is published at least weekly in a newspaper or magazine of general circulation, or in some media of general circulation or distribution, in areas where borrowers whose mortgages are governed by that interest rate reside.

COST OF BORROWING

Calculation of the APR

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

$$\text{APR} = \frac{C}{T \times P} \times 100$$

in which,

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

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

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

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

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

- (a) the APR may be rounded off to the nearest eighth of a per cent;
- (b) each instalment payment made on the mortgage must be applied first to the accumulated cost of borrowing and then to the outstanding principal;
- (c) a period of,
 - (i) one month is 1/12 of a year,
 - (ii) one week is 1/52 of a year, and
 - (iii) one day is 1/365 of a year;

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

Annual interest rate as APR

4. The APR for a mortgage is the annual interest rate if there is no cost of borrowing other than interest.

Included and excluded charges

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

1. Administrative charges, including charges for services, transactions or any other activity in relation to the mortgage.
2. Charges for the services, or disbursements, of a lawyer or notary that the lender required the borrower to retain.
3. Insurance charges other than those excluded under clauses (2) (a) and (f).
4. The brokerage's charges, if they are included in the amount borrowed.
5. Charges for appraisal, inspection or surveying services provided directly to the borrower in relation to the property that is security for a loan.

- (2) The cost of borrowing for a mortgage does not include,
- (a) charges for insurance on the mortgage,
 - (i) if the insurance is optional, or
 - (ii) if the borrower is its beneficiary and the amount insured reflects the value of an asset that is security under the mortgage;
 - (b) charges for an overdraft;
 - (c) charges paid to register documents or obtain information from a public registry about security interests related to property given as security;
 - (d) penalty charges for the prepayment of the mortgage;
 - (e) charges for the services, or disbursements, of a lawyer or notary, other than those mentioned in paragraph 2 of subsection (1);
 - (f) charges for insurance against defects in title to real property, if the insurance is paid for directly by the borrower;
 - (g) charges for appraisal, inspection or surveying services provided directly to the borrower in relation to property that is security for the mortgage;
 - (h) charges for insurance against default on a high-ratio mortgage;
 - (i) charges to maintain a tax account that are required for a high-ratio mortgage or that are optional;
 - (j) any charges to discharge a security interest; or
 - (k) default charges.

DISCLOSURE TO BORROWERS

Manner of making disclosures

6. (1) A mortgage brokerage must give the borrower a written disclosure statement that provides the information required by this Regulation.

(2) Information disclosed in a disclosure statement may be based on an assumption or estimate if the assumption or estimate is reasonable and if the information,

- (a) cannot be known by the brokerage when the brokerage makes the statement; and

(b) is identified to the borrower as an assumption or estimate.

(3) A disclosure statement, or a consent in relation to a disclosure statement, must be written in plain language that is clear and concise and it must be presented in a manner that is logical and likely to bring to the borrower's attention the information that is required to be disclosed.

(4) If the borrower consents in writing, the disclosure statement may be provided by electronic means in an electronic form that the borrower can retrieve and retain.

Timing of initial disclosure

7. (1) A mortgage brokerage that proposes to enter into or arrange a mortgage with a borrower must give the initial disclosure statement required by this Regulation to the borrower on or before the earlier of,

- (a) the day on which the borrower makes a payment, other than a disbursement charge, in relation to the mortgage; and
- (b) two clear business days before the borrower enters into the mortgage agreement.

(2) Clause (1) (b) does not apply if the borrower consents in writing to being given the initial disclosure on the day he or she enters into the mortgage agreement.

Disclosure – fixed interest mortgage for a fixed amount

8. (1) A mortgage brokerage that enters into or arranges a mortgage for a fixed interest rate for a fixed amount, to be repaid on a fixed future date or by instalment payments, must give the borrower an initial disclosure statement that includes the following information:

1. The principal amount of the mortgage.
2. The amount of each advance of the principal and when each advance is to be made.
3. The total amount of all payments.
4. The cost of borrowing over the term of the mortgage, expressed in dollars and cents.
5. The term of the mortgage, and the period of amortization if it is different from the term.

6. The annual interest rate and the circumstances, if any, under which it is compounded.
7. The APR, if it differs from the annual interest rate.
8. The date on and after which interest is charged and information concerning any period during which interest does not accrue.
9. The amount of each payment and when it is due.
10. The fact that each payment made on the mortgage must be applied first to the accumulated cost of borrowing and then to the outstanding principal.
11. Information about any optional service in relation to the mortgage that the borrower accepts, the charges for each optional service and the conditions under which the borrower may cancel the service, if that information is not disclosed in a separate statement before the optional service is provided.
12. The information required by section 24 of the Act, including default charges that may be imposed under section 15 of this Regulation.
13. The property in which the lender takes a security interest under the mortgage.
14. Any charge paid for by any other brokerage involved in the transaction, if the other brokerage's charges are included in the amount borrowed and are paid directly to the other brokerage.
15. The fact that there is a charge to discharge a security interest and the amount of the charges on the day that the statement was provided.
16. The nature and amount of any charge other than an interest charge, or the formula if the amount cannot be determined at the time of disclosure.

(2) If the outstanding balance of the mortgage is increased because the borrower has missed a scheduled instalment payment or because a default charge is levied on the borrower for missing a scheduled instalment payment, such that the amount of each of the subsequently scheduled instalment payments does not cover the interest accrued during the period for which a payment is scheduled, and if the brokerage is a lender under the mortgage, the brokerage must give the borrower a subsequent disclosure statement not more than 30 days after the missed payment or the imposition of the default charge that describes the situation and its consequences.

Disclosure – variable interest mortgage for a fixed amount

9. (1) A mortgage brokerage that enters into or arranges a mortgage with a variable interest rate for a fixed amount, to be repaid on a fixed future date or by instalment payments, must give the borrower an initial disclosure statement that includes the following information:

1. The information described in subsection 8 (1).
2. The annual rate of interest that applies on the date of the disclosure statement.
3. The method for determining the annual interest rate that applies after the date of the disclosure statement and when that determination is made.
4. The amount of each payment based on the annual interest rate that applies on the date of the disclosure statement and the dates when those payments are due.
5. The total amount of all payments and of the cost of borrowing based on the annual interest rate that applies on the date of the disclosure statement.
6. If the loan is to be paid by instalment payments and the amount to be paid is not adjusted automatically to reflect changes in the annual interest rate that apply to each instalment payment,
 - i. the annual interest rate above which the amount of a scheduled instalment payment on the initial principal does not cover the interest due on the instalment payment, and
 - ii. the fact that negative amortization is possible.
7. If the loan does not have regularly-scheduled payments,
 - i. the conditions that must occur for the entire outstanding balance, or part of it, to become due, or
 - ii. the provisions of the mortgage that set out those conditions.

(2) If the variable interest rate for the loan is determined by adding or subtracting a fixed percentage rate of interest to or from a public index that is a variable rate, and if the brokerage is the lender under the mortgage, the brokerage must give the borrower an additional disclosure statement at least once every 12 months that contains the following information:

1. The annual interest rate at the beginning and end of the period covered by the disclosure statement.
2. The outstanding balance at the beginning and end of the period covered by the disclosure statement.
3. The amount of each instalment payment due under a payment schedule and the time when each payment is due, based on the annual interest rate that applies at the end of the period covered by the disclosure statement.

(3) If the variable interest rate for the mortgage is determined by a method other than that referred to in subsection (2), and if the brokerage is the lender under the mortgage, the brokerage must give the borrower an additional disclosure statement no more than 30 days after increasing the annual interest rate by more than 1 per cent above the most recently disclosed rate and the disclosure statement must contain the following information:

1. The new annual interest rate and the date on which it takes effect.
2. The amount of each instalment payment and the time when each payment is due, for payments that are affected by the new annual interest rate.

Disclosure – line of credit

10. (1) A mortgage brokerage that arranges a mortgage securing a line of credit must give the borrower an initial disclosure statement that includes the following information:

1. The initial credit limit, if it is known at the time the disclosure is made.
2. The annual interest rate, or the method for determining it if it is variable.
3. The nature and amounts of any non-interest charges.
4. The minimum payment during each payment period or the method for determining it.
5. Each period for which a statement of account is to be provided.
6. The date on and after which interest accrues and information concerning any grace period that applies.
7. The particulars of the charges or penalties referred to in paragraph 5 of section 24 of the Act, including default charges that may be imposed under section 15 of this Regulation.

8. The property in which the lender takes a security interest under the mortgage.
 9. Information about any optional service in relation to the mortgage that the borrower accepts, the charges for each optional service and the conditions under which the borrower may cancel the service, if that information is not disclosed in a separate statement before the optional service is provided.
 10. A local or toll-free telephone number, or a telephone number with a prominent indication that collect calls are accepted, that the borrower may use to get information about the account during the lender's regular business hours.
 11. Any charge for any other brokerage involved in the transaction, if the other brokerage's charges are included in the amount borrowed and are paid directly to the other brokerage.
- (2) If the initial credit limit is not known when the initial disclosure statement is made, and if the brokerage is a lender under the mortgage, the brokerage must disclose it,
- (a) in the first statement of account provided to the borrower; or
 - (b) in a separate statement that the borrower receives on or before the date on which the borrower receives that first statement of account.
- (3) Subject to subsection (4), if the brokerage is a lender under the mortgage, the brokerage must give the borrower an additional disclosure statement at least once a month that contains the following information:
1. The period covered by the disclosure statement and the opening and closing balances in the period.
 2. An itemized statement of account that discloses each amount credited or charged, including interest, and the dates when those amounts were posted to the account.
 3. The sum for payments and the sum for credit advances and interest and other charges;
 4. The annual interest rate that applied on each day in the period and the total of interest charged at those rates in the period.

5. The credit limit and the amount of credit available at the end of the period.
6. The minimum payment and its due date.
7. The borrower's rights and obligations regarding any billing error that may appear in the statement of account.
8. A local or toll-free telephone number, or a telephone number with a prominent indication that collect calls are accepted, that the borrower may use to get information about the account during the brokerage's regular business hours.

(4) The additional disclosure statements described in subsection (3) are not required for a period during which there are no advances or payments and,

- (a) there is no outstanding balance at the end of the period; or
- (b) the borrower has notice that the mortgage has been suspended or cancelled due to default and the lender has demanded payment of the outstanding balance.

Disclosure after amendment to a mortgage

11. (1) This section applies if a mortgage brokerage is a lender under the mortgage.

(2) Subject to subsection (3), if a mortgage is amended by a subsequent agreement, the brokerage must give the borrower a written statement within 30 days after the borrower enters into the subsequent agreement, and the statement must describe the changes to the information required to be disclosed in the initial disclosure statement for the mortgage.

(3) If a mortgage for a fixed amount has a schedule for instalment payments and the schedule is amended by a subsequent agreement, the brokerage must give the borrower a written statement within 30 days after entering into the subsequent agreement, and the statement must set out the new payment schedule and any increase in the total amount to be paid or the cost of borrowing.

Disclosure – renewal of a mortgage

12. (1) This section applies if a mortgage brokerage is a lender under the mortgage.

(2) If a mortgage is to be renewed on a specified date, the brokerage must give the borrower an additional disclosure statement at least 21 days before the specified renewal date, and the statement must contain the information required by,

- (a) section 8, if the mortgage is for a fixed interest rate; or

- (b) section 9, if the mortgage is for a variable interest rate.
- (3) The additional disclosure statement must specify that,
- (a) the cost of borrowing will not be increased after the disclosure statement is given to the borrower and before the mortgage is renewed; and
 - (b) the borrower's rights under the mortgage continue, and the renewal does not take effect, until the day that is the later of the specified renewal date the day that is and 21 days after the borrower receives the statement.
- (4) If the brokerage does not intend to renew a mortgage after its term ends, the brokerage shall so notify the borrower at least 21 days before the end of the term.

Disclosure – offer to waive payment

13. (1) This section applies if a mortgage brokerage is a lender under the mortgage.

(2) If, under a mortgage for a fixed amount, a lender offers to waive a payment without waiving the accrual of interest during the period covered by the payment, the brokerage must disclose to the borrower in a prominent manner in the offer that interest will continue to accrue during that period if the borrower accepts the offer.

(3) If a lender offers to waive a payment under a mortgage that secures a line of credit, the brokerage must disclose to the borrower in a prominent manner in the offer whether interest will continue to accrue during any period covered by the offer if the borrower accepts the offer.

Disclosure – cancellation of optional services

14. (1) This section applies if a brokerage is a mortgage lender under the mortgage and if the brokerage provides optional services, including insurance services, to a borrower on an ongoing basis in connection with the mortgage.

(2) A disclosure statement in relation to the mortgage must specify that, if the borrower notifies the brokerage that the borrower wishes to cancel the services effective on the earlier of,

- (a) one month after the day that the brokerage gave the borrower the disclosure statement required by this Regulation; and
- (b) the last day of the notice period, if any, provided for under the mortgage,

the brokerage shall, without delay, refund or credit the borrower with the proportional amount, calculated in accordance with the formula set out in subsection (3), of any

charges for the service paid for by the borrower or added to the balance of the mortgage loan, but unused as of the cancellation date.

(3) The proportion of charges to be refunded or credited to a borrower are calculated using the formula,

$$R = A \times \frac{n - m}{n}$$

in which,

“R” is the amount to be refunded or credited,

“A” is the amount of the charges,

“n” is the period between the imposition of the charge and the time when the services were, before the cancellation, scheduled to end, and

“m” is the period between the imposition of the charge and the cancellation.

DEFAULT CHARGES

Default charges

15. If a mortgage brokerage is a lender under a mortgage and if a borrower fails to make a payment when it becomes due or fails to comply with an obligation under the mortgage, in addition to interest, the brokerage may impose charges for the sole purpose of recovering the costs reasonably incurred,

- (a) for legal services required to collect or attempt to collect the payment;
- (b) for expenses incurred to realize on a security interest taken under the mortgage or to protect such a security interest, including the cost of legal services required for that purpose; or
- (c) for expenses incurred to process a cheque or other payment instrument that the borrower used to make a payment under the mortgage but that was dishonoured.

ADVERTISING

Advertising – mortgage for a fixed amount

16. (1) If a mortgage brokerage advertises a mortgage for a fixed amount and if the advertisement includes a representation about the interest rate or the amount of any payment or of any charge other than interest, the advertisement must also include the

APR and the term of the mortgage and the APR must be provided at least as prominently as the representation and in the same manner as the representation is made, whether visually or aurally or both.

(2) If the APR or the term of the mortgage is not the same for all mortgages to which the advertisement relates, the disclosure must be based on an example of a mortgage that fairly depicts all those mortgages and is identified as a representative example of them.

Advertising – line of credit

17. If a mortgage brokerage advertises a mortgage that secures a line of credit and if the advertisement includes a representation about the annual interest rate or the amount of any payment or of any charge other than interest, the advertisement must also include the annual rate of interest on the date of the advertisement and any initial or periodic charges other than interest and that information must be provided at least as prominently as the representation and in the same manner as the representation is made, whether visually or aurally, or both.

Advertising – interest-free periods

18. (1) If a mortgage brokerage advertises that the brokerage will finance a mortgage and if the advertisement includes a representation, express or implied, that a period of the mortgage is free of any interest charges, the advertisement must indicate whether interest accrues during the period and is payable after the period and that information must be provided at least as prominently as the representation, if it was express, or in a prominent manner, if it was implied.

(2) If interest does not accrue during the period, the advertisement must also disclose any conditions that apply to the forgiving of the accrued interest and the APR, or the annual interest rate in the case of a mortgage that secures a credit card or line of credit, for a period when those conditions are not met.

PURCHASING INSURANCE

Insurance

19. (1) This section applies if a brokerage is a lender under the mortgage.

(2) If the brokerage requires a borrower to purchase any insurance, and if the brokerage offers to provide or arrange the insurance, the brokerage must at the same time clearly disclose to the borrower in writing that the borrower may purchase the required insurance through an agent and from an insurer of the borrower's choice.

III. CONSULTATION DRAFT REGULATIONS

6) DOCUMENT DELIVERY RULES

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

Application

1. (1) This Regulation governs how the following information and documents must be delivered or served by the Superintendent:

1. Notices that the Superintendent is required under the Act to give to a person or entity.
2. Orders and interim orders made under the Act.

(2) Any other information or document that the Superintendent is required to give to a person or entity under the Act or that the Superintendent may give to a person or entity in connection with the administration of the Act may be delivered to the person or entity in accordance with this Regulation.

(3) This Regulation does not prevail over any applicable rules made under subsection 15.1 (5) of the *Financial Services Commission of Ontario Act, 1997* or made by the Tribunal.

Personal delivery

2. (1) Information and documents to be given to a person or entity by the Superintendent may be delivered to the person or entity in any of the following ways:

1. By personal delivery to the person or entity.
2. By ordinary mail or registered mail addressed to the person or entity at his, her or its mailing address in Ontario as it appears in the records maintained by the Superintendent or, if there is no such address, at the person's or entity's last known address.
3. By fax sent to his, her or its fax number.
4. If the person or entity is a licensee or an applicant for a licence, by email sent to his, her or its email address, if any, as it appears in the records maintained by the Superintendent.

(2) For the purposes of paragraph 1 of subsection (1), information and documents to be given to any of the following persons or entities may be delivered in the manner indicated:

1. For information and documents to be given to a sole proprietorship, by leaving a copy of the information or document with the proprietor or by leaving a copy with an individual at a place of business of the sole proprietorship if the individual appears to be in control of, or to manage, the place of business.
2. For information and documents to be given to a partnership, by leaving a copy of the information or document with any partner or by leaving a copy with an individual at a place of business of the partnership if he or she appears to be in control of, or to manage, the place of business.
3. For information and documents to be given to a corporation, by leaving a copy of the information or document with a director, officer or agent of the corporation or by leaving a copy with an individual at a place of business of the corporation if he or she appears to be in control of, or to manage, the place of business.
4. For information and documents to be given to a person or entity who carries on business in Ontario but is not present in Ontario, by leaving a copy of the information or document with anyone carrying on business in Ontario on behalf of the person or entity.

Delivery to a lawyer, paralegal

3. (1) If the Superintendent has been notified that a person or entity is represented by a lawyer or paralegal, information and documents to be given to the person or entity by the Superintendent may instead be delivered to the lawyer or paralegal by any of the methods described in section 2, or by personal delivery to an employee in the office of the lawyer or paralegal.

(2) Delivery to a lawyer or paralegal is not effective unless, on a copy of the information or document, the lawyer or paralegal or the employee endorses the acceptance of service on behalf of the client and the date of acceptance.

Attempted delivery to an individual's residence

4. If an unsuccessful attempt is made to deliver information or documents to an individual by personal delivery at premises where he or she resides, the information or documents may instead be delivered to him or her by taking both of the following steps:

1. By leaving a copy of the information or document, in a sealed envelope addressed to the individual, at those premises with anyone who appears to be an adult member of the same household.
2. By mailing a copy of the information or document addressed to the individual at those premises on the same day or the next day.

When delivery is effective

5. (1) Delivery of information or a document to a person or entity by the Superintendent is effective on the day indicated:

1. If sent by ordinary mail, on the fifth day after mailing.
2. If sent by registered mail, on the earlier of the fifth day after mailing or the day after its receipt was acknowledged by the addressee or an individual accepting it on behalf of the addressee.
3. If sent by fax or email, on the same day it is sent, but only if the information or document is also sent to the addressee by ordinary mail within 48 hours after the fax or email is sent.
4. If delivered in accordance with section 4, on the fifth day after mailing.

(2) Information or a document that is delivered after 5 pm is deemed to have been received on the following day.

Deemed delivery to licensee, applicant

6. Information or a document is deemed to have been delivered to a licensee or applicant by the Superintendent if it is delivered in either of the following ways:

1. By registered mail addressed to the licensee or applicant at his, her or its mailing address in Ontario, if any, as it appears in the records maintained by the Superintendent.
2. By fax sent to the fax number, if any, of the licensee or applicant as it appears in the records maintained by the Superintendent.
3. By e-mail sent to the e-mail address, if any, of the licensee or applicant as it appears in the records maintained by the Superintendent.

Deemed delivery, alternate methods of delivery

7. Information or documents that are delivered to a person or entity by a method other than one described in sections 2 to 4 is deemed to have been delivered to him, her or it if it is reasonable in all the circumstances to conclude that the information or

document came to the notice of the person or entity or that it would have come to the notice of the person or entity but for his, her or its attempt to evade delivery.

Requirements re delivery by fax

8. Information and documents that are sent by fax must be accompanied by a cover page setting out the following information:

1. The sender's name, address, telephone number and fax number.
2. The name of the person or entity to whom the information and documents are to be delivered.
3. The date and time of the fax transmission.
4. The total number of pages being transmitted, including the cover page.
5. The telephone number of a person to contact in case of transmission problems.

Requirements re delivery by email

9. If information or documents are sent by email, the e-mail message must include the following information:

1. The sender's name, address, telephone number, fax number and email address.
2. The date and time of the email transmission.
3. The name and telephone number of a person to contact in case of transmission problems.

III. CONSULTATION DRAFT REGULATIONS

7) GENERAL

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

EXPIRY OF INTERIM ORDERS (SECTIONS 18 AND 35 OF THE ACT)

Interim order to suspend a licence

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

Interim compliance order

2. If an interim order is made under subsection 35 (5) of the Act, the prescribed period after which the interim order expires in the circumstances described in subsection 35 (9) of the Act is 21 days after the date on which the order is made.

PUBLIC REGISTER OF LICENSEES (SECTION 28 OF THE ACT)

Public register of brokerages, mortgage administrators

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

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

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

1. Each name in which it was licensed and its former licence number.
2. The type of licence that it held.
3. The date on which it ceased to be licensed.
4. Whether the licence was surrendered or revoked.

Public register of brokers and agents

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

1. The name in which he or she is licensed and the licence number.
2. The type of licence that he or she holds, its expiry date and whether the licence is in good standing or is suspended.
3. The name of the brokerage on whose behalf he or she is authorized to deal or trade in mortgages.
4. Any conditions, other than prescribed conditions, that apply to the licence.

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

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

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

III. CONSULTATION DRAFT REGULATIONS

8) EXEMPTIONS FROM THE REQUIREMENTS TO BE LICENSED

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006 AMENDING O.REG. 407/07

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

1. Ontario Regulation 407/07 is amended by adding the following section:

For personal corporation of broker, agent

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

1. Every broker or agent who is an employee or shareholder of the corporation (the "member brokers and agents") is authorized to deal or trade in mortgages on behalf of the same brokerage (the "business brokerage").
2. The corporation does not carry on the business of dealing or trading in mortgages otherwise than by providing the services of its member brokers and agents to the business brokerage.
3. The corporation does not carry on business as a mortgage lender.
4. The corporation and its member brokers and agents do not represent to the public in any manner, directly or indirectly, that the corporation carries on the business of dealing or trading in mortgages or carries on business as a mortgage lender.
5. The corporation does not receive, directly or indirectly, revenue for dealing or trading in mortgages from any person or entity other than the business brokerage.
6. The member brokers and agents do not receive, directly or indirectly, fees or other remuneration for dealing or trading in mortgages from any person or entity other than the corporation or the business brokerage.
7. The corporation does not, on behalf of the business brokerage, directly or indirectly hold funds or other assets received from borrowers, lenders or investors in connection with dealing or trading in mortgages.
8. A majority of the corporation's directors are member brokers and agents.

9. A majority of the equity of the corporation is legally and beneficially owned, directly or indirectly, by one or more of its member brokers or agents.
 10. There is a written agreement between the business brokerage and each member broker or agent governing the relationship between the brokerage and the broker or agent.
 11. There is a written agreement between the corporation and the business brokerage governing the relationship between the business brokerage and the corporation and its member brokers and agents.
 12. Under the agreement between the corporation and the business brokerage, the corporation agrees not to hinder or obstruct the business brokerage or its principal broker in the performance of their duties under the Act and not to hinder or obstruct the member brokers and agents in the performance of their duties under the Act.
 13. Under the agreement between the corporation and the business brokerage, the corporation agrees to provide whatever assistance may be reasonably necessary to enable the business brokerage and its principal broker to comply with their duties under the Act and to enable the brokerage and its principal broker to ensure that the member brokers and agents are complying with their duties under the Act.
 14. Under the agreement between the corporation and the business brokerage, the corporation agrees to provide whatever assistance may reasonably be necessary to enable the business brokerage to determine whether the circumstances entitling the corporation to the exemption established by this section exist.
- (2) Expressions used in this section have the same meaning as in the standards of practice prescribed for brokerage licences.

III. CONSULTATION DRAFT REGULATIONS

9) MORTGAGE ADMINISTRATORS: LICENSING

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006 AMENDING O.REG. 411/07

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

1. Subsection 1 (1) of Ontario Regulation 411/07 is amended by adding the following paragraph:

5. The corporation has a trust account, designated as its mortgage administrator's trust account, at a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), at a credit union or caisse populaire to which the *Credit Unions and Caisses Populaires Act, 1994* applies, at a corporation registered under the *Loan and Trust Corporations Act* or at a retail association as defined under the *Cooperative Credit Associations Act* (Canada).

2. Subsection 2 (1) of the Regulation is amended by adding the following paragraph:

5. The partnership has a trust account, designated as its mortgage administrator's trust account, at a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), at a credit union or caisse populaire to which the *Credit Unions and Caisses Populaires Act, 1994* applies, at a corporation registered under the *Loan and Trust Corporations Act* or at a retail association as defined under the *Cooperative Credit Associations Act* (Canada).

3. Subsection 3 (1) of the Regulation is amended by adding the following paragraph:

5. The sole proprietorship has a trust account, designated as its mortgage administrator's trust account, at a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), at a credit union or caisse populaire to which the *Credit Unions and Caisses Populaires Act, 1994* applies, at a corporation registered under the *Loan and Trust Corporations Act* or at a retail association as defined under the *Cooperative Credit Associations Act* (Canada).

4. The Regulation is amended by adding the following section:

| |
|---|
| <p><i>Mortgage Brokerages, Lenders and Administrators Act, 2006: A Consultation Draft of Regulations Proposed under the Act</i></p> |
|---|

SURRENDER OF LICENCE

Criteria re surrender of licence

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

1. Whether the applicant has any funds remaining in its mortgage administrator's trust account that was being maintained under the standards of practice.
2. Whether any funds in the applicant's mortgage administrator's trust account have not been accounted for.
3. Whether the applicant has failed to make reasonable arrangements for winding up or transferring its business of administering mortgages in Ontario.
4. Whether the applicant has failed to make reasonable arrangements for the retention of the records required by the standards of practice, or has failed to inform the Superintendent about the location in which the records are to be kept.
5. Whether any deeds, instruments or agreements signed by or on behalf of a lender or investor and any other documents given to the applicant by a lender or investor in connection with the applicant's business of administering mortgages have not been returned.
6. Whether the applicant has any outstanding fees, charges or penalties payable under the Act.

III. CONSULTATION DRAFT REGULATIONS

I O) MORTGAGE BROKERAGES: LICENSING

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006 AMENDING O.REG. 408/07

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

1. Ontario Regulation 408/07 is amended by adding the following section:

SURRENDER OF LICENCE

Criteria re surrender of licence

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

1. Whether the applicant has any funds remaining in a mortgage brokerage trust account that was being maintained under the standards of practice.
2. Whether any funds in the applicant's mortgage brokerage trust account have not been accounted for.
3. Whether the applicant has failed to make reasonable arrangements for the retention of the records required by the standards of practice, or has failed to inform the Superintendent about the location in which the records are to be kept.
4. Whether any deeds, instruments or agreements signed by or on behalf of a borrower, lender or investor and any other documents given to the applicant by the borrower, lender or investor in connection with the applicant's business of dealing or trading in mortgages have not been returned.
5. Whether the applicant has any outstanding fees, charges or penalties payable under the Act.

III. CONSULTATION DRAFT REGULATIONS

I I) MORTGAGE BROKERS AND AGENTS: LICENSING

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006 AMENDING O.REG. 409/07

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

1. Section 3 of Ontario Regulation 409/07 is amended by adding the following subsection:

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

2. Section 6 of the Regulation is amended by adding the following subsection:

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

3. Subsection 7 (1) of the Regulation is amended by striking out “both” in the portion before paragraph 1 and substituting “all”.

4. Section 9 of the Regulation is amended by adding the following subsection:

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

5. Clause 15 (3) (c) of the Act is revoked and the following substituted:

(c) if the individual undertakes, as a condition of his or her licence, to successfully complete an approved education program for mortgage agents before July 1, 2009.

III. CONSULTATION DRAFT REGULATIONS

I 2) REPORTING REQUIREMENTS FOR LICENSEES

under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006

Note: This is a draft regulation for discussion purposes. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* is not in force.

PRESCRIBED REPORTING REQUIREMENTS

Requirement to submit information, etc.

1. The requirements set out in this Regulation are prescribed for the purposes of subsection 29 (1) of the Act.

ANNUAL FILINGS

Annual information return

2. On or before March 31 each year, each brokerage and each mortgage administrator shall give the Superintendent an annual information return for the previous year in a form approved by the Superintendent.

Financial information

3. (1) Within 90 days after the end of its fiscal year, each brokerage shall give the Superintendent,

- (a) a statement, in a form approved by the Superintendent, that the brokerage was not required by the standards of practice to maintain a mortgage brokerage trust account at any time during the fiscal year; or
- (b) a copy of its audited financial statements for the year and a copy of its annual reconciliation statement for the trust account for the year together with the auditor's report described in subsection (4) about the trust account.

(2) Within 90 days after the end of its fiscal year, each mortgage administrator shall give the Superintendent a copy of its audited financial statements for the year and a copy of its annual reconciliation statement for the trust account for the year together with the auditor's report described in subsection (4) about the trust account.

(3) The financial statements must be prepared in accordance with generally accepted accounting principles as set out in the Handbook of the Canadian Institute of Chartered Accountants and must be audited by a licensed public accountant.

(4) The auditor's report about the trust account for a fiscal year must be prepared by the same person who audits the financial statements for the year and the report must indicate,

- (a) whether the results of the auditor's inspection of the books, records and accounts of the brokerage or mortgage administrator, as the case may be, and procedures applied in that regard, indicate that the brokerage or mortgage administrator maintained books, records and accounts as required under the Act; and
- (b) whether the results of that inspection and those procedures disclose any differences between the monthly trust account reconciliation statements prepared by the brokerage or mortgage administrator, its records and accounts and the account records of the financial institution where the trust account was maintained.

INFORMATION ABOUT OTHER MATTERS

Establishment of trust account, brokerage

4. If a brokerage is required by the standards of practice to establish a mortgage brokerage trust account, the brokerage shall notify the Superintendent as soon as practicable and, in any event, no later than five days after the brokerage is required to establish the account.

REPORTING ABOUT CHANGES

Change of address for service

5. If a licensee changes the licensee's mailing address in Ontario, the licensee shall give the Superintendent particulars of the new address no later than five days after the change occurs.

Change of other contact information

6. If a brokerage or mortgage administrator changes its email address, phone number or fax number, the brokerage or mortgage administrator shall give the Superintendent particulars of the new address or number no later than five days after the change occurs.

Change of principal place of business

7. If a brokerage or mortgage administrator changes the location of its principal place of business in Ontario, the brokerage or mortgage administrator shall notify the Superintendent no later than five days after the change occurs.

Change of offices open to the public

8. If a brokerage or mortgage administrator opens or closes an office in Ontario that is open to the public, the brokerage or mortgage administrator shall notify the Superintendent no later than five days after doing so.

Change of director, officer, partner

9. (1) If a licensee that is a corporation changes one or more of its directors or officers, the licensee shall notify the Superintendent no later than five days after the change occurs.

(2) If a licensee that is a partnership changes one or more of its partners, the licensee shall notify the Superintendent no later than five days after the change occurs.

Change of principal broker

10. If a brokerage changes its principal broker, the brokerage shall notify the Superintendent no later than five days after the change occurs.

Change of authority to act on behalf of brokerage

11. (1) If a mortgage broker or agent ceases to be authorized to deal or trade in mortgages on behalf of a brokerage, the brokerage shall notify the Superintendent no later than five days after the authority ceases.

(2) A mortgage broker or agent who ceases to be authorized to deal or trade in mortgages on behalf of a brokerage shall notify the Superintendent no later than five days after the authority ceases.

Change re insurance coverage, brokerage

12. If the errors and omissions insurance or other assurance maintained by a brokerage in accordance with the standards of practice is cancelled or is not renewed, the brokerage shall immediately notify the Superintendent.

ADMINISTRATIVE PENALTIES FOR NON-COMPLIANCE**Penalty amounts**

13. (1) If a brokerage or mortgage administrator fails to comply with a requirement of this Regulation, the following summary administrative penalty may be imposed under section 40 of the Act:

1. \$1,000 for each failure to comply with section 2, subsection 3 (1) or (2) or section 4 or 12.
2. \$500 for each failure to comply with any other provision of this Regulation.

(2) If a broker or agent fails to comply with a requirement of this Regulation, a summary administrative penalty of \$250 may be imposed under section 40 of the Act for each failure to comply with section 5 or subsection 11 (2).

REVOCATION

Revocation

15. Ontario Regulation 412/07 is revoked.

IV. TABLE OF CONCORDANCE

January 2008 Consultation Draft Regulation “Mortgage Brokerages: Standards of Practice” compared to November 2006 Consultation Draft “Standards of Practice: Brokerages”

| Section Description | January 2008 | November 2006 |
|--|--------------|----------------------------------|
| Definitions | 1 | 1 |
| Designated classes of lenders and investors | 2 | 1 (“specified person or entity”) |
| Duties re syndicated mortgages | 3 | n/a |
| Standards of practice | 4 | |
| Use of authorized name | 5 | 2 |
| Use of name, etc., in public relations materials | 6 | 3 |
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