



Financial
Services
Commission

Financial
Institutions Division

6th Floor, 1919 Saskatchewan Drive
Regina, Canada
S4P 3V7

(306) 787-6700
(306) 787-9006 Fax
fid@sfsc.gov.sk.ca

July 15, 2004

Dear Stakeholder:

Re: Proposed Modernization of The Mortgage Brokers Act (Saskatchewan)

As you may know, The Mortgage Brokers Act (Saskatchewan) (the "Current Act") was originally enacted in 1967 and consolidated with other legislation in the Revised Statutes of Saskatchewan in 1978. Few changes have been made to the provisions of the Current Act since its enactment in 1967.

The financial services sector has evolved over the past thirty-five years, and there are new business models and methods being utilized by mortgage brokers in Saskatchewan. Accordingly, the Saskatchewan Financial Services Commission, Financial Institutions Division, has initiated a broad review of the Current Act with a view to recommending that its provisions be updated and modernized.

Attached to this letter is a list of areas that we have identified for consideration. At this time, we would welcome any suggestions you have concerning these issues, or any other issues that you believe should be addressed in our review. The attached list is to facilitate the consultation process only, it is not intended to be an exhaustive list and our review will not be restricted to those areas identified.

Please send your suggestions, by August 13, 2004, to:

Roger K. Sobotkiewicz, Legal Analyst
Saskatchewan Financial Services Commission
Financial Institutions Division
6th Flr., 1919 Sask. Drive
Regina, SK S4P 3V7
rsobotkiewicz@sfsc.gov.sk.ca

You will be included in further consultations occurring at later stages in our review, unless you request not to be included.

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All submissions received will be subject to the provisions of The Freedom of Information and Protection of Privacy Act (Saskatchewan), and may be disclosed or made available to other persons during and after the consultation.

Please note that only the Saskatchewan Legislature has the authority to enact changes to the Current Act, and therefore, we cannot provide any assurance that any proposed changes will be forthcoming.

If you have any questions at this time, please feel free to contact me directly at (306) 787-7881, or Roger K. Sobotkiewicz at (306) 787-5548.

Yours truly,

J. M. Hall
Superintendent of Financial Institutions

AREAS PRESENTLY IDENTIFIED FOR CONSIDERATION IN THE REVIEW OF THE MORTGAGE BROKERS ACT (SASKATCHEWAN)

1. Definitions of “Mortgage” and “Mortgage Broker”:

These definitions determine the scope of the Act by identifying those transactions and persons to which the Act will apply.

We are considering expanding the definition of “mortgage broker” to include certain mortgage broker activities that may be outside the scope of the Current Act. As it reads now, persons engaged in mortgage broker activities are not required to obtain a license under the Current Act if they are not “carrying on business” when they engage in those activities. However, many of these activities, such as administering or servicing mortgages on behalf of others, may pose enough risk to the public to warrant compliance with the Act even by those who are not “carrying on business”. In this context, we will be considering whether the definition of “mortgage broker” should be expanded to include all persons who engage in certain types of mortgage broker activities, whether or not they would be considered to be carrying on business in those activities.

Another area of consideration with respect to the definition of “mortgage broker” involves whether the concept of “dealing in” should be broken down into its various components to promote clarity.

With respect to the definition of “mortgage”, one area to be considered is whether it should be expanded to include any charge on land, including a transfer of land, which operates as a de facto mortgage.

2. Classes or Categories of Licensees:

The Current Act makes no express differentiation between persons who engage in different types of mortgage broker activities. To provide a few examples, different categories could be established for mortgage brokers that:

- (i) handle trust money;
- (ii) engage in the administration or servicing of mortgages on behalf of others;
- (iii) only lend their own money on mortgages.

By differentiating between types of mortgage broker activities carried on, the regulatory requirements could be streamlined and focused towards the particular activities carried out by the various categories of mortgage brokers.

3. Exemptions:

Certain exemptions from the licensing provisions are provided in the Current Act and in The Mortgage Broker Regulations (Saskatchewan). Consideration will be given as to whether the current list of exemptions is appropriate.

4. Proficiency and Educational Requirements:

There are no express educational or proficiency requirements under the Current Act. Our review will encompass whether educational or other proficiency requirements are needed. If it is determined that requirements of this nature are needed, consideration will be given as to what those requirements should be, and how they will be implemented.

5. Place of Business Requirements:

Section 8 of the Current Act requires all licensed mortgage brokers to have and maintain in Saskatchewan a place of business satisfactory to the Superintendent. Consideration will be given as to whether this provision should be modified to allow mortgage brokers to operate in Saskatchewan without maintaining a business office in the province, where certain conditions are met.

6. Capital, Insurance, Bonding and Other Forms of Solvency Assurance:

There are no express requirements of this nature in the Current Act. We will be considering whether some form of solvency assurance is appropriate, and whether it should be determinant upon the nature of the activities being carried on by the mortgage broker. For example, do the additional risks to the public associated with the handling of trust money warrant solvency assurance requirements that are not imposed on other types of mortgage broker activities?

A second, key question in respect of this issue is what form of solvency assurance, if any is required, should be obtained. Some examples of forms of solvency assurance are:

- (i) capital requirements;
- (ii) fidelity insurance;
- (iii) surety bonds; and
- (iv) standby letters of credit.

7. Record Keeping Requirements:

Section 24 of the Current Act contains certain record keeping requirements. Consideration will be given as to whether these requirements are sufficiently detailed to promote transparency and facilitate audits.

8. Trust Money Requirements:

The Current Act has no express requirements around the receipt and handling of trust money. In addition to the primary question of whether requirements should be imposed, other significant areas to consider include which funds should be deemed to be trust funds and the terms of any trust agreement documenting the trust relationship.

9. Disclosure to Borrowers:

The Current Act does not expressly require any particular disclosure to borrowers prior to the borrower entering into the mortgage transaction. We will be considering whether some disclosure is required, and if so, the nature of the disclosure. For example, the disclosure could involve emphasizing the terms of the mortgage pertaining to deductions from the principal advanced, the right of prepayment and any charges associated with it, or any other terms which should be brought explicitly to the borrower's attention.

10. Disclosure to Investors:

The Current Act does not expressly require any particular disclosure to investors in mortgages prior to the entering into of the mortgage transaction. We will be considering whether some disclosure is required, and if so, the nature of the disclosure. For example, items to be disclosed could include the current status of the mortgage, copies of the appraisal report or a statement of valuation, the risks involved in investing in mortgages, or any other information that should be brought explicitly to the investor's attention.

11. Conflict of Interest:

The Current Act does not expressly address conflicts of interest between mortgage brokers and the consumers of their products and services. The consideration of this topic will involve whether conflicts of interest should be addressed, and if so, how. For example, some jurisdictions require mortgage brokers to provide consumers with up front disclosure of conflicts of interest in certain situations. Items that could be the subject of required disclosure could include:

- (i) the nature of any relationship between the mortgage broker and any other parties to the transaction; and
- (ii) whether the mortgage broker is receiving a commission from any of the other parties to the transaction.