

June 11, 2004

Dear Sir/Madam:

Re: Submortgage Brokers

Our records indicate that you are the individual responsible for the operation of a mortgage broker registered under the *Mortgage Brokers Act* (the "Act"). I am writing to you to clarify a matter with respect to the manner in which submortgage brokers are paid.

The Act is very clear in establishing that submortgage brokers are "employed" by mortgage brokers to engage in brokering activities. Individuals are employed, companies are not. I do not register companies as submortgage brokers; only **individuals** are registered as submortgage brokers. Therefore, a mortgage broker must pay the individuals employed by that mortgage broker.

Many mortgage brokers feel that they can pay the commissions owed to a submortgage broker to a company owned by a submortgage broker because the submortgage broker is an independent contractor. However, this does not conform to the legislation, as the company is not registered under the Act. And the submortgage broker is not an independent contractor but an employee.

Under section 21, a submortgage broker must not carry on the business of a mortgage broker unless registered under the Act; and a mortgage broker must not employ as a submortgage broker anyone who is not registered under the Act. The definition of a mortgage broker includes any person who in one year receives an amount of \$1,000 or more in fees or other consideration, excluding legal fees, for arranging mortgages for other persons. Therefore, a company that is not registered and receives commissions would be engaged in unregistered activity. This is an offence under the Act.

In addition, many mortgage brokers are now selling credit insurance to their borrowers. Under the *Financial Institutions Act* and Regulations, licensing as an insurance salesperson is not required by a person whose only activity as an insurance salesperson is in connection with credit insurance sold incidentally to the granting of credit by, or arranged by, that person or that person's employer. Therefore, a submortgage broker who is selling credit insurance, through a group policy arranged by the mortgage broker, must be an employee of the mortgage broker in order to market the insurance product. Insurance commissions must be paid to the registered individual, not a company owned by the submortgage broker. Any other arrangement would be an offence under the *Financial Institutions Act* and Regulations.

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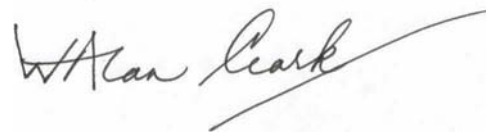
I recently became aware of a situation wherein a mortgage broker had four employees. The senior submortgage broker had a company and the mortgage broker had been paying that submortgage broker's commission to his company for some time. The three other submortgage brokers were new to the industry and according to the mortgage broker, worked with the senior submortgage broker on deals. The mortgage broker started paying the commissions owing to the three junior submortgage brokers to the company owned by the senior submortgage broker. That company was engaged in unregistered mortgage brokering and the registered mortgage broker facilitated the activity by agreeing to pay the commissions owing to the other three submortgage brokers to the senior submortgage broker's company when he should have paid the submortgage brokers directly.

I am aware that some submortgage brokers have now become mortgage brokers and entered into co-brokering agreements with their former mortgage broker employer. The new mortgage broker has a separate company name; has a separate registered address and address for service; maintains its own books and records, including disclosure statements; files an annual financial filing; and advertises under its corporate name. But it co-brokers deals through the former employer and receives the benefits of the volume commissions the original mortgage broker has achieved over time. This arrangement meets the requirements of the Act.

Mortgage brokers are also responsible for retaining copies of the disclosure statements issued; for ensuring that all advertising has the name of the registered mortgage broker in the advertisement; for maintaining adequate books and records, including financial records for the business; and for ensuring that all trust funds are handled in accordance with the requirements of the Conditions of Registration and the Regulations. Individual mortgage brokers who permit their submortgage brokers to "hang" their registrations and do not supervise the activities of their employees will find that ultimately it is the mortgage broker who is responsible for compliance with the *Mortgage Brokers Act*.

I trust this clarifies the requirements of the Act for you.

Yours truly,

A handwritten signature in black ink that reads "W. Alan Clark". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

W. Alan Clark  
Chief Executive Officer and  
Registrar of Mortgage Brokers  
Financial Institutions Commission