



July 13, 2005

To All Saskatchewan Mortgage Brokers

Dear Sir or Madam:

Re: Legislative Requirements

The Mortgage Brokers Act (the “Act”) sets out that the Superintendent of Insurance (“Superintendent”) is charged with administering the Act. In carrying out these responsibilities, the Superintendent will occasionally issue a communication regarding the legislative requirements that mortgage brokers need to comply with. Mortgage brokers are being sent this letter to:

- set out the Superintendent’s expectation that mortgage brokers place clients’ interests over the mortgage brokers’ own interests;
- describe how *The Saskatchewan Insurance Act* may impact any insurance activities mortgage brokers undertake; and
- provide notification of an expected change to *The Securities Act, 1988* that may impact mortgage brokers’ operations.

Conflict of Interest

The Superintendent is aware that mortgage brokers can be placed in a position where the interests of their clients may conflict with the mortgage brokers’ interests. These scenarios include, but are not limited to, situations where a mortgage broker may obtain a higher commission or other benefits by recommending a client obtain a loan under terms and conditions that may not be as favorable as those otherwise available to the client.

When faced with these situations, it is the Superintendent’s expectation that every mortgage broker will govern themselves in a manner that is consistent with the *Principles and Practices for the Sale of Products and Services in the Financial Sector* issued by the Joint Forum of Financial Market Regulators in January, 2005 (the “Practice Standards”). The first principle of the Practice Standards sets out that:

The client's interests take priority over the intermediary's interests and should not be sacrificed to the interests of others.

For your reference, a copy of the Practice Standards is attached. It can also be accessed at: www.jointforum.ca.

Should a concern be brought forward that a mortgage broker placed a client's interests in a subordinate position, the Superintendent may investigate this matter pursuant to the authority set out in the Act. Any findings from this investigation will be assessed against the suitability requirements established under the Act, including the provisions set out in Section 10:

10. The superintendent may suspend or cancel a licence for any reason for which he may refuse to grant the licence or where he is satisfied that the licensee:
 - (a) has violated any provision of this Act or the regulations or has failed to comply with any of the terms, conditions or restrictions to which his licence is subject;
 - (b) has made a material mis-statement in the application for his licence or in any of the information or material submitted by him to the superintendent pursuant to section 11;
 - (c) is guilty of misrepresentation, fraud or dishonesty;
 - (d) has by any false, misleading or deceptive statement or advertisement, representation or promise, or by any dishonest concealment of material facts, induced or attempted to induce any person to borrow money or to be responsible for the repayment thereof or to agree to the terms of any transaction with respect to money lent on the security of a mortgage;
 - (e) has induced or attempted to induce any person to pay or be responsible for the payment of excessive or exorbitant fees or expenses in connection with a loan on the security of a mortgage; or
 - (f) has demonstrated his incompetency or untrustworthiness to carry on the business of a mortgage broker.

In issuing this communication, the Superintendent is aware that many mortgage brokers in Saskatchewan are members of the Canadian Institute of Mortgage Brokers and Lenders ("CIMBL"), and that CIMBL's code of ethics has a similar requirement to that set out above.

Please ensure that your operations are consistent with the above expectations.

Dealing in Insurance

The Saskatchewan Insurance Act (the “SIA”) addresses persons dealing in insurance, both as an insurer and as an insurance agent. The following provisions are applicable in these matters:

- Section 28 No person shall transact insurance in Saskatchewan unless he is the holder of a subsisting licence under this Act as an insurer.

- Section 416 No person shall act as an insurance agent unless he is the holder of a subsisting licence under this Act as an agent or as a salesman of a licensed agent.

- Section 418 No insurer or agent shall appoint, permit or authorize any person to do any of the things in respect of which a licence is required unless the person is the holder of a subsisting licence.

- Section 444 No insurer and no officer, agent or employee of an insurer and no licensed agent or salesman shall, directly or indirectly, pay or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person for acting or attempting or assuming to act as an insurance agent in respect of insurance in Saskatchewan unless that person holds at the time a subsisting licence under this Act as an agent or a salesman.

Clause 2 (1)(d) “agent” or “insurance agent” means a person who:

- (i) solicits, negotiates or effects for or on behalf of any insurer a contract of insurance;
- (ii) for compensation, acts in the solicitation or negotiation of insurance;
- (iii) transmits, for compensation, for a person other than himself, an application for or a policy of insurance to or from an insurer; or
- (iv) retains as compensation any portion of a premium received by him;

and includes a general agent but does not include an officer or salaried employee of an insurer.

Should a mortgage broker offer or promote insurance coverage, products or services to its customers, the above provisions may be applicable. Licensed mortgage brokers need to ensure their operations comply with all Saskatchewan legislation. This letter sets out the options as to how a mortgage broker can offer insurance coverage, products or services to its customers while ensuring compliance with the SIA.

In assessing the legislative requirements established in the SIA, we identified three options that may allow a mortgage broker to receive compensation for assisting its customers in meeting their insurance needs, while maintaining compliance with the SIA. These options are:

Option 1

An entity that chooses to offer insurance such as a group creditor product to its clients has at least one staff member who is licensed as an insurance agent. The licensed person(s) would be responsible for conducting all insurance related matters for that entity.

For an entity to implement this option, a valid Saskatchewan life insurance agent licence must be held by all persons representing the entity who:

- (i) participate in the soliciting, negotiating or effecting of the insurance; or
- (ii) transmit an application for or a policy of insurance to or from the insurer.

The licensing requirements for insurance agents are set by the Insurance Councils of Saskatchewan. You should contact them directly to obtain information as to the requirements that would need to be met for you to implement this option. You can contact them at:

Insurance Councils of Saskatchewan
310 - 2631 - 28th Avenue
Regina SK S4S 6X3
Licensing (306) 347-0862

Option 2

The entity provides the client with an information package outlining the coverage available, along with an application form. The insurance company would supply this information package and application form. The entity instructs the client that if

the client wants insurance coverage, the client is to contact the insurance company directly (e.g. the information package would provide a 1-800 number) with questions or for assistance in completing the application. The client would submit the application form directly to the insurer; the entity cannot transmit the policy.

For this option to comply with the SIA, there are a number of requirements that need to be met:

- a) The entity is prohibited from participating in the soliciting, negotiating or effecting of the insurance.
- b) The entity is prohibited from assisting in completing the application or transmitting an application for or a policy of insurance to or from the insurer.
- c) The entity must direct all insurance related questions or matters to an insurer that is licensed to transact such insurance in Saskatchewan.
- d) The entity cannot be the Master Policy Holder of a group policy.
- e) The entity may not receive any compensation that is based on the sale of insurance to a client.
- f) The entity may receive a nominal flat rate referral fee from an insurer or agent/broker for each client referred to the insurer, whether or not insurance is purchased.
- g) The amount of the flat rate referral fee must remain constant whether or not insurance is purchased.

Option 3

The entity does not deal in insurance. Rather, the client is referred to a licensed insurance agent or broker to discuss insurance advice or to transact a specific product.

In these situations, the entity must comply with the following requirements:

- a) The entity is prohibited from participating in the soliciting, negotiating or effecting of the insurance.
- b) The entity is prohibited from assisting in completing the application or transmitting an application for or a policy of insurance to or from the insurer.
- c) The entity must direct all insurance related questions or matters to a person or agency licensed to transact that class of insurance.
- d) The entity cannot be the Master Policy Holder of a group policy.
- e) The entity may not receive any compensation that is based on the sale of insurance to a client.
- f) The entity may receive a nominal flat rate referral fee from an insurer or agent/broker for each client referred to the insurer or agent/broker, whether or not insurance is purchased.
- g) The amount of the nominal flat rate referral fee must remain constant whether or not insurance is purchased.

Until such time as the requirement for licensing of insurers or agents to engage in the sale of these products is changed in the SIA, entities wishing to provide to their customers access to insurance products are limited to the three options outlined above. Please ensure any insurance activities you carry out are consistent with one of these options.

Expected Change to Securities Laws

It is expected that National Instrument 45-106 *Prospectus and Registration Exemptions* (“NI 45-106”) will be implemented across Canada effective September 14, 2005. You can access NI 45-106 at:
<http://www.sfcc.gov.sk.ca/ssc/gennews2005.shtml>

If NI 45-106 is implemented, mortgage brokers will no longer have access to the exemption from the prospectus and registration requirements currently set out in *The Securities Act, 1988* for dealing in syndicated mortgages. While there may be other exemptions that would apply to your operations, including those set out NI 45-106, you should review NI 45-106 to determine what, if any, impact this has on your operations.

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Please ensure that any necessary changes are made so that you will be complying with the revised requirements should NI 45-106 come into force on September 14, 2005.

If you have any questions regarding NI 45-106, please contact Dean Murrison, Deputy Director Legal/Registration, Securities Division, Saskatchewan Financial Services Commission at (306) 787-5879.

If you have any questions regarding the Practice Standards or the requirements regarding the insurance agent provisions of the SIA, please contact the office of the Superintendent of Insurance at (306) 787-6700.

Yours truly,

“J. M. Hall”

Superintendent of Insurance

Attachment

cc: Dean Murrison, Saskatchewan Financial Services Commission
John Waugh, Insurance Councils of Saskatchewan

