

BULLETIN NUMBER: MB 07-007 (Replaces MB 07-002)

TITLE: PROVIDING CONFLICT OF INTEREST DISCLOSURE

LEGISLATION: MORTGAGE BROKERS ACT

DATE: AUGUST 24, 2007

All mortgage broker registrants have an obligation to provide disclosure of their interests to borrowers and lenders. Form 10 is the Conflict of Interest Disclosure Statement prescribed pursuant to sections 17.3 and 17.4 of the *Mortgage Brokers Act*. Those sections require every mortgage broker, who acts in a mortgage transaction in which the mortgage broker, or any associate or related party of the mortgage broker, has or may acquire a direct or indirect interest, to disclose that interest to the borrower or lender, as the case may be.

Associate is defined in the Regulations to include submortgage brokers employed by the mortgage broker.

A disclosable interest exists where a mortgage broker or an associate of the mortgage broker has a personal or business interest in a mortgage transaction. Furthermore, such an interest may be a conflict of interest. It may be impossible for mortgage brokers or their associates to completely avoid conflicts, and being in a conflict of interest does not necessarily mean that the mortgage broker or an associate has engaged in any wrong doing. However, conflicts may affect the broker's judgment or his or her sense of duty to act in the best interests of the client. All interests must therefore be disclosed to the client.

Mortgage brokers should ensure that the Form 10 clearly explains the nature of the interest. We have found that many mortgage brokers complete Form 10's in a perfunctory manner, using boilerplate language which may have little meaning to the borrower or lender.

Examples of situations where a mortgage broker may have a disclosable interest include the following:

- acting in multiple roles for borrowers, such as mortgage brokers who are also a realtor, insurance agent, appraiser, or notary in the same transaction;
- arranging a mortgage for a borrower in which a submortgage broker of the mortgage broker is the lender or has an interest in the transaction as a shareholder or director of a corporate lender or as the spouse of a lender;

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- arranging a mortgage for a borrower and funding the same mortgage as a lender;
- arranging a mortgage for a borrower where the lender is related, either directly or indirectly to the mortgage broker;
- arranging a mortgage for a borrower where the lender provides any kind of compensation, including volume bonuses, points and other rewards, to the mortgage broker; and
- accumulating points from a lender by not providing a borrower with the lowest interest rate in order to bank points and eventually use them to benefit other borrowers.

Please be aware that the above list is not exhaustive, and other situations may exist where a disclosable interest arises in a mortgage transaction. Mortgage brokers should always act cautiously and disclose all potential interests, even if it does not appear to be a conflicting interest or the interest appears to be remote.

Subsections 17.3 (2)(c) and 17.4 (2)(c) state that the Form 10 must be dated and signed by the mortgage broker. The *Mortgage Brokers Act Regulations* require that the Form 10 be given to a borrower at the earliest opportune time, and in any event, before the borrower signs the mortgage or any ancillary agreement with the broker or lender, including an agency agreement with the broker that commits the borrower to the mortgage transaction. The Regulations also require that the Form 10 be given to a lender prior to the lender's funds being released from trust on the direction of the lender, if the funds are held in trust, and if they are not held in trust, prior to the advancement of the funds by the lender.

Mortgage brokers must retain a copy of every Conflict of Interest Disclosure Statement for a period of at least seven years.

Any questions about completing or delivering the Form 10 can be addressed to the Registrar's Staff.

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.