

BULLETIN NUMBER: MB 07-003

TITLE: MAXIMUM FEES FOR PROVIDING EXECUTED MORTGAGE DISCHARGES AND OTHER COSTS

LEGISLATION: BUSINESS PRACTICES AND CONSUMER PROTECTION ACT AND MORTGAGE BROKERS ACT

DATE: JANUARY 31, 2007

This Bulletin clarifies the maximum fee that can be charged by lenders or their administrators for providing borrowers with executed mortgage discharges and other costs that can be charged to borrowers.

We understand that some mortgage lenders or mortgage administrators who act for other lenders, may be charging borrowers in excess of \$75 to provide executed mortgage discharges.

Please be aware that under sections 72(3) of the *Business Practices and Consumer Protection Act* ("BPCPA"), and section 16 of the Regulations, the maximum fee for providing an executed discharge is \$75. Please also be aware that section 207(5) of the BPCPA provides that:

Section 72 [*borrowers entitled to mortgage discharge*] applies to the discharge of all mortgages, whether the mortgage for which the discharge is being furnished is entered into before, on or after the coming into force of Part 5.

This means that mortgages which were created prior to the coming into force of Part 5 of the BPCPA are also subject to the maximum discharge fee. If you charge any borrower in excess of \$75 to provide an executed mortgage discharge, regardless of when the mortgage was entered into, you have breached section 72 of the BPCPA.

In addition, under section 75 of the BPCPA a credit grantor must not impose, under a credit agreement, any default charges other than the following:

(a) court ordered costs incurred in collecting or attempting to collect a debt;

(b) reasonable charges in respect of costs, including legal costs, incurred in realizing a security interest or protecting the subject matter of a security interest after default; and

(c) reasonable charges that reflect costs incurred by the credit grantor because a cheque or other payment instrument given by the borrower to the credit grantor was dishonoured.

Section 75 therefore, prohibits lenders from charging borrowers, who default on mortgage payments, NSF fees which unreasonably exceed the actual cost incurred by the lender to process the default. For example, if a bank charges a lender \$25 to process a returned cheque, it would be unreasonable for the lender to then assess the borrower with a \$250 charge for the default.

Please note that it is proper to separate the discharge fee and other costs from the cost to payout the mortgage in the payout statement. It is improper to request only a lump sum payout figure which fails to itemize charges and other costs, as this can have the effect of hiding charges, such as the discharge fee.

The Registrar of Mortgage Brokers may seek to impose regulatory penalties against any mortgage broker who breaches sections 72 and 75 of the BPCPA.

At the Financial Institutions Commission, we issue information bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Mortgage Brokers Act, Business Practices and Consumer Protection Act* and Regulations. While the comments in a particular part of an information bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an information bulletin generally applies as of the date on which it was published, unless otherwise specified.