

ONTARIO REGULATION 188/08

made under the

MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006

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MORTGAGE BROKERAGES: STANDARDS OF PRACTICE

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INTERPRETATION

Definitions

1. In this Regulation,

“authorized name” means, in relation to a brokerage, any name in which the brokerage is licensed;

“authorized trust account” means, in relation to a brokerage, its mortgage brokerage trust account established in accordance with section 50;

“business day” means a day that is not a Saturday or holiday within the meaning of section 87 of the *Legislation Act, 2006*;

“deemed trust funds” means, in relation to a brokerage, money that is deemed by section 49 to be held in trust by the brokerage;

“investor” means a person or entity who makes an investment in a mortgage through the purchase or exchange of a loan or an interest in a loan on the security of real estate;

“public relations materials” means, in relation to a brokerage,

(a) any advertisement by the brokerage in connection with its business as a brokerage that is published, circulated or broadcast by any means, or

(b) any material that a brokerage makes available to the public in connection with its business as a brokerage;

“trade completion date” means, in relation to a mortgage, the earlier of,

(a) the date on which an investor, or a brokerage on behalf of an investor, enters into an agreement to trade in the mortgage, or

(b) the date on which the trade in the mortgage is completed.

Designated classes of lenders and investors

2. (1) For the purposes of this Regulation, a person or entity is a member of a designated class of lenders and investors if the person or entity is a member of any of the following classes:

1. The Crown in right of Ontario, Canada or any province or territory of Canada.
2. A brokerage acting on its own behalf.
3. A financial institution.
4. A corporation that is a subsidiary of a person or entity described in paragraph 1, 2 or 3.
5. A corporation that is an approved lender under the *National Housing Act* (Canada).
6. An administrator or trustee of a registered pension plan within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada).
7. A person or entity who is registered as an adviser or dealer under the *Securities Act* when the person or entity is acting as a principal or as an agent or trustee for accounts that are fully managed by the person or entity.
8. A person or entity who is registered under securities legislation in another province or territory of Canada with a status comparable to that described in paragraph 7 when the person or entity is acting as a principal or as an agent or trustee for accounts that are fully managed by the person or entity.
9. A person or entity, other than an individual, who has net assets of at least \$5 million as reflected in its most recently-prepared financial statements and who provides written confirmation of this to the brokerage.
10. An individual who, alone or together with his or her spouse, has net assets of at least \$5 million and who provides written confirmation of this to the brokerage.
11. An individual who, alone or together with his or her spouse, beneficially owns financial assets (being cash, securities within the meaning of the *Securities Act*, the cash surrender value of a life insurance contract, a deposit or evidence of a deposit) that have an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1 million and who provides written confirmation of this to the brokerage.
12. An individual whose net income before taxes in each of the two most recent years exceeded \$200,000 or whose net income before taxes in each of those years combined with that of his or her spouse in each of those years exceeded \$300,000, who has a reasonable expectation of exceeding the same net income or combined net income, as the case may be, in the current year and who provides written confirmation of this to the brokerage.
13. A person or entity in respect of which all of the owners of interests, other than the owners of voting securities required by law to be owned by directors, are persons or entities described in paragraphs 1 to 12.

(2) In this section,

“spouse” means spouse as defined in section 29 of the *Family Law Act*.

Duties re syndicated mortgages

3. If there is more than one lender under a mortgage or if there is more than one investor who makes an investment in a mortgage, a brokerage owes to each of the lenders or investors the duties imposed by this Regulation in respect of the mortgage or investment.

STANDARDS OF PRACTICE

Standards of practice

4. The requirements set out in this Regulation are prescribed as standards of practice for every brokerage licence that is issued under the Act.

PUBLIC RELATIONS

Use of authorized name

5. A brokerage shall not carry on business in a name other than its authorized name.

Use of name, etc., in public relations materials

6. (1) A brokerage shall disclose its authorized name and its licence number in all of its public relations materials and the name and number must be clearly and prominently disclosed.

(2) If the authorized name of a brokerage is, or includes, a franchise name that the brokerage is permitted to use under a franchise agreement, the public relations materials must clearly indicate that the brokerage is independently owned and operated.

(3) If, in its public relations materials, a brokerage identifies a broker or agent by name, the brokerage shall use the name in which the broker or agent is licensed.

(4) If, in its public relations materials, a brokerage refers to a broker or agent, the materials must include at least one reference to the broker or agent that includes one of the following titles, and the materials may also include an equivalent title in another language:

1. When referring to a broker, the title “mortgage broker”, “broker”, “courtier en hypothèques” or “courtier” or an abbreviation of any of those titles.
2. When referring to an agent, the title “mortgage agent”, “agent” or “agent en hypothèques” or an abbreviation of any of those titles.

Prohibition re public relations materials

7. A brokerage shall not include false, misleading or deceptive information in its public relations materials.

Duty to provide licence information

8. (1) Upon request, a brokerage shall give to a person the licence number of the brokerage and the name and licence number of any broker or agent who is authorized to deal or trade in mortgages on behalf of the brokerage.

(2) Subsection (1) does not require the brokerage to give a person the names and licence numbers of all or substantially all of its brokers or agents.

Complaints by the public

9. (1) If a person makes a complaint to the brokerage in writing about the mortgage business activities of the brokerage or of any broker or agent authorized to deal or trade in mortgages on its behalf, the brokerage shall give the person a written response to the complaint setting out the brokerage’s proposed resolution of the complaint.

(2) The written response must also tell the person who made the complaint that, if the person is not satisfied with the proposed resolution and if the person believes that the complaint relates to a contravention of the Act or a regulation, the person may refer the complaint to the Superintendent.

CUSTOMER RELATIONS

Duty to verify customer's identity

10. (1) A brokerage shall take reasonable steps to verify the identity of each borrower and lender to whom it intends to present a mortgage or renewal for consideration.

(2) A brokerage shall take reasonable steps to verify the identity of each investor to whom it intends to present an investment in a mortgage for consideration.

Duty to verify other party's identity

11. (1) If a brokerage wishes to present a mortgage or renewal to a borrower for consideration, the brokerage shall take reasonable steps to verify the identity of each lender.

(2) If a brokerage wishes to present a mortgage or renewal to a lender for consideration, the brokerage shall take reasonable steps to verify the identity of each borrower.

(3) Subsection (2) does not apply if the lender is otherwise required by law to verify the borrower's identity.

(4) If a brokerage wishes to present an investment in a mortgage to an investor for consideration, the brokerage shall take reasonable steps to verify the identity of every other investor involved in the trade.

(5) Subsection (4) does not apply if another brokerage is acting as the representative of the other investor in the trade.

(6) The brokerage shall advise the borrower, lender or investor, as the case may be, if the brokerage is unable to verify the identity of another party to the transaction,

- (a) before the borrower enters into the mortgage agreement or signs a mortgage instrument or a mortgage renewal agreement, as the case may be, with the lender;
- (b) before submitting the borrower's mortgage application to the lender or arranging for a mortgage renewal agreement with the lender; or
- (c) before the trade completion date for the investment in a mortgage.

Duty re unlawful transactions

12. A brokerage shall not act as a representative of a borrower, lender or investor in respect of a mortgage if the brokerage has reasonable grounds to believe that the mortgage, its renewal or the investment in it is unlawful.

Duty re borrower's legal authority

13. If a brokerage has reason to doubt a borrower's legal authority to mortgage a property, the brokerage shall so advise each prospective lender at the earliest opportunity.

Duty re accuracy of mortgage application

14. If a brokerage has reason to doubt the accuracy of information contained in a borrower's mortgage application or in a document submitted in support of an application, the brokerage shall so advise each prospective lender at the earliest opportunity.

Restriction re tied selling

15. (1) A brokerage shall not coerce a borrower, lender or investor to obtain a product or service from a particular person or entity, including the brokerage, as a condition for obtaining another service from the brokerage.

(2) For the purposes of subsection (1), a brokerage does not coerce a borrower, lender or investor, as the case may be, by virtue of offering a service to the borrower, lender or investor on more favourable terms than it would otherwise offer, if the more favourable terms are offered on the condition that the borrower, lender or investor obtains another product or service from a particular person or entity, including the brokerage.

Restriction re guarantees

16. A brokerage shall not, directly or indirectly, offer or make any guarantee to a lender in respect of a mortgage or to an investor in respect of an investment in a mortgage.

Duty to return certain documents

17. (1) A brokerage shall not unreasonably withhold any deed, instruments or other documents from their owner.

(2) A brokerage shall promptly, without charge, return deeds, instruments or other documents to their owner when requested in writing to do so by the Superintendent, the owner or the owner's agent.

INFORMATION ABOUT THE BROKERAGE

Disclosure re role of brokerage

18. (1) A brokerage shall disclose in writing to a prospective borrower or lender the following information about the nature of its relationship with borrowers and lenders:

1. Information about whether, and when, the brokerage is acting as a representative of the lender but not the borrower in a transaction.
2. Information about whether, and when, the brokerage is acting as a representative of the borrower but not the lender in a transaction.
3. Information about whether, and when, the brokerage is acting as a representative of both the borrower and the lender in a transaction and is not giving preference to the interests of either.

(2) Subsection (1) does not apply when the brokerage is the mortgage lender.

Disclosure of brokerage's relationship with lenders

19. (1) A brokerage shall disclose in writing to a borrower the number of lenders on whose behalf the brokerage acted as a representative during the previous fiscal year and shall indicate whether the brokerage itself was a lender.

(2) When there are two or more lenders under one mortgage, they are deemed to be one lender for the purposes of subsection (1).

(3) Upon request, a brokerage shall disclose the following information in writing to a borrower:

1. Whether the brokerage itself was the lender for more than 50 per cent of the total number of mortgages and mortgage renewals completed by the brokerage during the previous fiscal year.

2. The name of the lender, if any, with whom the brokerage arranged mortgages during the previous fiscal year if the mortgages constituted more than 50 per cent of the total number of mortgages and mortgage renewals completed by the brokerage during the previous fiscal year.

INFORMATION ABOUT FEES AND OTHER PAYMENTS

Representations re status of payments

20. (1) A brokerage shall not, directly or indirectly, represent to any person or entity that any amounts payable to the brokerage in connection with carrying on the business of dealing or trading in mortgages or carrying on business as a mortgage lender are set or approved by any government authority.

(2) Subsection (1) does not apply with respect to disbursements that may be made by a brokerage for fees payable to register or deposit instruments under the *Land Titles Act* or the *Registry Act*.

Fees, etc., payable by others

21. (1) A brokerage shall give the following information, in writing, to a borrower in connection with a mortgage or renewal that it presents for the borrower's consideration:

1. Whether the brokerage has received, may receive or will receive a fee or other remuneration, directly or indirectly, from another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.
2. If a fee or other remuneration is or may be payable to the brokerage, the identity of the other person or entity, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.
3. Whether a broker or agent who is authorized to deal or trade in mortgages on the brokerage's behalf has received, may receive or will receive payment of an incentive from another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.
4. If an incentive is or may be payable to a broker or agent, the nature of the incentive and the identity of the other person or entity.

(2) The brokerage shall obtain the borrower's written acknowledgement that the brokerage made the disclosure required by this section.

Fees, etc., payable by the brokerage to others

22. (1) A brokerage shall give the following information, in writing, to a borrower in connection with a mortgage or renewal that it presents for the borrower's consideration:

1. Whether the brokerage has paid, may pay or will pay a fee or other remuneration, directly or indirectly, to another person or entity in connection with the negotiation or arrangement of the mortgage or renewal.
2. If a fee or other remuneration is or may be payable, the identity of the other person or entity, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.

(2) The brokerage shall obtain the borrower's written acknowledgement that the brokerage made the disclosure required by this section.

Fees, etc., receivable by brokerage for referral

23. If a brokerage refers a borrower, lender or investor or a prospective borrower, lender or investor to another person or entity for a fee or other remuneration, the brokerage shall give the following information, in writing, to the borrower, lender or investor or prospective borrower, lender or investor either before or when making the referral:

1. A description of the nature of the relationship between the brokerage and the other person or entity.
2. A statement concerning whether the brokerage has received, may receive or will receive a fee or other remuneration, directly or indirectly, for making the referral.

DUTIES IN PARTICULAR TRANSACTIONS**Duty re suitability of mortgage for customer**

24. (1) A brokerage shall take reasonable steps to ensure that any mortgage or investment in a mortgage that it presents for the consideration of a borrower, lender or investor, as the case may be, is suitable for the borrower, lender or investor having regard to the needs and circumstances of the borrower, lender or investor.

(2) Subsection (1) does not apply if the borrower, lender or investor, as the case may be, is another brokerage or a financial institution.

Disclosure of material risks

25. (1) A brokerage shall disclose in writing to a borrower, lender or investor, as the case may be, the material risks of each mortgage or investment in a mortgage that the brokerage presents for the consideration of the borrower, lender or investor.

(2) Subsection (1) does not apply if the lender or investor, as the case may be, is a member of a designated class of lenders and investors.

(3) The brokerage shall obtain the written acknowledgement of the borrower, lender or investor, as the case may be, that the brokerage made the disclosure required by this section.

Disclosure of brokerage's relationships

26. (1) A brokerage shall disclose in writing to a borrower the nature of the relationship between the brokerage and each lender under a mortgage that it presents for the borrower's consideration, including whether the brokerage itself is a lender under the mortgage.

(2) A brokerage shall disclose in writing to each lender the nature of the relationship between the brokerage and each borrower under a mortgage that it presents for the lender's consideration.

(3) A brokerage shall disclose in writing to an investor the nature of the relationship between the brokerage and each party to the trade in a mortgage that it presents for the investor's consideration.

(4) The brokerage shall obtain the written acknowledgement of the borrower, lender or investor, as the case may be, that the brokerage made the disclosure required by this section.

Disclosure of potential conflicts of interest

27. (1) A brokerage shall disclose in writing to a borrower, lender or investor, as the case may be, any conflict of interest that the brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf may have in connection with a mortgage or a trade in a

mortgage that the brokerage presents for the consideration of the borrower, lender or investor.

(2) The brokerage shall obtain the written acknowledgement of the borrower, lender or investor, as the case may be, that the brokerage made the disclosure required by this section.

(3) Subsection (1) does not apply if the lender is another brokerage.

(4) Subsection (1) does not apply if the investor is another brokerage or a financial institution.

Duty re mortgage previously in default

28. (1) A brokerage shall not sell or attempt to sell or arrange or attempt to arrange the sale of a mortgage that has been in default at any time in the preceding 12 months unless the brokerage informs the investor of the amount and duration of the default.

(2) A brokerage shall obtain the investor's written acknowledgement that the brokerage has made the disclosure required by this section.

Duties re reverse mortgages

29. (1) A brokerage shall not arrange or enter into a reverse mortgage with a borrower unless the brokerage receives from the borrower a written statement signed by a lawyer stating that the lawyer has given the borrower independent legal advice about the proposed reverse mortgage.

(2) For the purposes of this section, a mortgage is a reverse mortgage if both of the following conditions are satisfied:

1. The money that is advanced under the mortgage does not have to be repaid until the occurrence of one or more of the following events:
 - i. The borrower's death or, if there is more than one borrower, the death of the last surviving borrower.
 - ii. The acquisition by the borrower or the last surviving borrower, as the case may be, of another dwelling to use as his or her principal residence.
 - iii. The sale of the mortgaged property.
 - iv. The borrower's or last surviving borrower's vacating the mortgaged property to live elsewhere with no reasonable prospect of returning.
 - v. An event of default under the conditions of the mortgage.
2. One or more of the following conditions applies while the borrower or last surviving borrower, as the case may be, continues to occupy the mortgaged property as his or her principal residence and otherwise complies with the terms of the mortgage:
 - i. No instalment repayments of the principal and no payment of interest on the principal are due or capable of becoming due.
 - ii. Although interest payments may become due, no repayment of all or part of the principal is due or capable of becoming due.
 - iii. Although interest payments and repayment of part of the principal may become due, repayment of all of the principal is not due or capable of becoming due.

Temporary disclosure form for borrowers re cost of borrowing

30. (1) A brokerage shall give a borrower the following information and documents about each mortgage that the brokerage presents for the borrower's consideration:

1. A completed disclosure form, in a form approved by the Superintendent, signed by a broker.
2. The principal amount of the mortgage.
3. The annual interest rate or, in the case of a mortgage with a variable interest rate, the method of determining the annual interest rate.
4. The applicable instalment period and the amount of each instalment payment.
5. The amortization period for the mortgage and particulars of any compounding of interest.
6. Particulars of the fees and costs that are payable by the borrower, indicating any amounts that are to be deducted from the principal amount of the mortgage.
7. The net amount to be advanced under the mortgage.
8. The term of the mortgage and the amount that the borrower will owe when the term expires, if all payments have been made on the due date and any prepayment privilege is not used.
9. Particulars of any rights, obligations, charges and penalties that apply with respect to the mortgage, including any rights and obligations referred to in section 24 or subsection 25 (1) of the Act or any charges or penalties referred to in section 24 or subsection 25 (1) of the Act, as the case may be.
10. Other terms and conditions of the mortgage.

(2) For the purposes of clause 23 (2) (b) of the Act, the cost of borrowing is composed of the fees and costs that are payable by the borrower and are not deducted from the principal amount of the mortgage, and it must be expressed as a percentage accurate to within one eighth of 1 per cent.

(3) The brokerage shall give the borrower the information and documents required by subsection (1) at least 72 hours, excluding Sundays and holidays, before the borrower is asked to sign a mortgage instrument or a commitment to enter into the mortgage.

(4) The 72-hour period referred to in subsection (3) may be reduced to 24 hours if the borrower obtains independent legal advice about the mortgage.

(5) Subsection (3) does not apply,

(a) if the lender is a financial institution; and

(b) if the borrower is not required to pay a brokerage fee to the brokerage.

(6) This section is revoked on January 1, 2009.

Disclosure form for lenders and investors re mortgages

31. (1) A brokerage shall give each lender or investor the following information and documents with respect to a mortgage or a trade in a mortgage that the brokerage presents for the consideration of the lender or investor:

1. A completed disclosure form, in a form approved by the Superintendent, signed by a

broker.

2. If the investment is in an existing mortgage, a copy of the mortgage instrument.
3. If an appraisal of the applicable property has been done in the preceding 12 months and is available to the brokerage, a copy of the appraisal.
4. If an appraisal of the applicable property is not available as described in paragraph 3, documentary evidence of the value of the property, other than an agreement of purchase and sale.
5. If an agreement of purchase and sale in respect of the property has been entered into in the preceding 12 months and is available to the brokerage, a copy of the agreement of purchase and sale.
6. Documentary evidence of the borrower's ability to meet the mortgage payments.
7. A copy of the application for the mortgage and of any document submitted in support of the application.
8. If the mortgage is a new mortgage, documentary evidence of any down payment made by the borrower for the purchase of the property.
9. A copy of any agreement that the lender or investor may be asked to enter into with the brokerage.
10. All other information, in writing, that a lender or investor of ordinary prudence would consider to be material to a decision about whether to lend money on the security of the property or to invest in the mortgage.

(2) Subsection (1) does not apply if the lender or investor is a member of a designated class of lenders and investors.

(3) A brokerage shall obtain the lender's or investor's written acknowledgement that the brokerage has disclosed the information and documents required by this section.

Disclosure form for lenders re mortgage renewals

32. (1) A brokerage shall give each lender the following information and documents with respect to a renewal of a mortgage that the brokerage presents for the lender's consideration:

1. A completed renewal disclosure form, in a form approved by the Superintendent, signed by a broker.
2. If an appraisal of the property has been done in the preceding 12 months and is available to the brokerage, a copy of the appraisal.
3. If an agreement of purchase and sale in respect of the property has been entered into in the preceding 12 months and is available to the brokerage, a copy of the agreement of purchase and sale.
4. All other information, in writing, that a lender of ordinary prudence would consider to be material to a decision about whether to renew the mortgage.

(2) Subsection (1) does not apply if the lender is a member of a designated class of lenders and investors.

(3) A brokerage shall obtain the lender's written acknowledgement that the brokerage has disclosed the information and documents required by this section.

GENERAL REQUIREMENTS FOR DISCLOSURES

Clarity of disclosure, etc.

33. A written disclosure, consent or acknowledgement required by this Regulation must be expressed in plain language that is clear and concise and it must be presented in a manner that is logical and is likely to bring to the attention of the borrower, lender or investor, as the case may be, the information that is required to be conveyed.

Disclosure based on estimate, etc.

34. (1) The information to be disclosed under this Regulation to a borrower, lender or investor may be an estimate or may be based upon an assumption if, when the disclosure is made, the brokerage cannot know the actual information to be disclosed and if the estimate or assumption is reasonable.

(2) If the information disclosed under this Regulation to a borrower, lender or investor is an estimate or is based upon an assumption, the brokerage shall so notify the borrower, lender or investor, as the case may be, in writing.

Deadline for disclosures to borrowers

35. (1) Unless the context requires otherwise, every disclosure of information to a borrower that is required by this Regulation must be made at the earliest opportunity and, in any case, no later than two business days before the borrower enters into a mortgage agreement or signs a mortgage instrument, whichever is the earlier.

(2) If the borrower consents in writing to receiving the disclosure after the deadline described in subsection (1), the disclosure may instead be made at any time before the borrower signs a mortgage instrument.

Deadline for disclosures to lenders and investors

36. (1) Unless the context requires otherwise, every disclosure of information to a lender or investor that is required by this Regulation must be made at the earliest opportunity and, in any case, no later than two business days before the earliest of the following events:

1. The brokerage receives money from the lender or investor.
2. The brokerage enters into an agreement to receive money from the lender or investor.
3. The lender enters into an agreement to enter into a mortgage or the investor enters into an agreement to purchase, exchange or sell a mortgage.
4. The money is advanced to the borrower under the mortgage.
5. The trade completion date.

(2) If the lender or investor consents in writing to receiving the disclosure after the deadline described in subsection (1), the disclosure may instead be made no later than one business day before the earliest of the events described in that subsection.

PAYMENTS BY BORROWERS, LENDERS, INVESTORS

Advance payment by borrower

37. (1) If the principal amount of a mortgage is \$300,000 or less, a brokerage shall not require a borrower to make, and shall not accept, an advance payment or deposit for services to be rendered or expenses to be incurred by the brokerage or any other person.

(2) Before January 1, 2009, if the principal amount of a mortgage is \$200,000 or less, a brokerage shall not require a borrower to make, and shall not accept, an advance payment or deposit for services to be rendered or expenses to be incurred by the brokerage or any other person.

(3) Subsection (2) is revoked on January 1, 2009.

Payment, etc., by lender or investor

38. (1) A brokerage shall not receive money from a lender or enter into an agreement to receive money from a lender in connection with any activity requiring a brokerage licence unless an application has been made for a mortgage on a specific property.

(2) A brokerage shall not receive money from an investor or enter into an agreement to receive money from an investor in connection with any activity requiring a brokerage licence unless an existing mortgage is available on a specific property.

Receipt for deemed trust funds

39. Upon receiving from a person or entity money that constitutes deemed trust funds, the brokerage shall give the person or entity a written statement setting out the following information:

1. The amount of the money received by the brokerage.
2. The date on which the brokerage received the money.
3. The name of the person or entity from whom the money was received and, if the money was received on behalf of another person or entity, the name of that person or entity.
4. The purpose for which the money was received, including particulars of the mortgage, if any, to which the money relates.
5. The terms on which the brokerage holds the money.
6. The name of the broker or agent who received the money on behalf of the brokerage.

MANAGING THE BROKERAGE

Duty to establish policies and procedures

40. (1) A brokerage shall establish and implement policies and procedures that are reasonably designed to ensure that the brokerage and every broker and agent who is authorized to deal or trade in mortgages on its behalf complies with the requirements established under the Act.

(2) A brokerage shall establish and implement policies and procedures providing for the adequate supervision of every broker and agent who is authorized to deal or trade in mortgages on its behalf.

(3) Without limiting the generality of subsections (1) and (2), the brokerage shall establish and implement policies and procedures in respect of the following matters:

1. The description of the role of the brokerage in relation to borrowers and lenders and its disclosure to borrowers and lenders as required by this Regulation.
2. The verification of the identity of borrowers, lenders and investors in the circumstances required by this Regulation.

3. The determination of the suitability of a mortgage or investment in a mortgage for a borrower, lender or investor, as the case may be.
4. The identification of the material risks of a mortgage or investment in a mortgage for a borrower, lender or investor, as the case may be, and their disclosure to the borrower, lender or investor, as the case may be, as required by this Regulation.
5. The identification of potential conflicts of interest between the brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf and a borrower, lender or investor who is represented by the brokerage, and their disclosure to the borrower, lender or investor, as the case may be, as required by this Regulation.
6. The provision of incentives other than money for dealing or trading in mortgages to its brokers and agents by other persons and entities, if the brokerage permits any of its brokers or agents to receive such incentives.
7. The provision of incentives other than money for dealing or trading in mortgages to brokers and agents who are authorized by another brokerage to deal or trade in mortgages on the other brokerage's behalf, if the brokerage provides incentives to any brokers or agents of the other brokerage.

Duty to establish complaints process

41. (1) A brokerage shall establish a process for resolving complaints from the public about the mortgage business activities of the brokerage or of any broker or agent authorized to deal or trade in mortgages on its behalf.

(2) The brokerage shall designate one or more individuals to receive and attempt to resolve complaints from the public, and each designated individual must be an employee of the brokerage or someone who is otherwise authorized to act on its behalf.

(3) The brokerage shall keep a record of all written complaints received from the public by the brokerage and all written responses by the brokerage.

Duty to have insurance

42. (1) A brokerage shall maintain errors and omissions insurance in a form approved by the Superintendent with extended coverage for loss resulting from fraudulent acts or shall have some other form of assurance in a form approved by the Superintendent.

(2) The insurance or other assurance must be sufficient to pay a minimum of \$500,000 in respect of any one occurrence involving the brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf and \$1 million in respect of all occurrences during a 365-day period involving the brokerage or any such broker or agent.

Duty re authorization of brokers, agents

43. (1) A brokerage shall not authorize an individual to deal or trade in mortgages on its behalf unless the brokerage takes reasonable steps to satisfy itself that the individual is eligible to be licensed as a broker or agent.

(2) A brokerage shall not authorize an individual to deal or trade in mortgages on its behalf if the brokerage knows, or reasonably ought to know, that the individual is a broker or agent who is authorized to deal or trade in mortgages on behalf of another brokerage.

(3) A brokerage shall immediately notify the Superintendent if the brokerage believes that there may be reasonable grounds upon which the Superintendent could determine that a broker

or agent is not suitable to be licensed under the Act.

Restrictions on payments by brokerage

44. (1) A brokerage shall not pay a fee or other remuneration for dealing or trading in mortgages on its behalf to another person or entity that carries on the business of dealing or trading in mortgages unless the other person or entity either has a brokerage licence or is exempted from the requirement to have such a licence.

(2) A brokerage shall not pay a fee or other remuneration to an individual for dealing or trading in mortgages on its behalf if the brokerage knows, or reasonably ought to know, that the individual is a broker or agent who is authorized to deal or trade in mortgages on behalf of another brokerage.

Payment of incentives other than money

45. (1) Despite subsection 44 (2), a brokerage is permitted to provide an incentive other than money for dealing or trading in mortgages to a broker or agent who is authorized to deal or trade in mortgages on behalf of another brokerage if all of the following conditions are satisfied:

1. The broker or agent has obtained the consent of the other brokerage.
2. The brokerages have a written agreement governing the provision of the incentive to the broker or agent.
3. The brokerage has a written agreement with the broker or agent governing the provision of the incentive to him or her.
4. Both agreements require the brokerage to give the other brokerage particulars of the following matters both periodically and upon request:
 - i. the incentives provided by the brokerage to the broker or agent during the applicable period, and
 - ii. if an incentive entitles the broker or agent to exercise one or more options in the future, particulars of the options exercised during the applicable period.

(2) Despite subsection 44 (2), until December 31, 2008, a brokerage is permitted to provide an incentive other than money for dealing or trading in mortgages to a broker or agent who is authorized to deal or trade in mortgages on behalf of another brokerage if the broker or agent has obtained the written consent of the other brokerage.

(3) Subsection (2) is revoked on January 1, 2009.

Required records

46. (1) A brokerage shall maintain the following records:

1. Complete and accurate financial records of its licensed activities in Ontario.
2. Complete and accurate records of every mortgage application, mortgage instrument and mortgage renewal agreement received or arranged by the brokerage.
3. Complete and accurate records of every other agreement entered into by the brokerage in the course of dealing or trading in mortgages or in the course of mortgage lending.
4. Complete and accurate records of all documents or written information given to or obtained from a borrower or prospective borrower, a lender or prospective lender, an investor or prospective investor or any other person or entity pursuant to a

requirement established under the Act.

(2) The financial records maintained by a brokerage must distinguish between the deemed trust funds held by the brokerage and any other assets pertaining to other activities.

Security of records

47. A brokerage shall take adequate precautions, appropriate to the form of its records, to guard against the falsification of the records.

Records retention

48. (1) A brokerage shall retain all records that relate to a mortgage or mortgage renewal agreement, as the case may be, for at least six years after the expiry of the term of the mortgage or renewal or other expiry of the mortgage transaction.

(2) A brokerage shall retain all records that relate to a purchase, sale or trade in a mortgage for at least six years after the trade completion date or other expiry of the transaction.

(3) A brokerage shall retain for at least six years all other records that are required by subsection 46 (1) or that the brokerage is otherwise required to create or maintain under the Act.

(4) A brokerage shall retain the records described in subsections (1), (2) and (3) at its principal place of business in Ontario, if any, or, if the brokerage has notified the Superintendent that it keeps records at other specified premises in Ontario, at those premises.

(5) If the records described in subsection (1), (2) or (3) originate at another place of business, the brokerage shall forward them to its principal place of business in Ontario, if any, or to the other premises described in subsection (4).

(6) Despite subsection (4), records in electronic form need not be retained at the premises described in that subsection if those records can be retrieved from those premises in an understandable electronic and paper form promptly upon request.

(7) A brokerage shall ensure that it maintains the capacity to retrieve its electronic records throughout the period during which this section requires the records to be retained.

MANAGING DEEMED TRUST FUNDS

Deemed trust funds

49. (1) Subject to subsection (2), money received by a brokerage directly or indirectly from a borrower, lender or investor in connection with carrying on the business of dealing or trading in mortgages is deemed, for the purposes of this Regulation, to be held in trust by the brokerage.

(2) Money received by a brokerage for any of the following purposes is not deemed to be held in trust by the brokerage:

1. Money earned by the brokerage for its services.
2. Money received to reimburse the brokerage for its expenses.
3. Money payable to the brokerage as a mortgage lender.

Authorized trust account

50. (1) A brokerage that receives or holds deemed trust funds shall maintain a trust account designated as its mortgage brokerage trust account at one of the following types of financial institutions in Ontario:

1. A bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada).
2. A credit union or caisse populaire to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
3. A corporation registered under the *Loan and Trust Corporations Act*.
4. A retail association as defined under the *Cooperative Credit Associations Act* (Canada).

(2) A brokerage shall not establish or maintain more than one mortgage brokerage trust account unless it has the prior written consent of the Superintendent to do so.

Administration of trust account

51. (1) A brokerage shall deposit deemed trust funds that it receives into its authorized trust account within two business days after receiving the funds.

(2) A brokerage shall keep deemed trust funds separate from money that does not constitute deemed trust funds.

(3) Unless otherwise agreed to in writing by the beneficial owner of deemed trust funds, any interest earned on the deemed trust funds shall be paid to the beneficial owner.

(4) A brokerage shall not disburse any deemed trust funds except in accordance with the terms upon which the funds were received by the brokerage.

Record of trust account transactions

52. A brokerage shall make a written record of all deemed trust funds that it receives and all transactions relating to the funds, and the record must include the following information:

1. The contents of the written statement required by section 39 that is given to the person or entity from whom money is received.
2. With respect to every deposit made to the authorized trust account, the amount of the deposit, the date on which it was made, the name of the person or entity from whom the deposited money was received and the purpose for the deposit, including particulars of the mortgage, if any, to which the deposit relates.
3. With respect to every disbursement made from the authorized trust account, the amount of the disbursement, the date on which it was made, the name of the person or entity to whom the money was disbursed and the purpose for the disbursement, including particulars of the mortgage, if any, to which the disbursement relates.
4. With respect to every payment of interest on money in the authorized trust account, a way of identifying the deposit of deemed trust funds to which the interest relates, the amount of the interest associated with the deposit and the date, if any, on which the interest was paid to the person or entity from whom the deposit was received.

Monthly reconciliation statement for trust account

53. (1) Every month, a brokerage shall prepare a reconciliation statement for the authorized trust account and the principal broker shall review the statement and sign and date it to indicate that he or she certifies that it is accurate.

(2) The reconciliation statement for a month must be prepared, reviewed and signed by the following deadline:

1. If the brokerage receives a monthly account statement from the financial institution where the account is maintained, 30 days after the brokerage receives the monthly account statement.
 2. In any other case, 30 days after the end of the month.
- (3) The reconciliation statement for a month must set out the following information:
1. The differences, if any, between the records of the brokerage and the records of the applicable financial institution as of the following date:
 - i. if the brokerage receives a monthly account statement from the financial institution, the date of the monthly account statement, and
 - ii. in any other case, the last day of the month.
 2. The balance in the account that is owing to each person or entity as of the applicable date described in subparagraph 1 i or ii.

Duty to report shortfall in trust account

54. If a brokerage determines that there is a shortfall in the authorized trust account, the brokerage shall immediately notify the Superintendent.

Annual reconciliation statement for trust account

55. (1) If, for any month during its fiscal year, a brokerage is required to prepare a reconciliation statement for the authorized trust account, the brokerage shall prepare an annual reconciliation statement for the account for the fiscal year within 90 days after the end of the year.

(2) The annual reconciliation statement must summarize the contents of each of the required monthly reconciliation statements for the account for the fiscal year.

OTHER MATTERS

Duty re concurrent businesses

56. A brokerage that engages in another business concurrently with carrying on the business of dealing or trading in mortgages or carrying on business as a mortgage lender shall not allow the other business to jeopardize its integrity, independence or competence when carrying on the business of dealing or trading in mortgages or carrying on business as a mortgage lender.

Use of certain information

57. A brokerage shall not use information obtained in the course of carrying on business for any purpose other than that for which the information was obtained unless the brokerage has the written consent of the person or entity who is the subject of the information.

Required addresses

58. (1) A brokerage shall maintain a mailing address in Ontario that is suitable to permit service by registered mail.

(2) A brokerage shall maintain an e-mail address.

Use of forms

59. If a form is approved by the Superintendent for a purpose under the Act, a brokerage shall ensure that the brokerage and its brokers and agents use the current approved version of the form.

COMMENCEMENT

Commencement

60. (1) Subject to subsection (2), this Regulation comes into force on July 1, 2008.

(2) Sections 6, 10, 11, 18, 19, 21 to 25 and 27, subsection 37 (1) and sections 40 and 41 come into force on January 1, 2009.

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