



MORTGAGE BROKERAGE - AVOID MISREPRESENTATIONS

Summary: An industry member must not submit information to a third party that they know or ought to have known is false or misleading. Additionally, mortgage brokerage industry members must disclose any steps they have taken to verify information provided to them by parties to a mortgage deal and must keep any documentation relating to that information verification.[See: *Real Estate Act* Rules, s.41(a)(g)(j), s.42(a)(b)(g), s.72(1)(2)]

Note: For the purpose of this Information Bulletin, “mortgage broker” or “mortgage brokers” refers to all three categories of mortgage broker licence i.e. brokerage, broker and associate.

Industry members across all classes and category of licence have a responsibility to ensure they act honestly, practice in accordance with the legislation and refuse to provide services to any client who instructs the industry member to withhold information that is required to be disclosed under the legislation.

Likewise, industry members have prohibitions that apply regardless of the specific licensing class or category. All industry members are prohibited from making representations or carrying on with conduct that is reckless or intentional and that misleads or is likely to do so; participating in fraudulent or unlawful activities in connection with the provision of services; and, engaging in conduct that undermines public confidence in the industry, harms the integrity of the industry or brings the industry into disrepute.

Altering or concealing facts

A misrepresentation is a false or inaccurate statement made with the intention of misleading and/or it is any representation that is untrue. It may be made fraudulently, carelessly or innocently, and it can include when a person omits information or fails to ask appropriate questions about information the person has received when there is concern that the information received is false.

Mortgage brokers must not participate in the submission of material or important facts when they know or ought to know the provider of a fact is attempting to mislead the intended receiver of the information. Additionally, they must not withhold relevant information.

Mortgage brokers have an important role to play in the process of connecting borrowers and lenders. They receive important financial, legal and confidential information from both parties and are typically responsible for providing information from one party to the other party.

Section 72 of the *Real Estate Act* Rules contains the requirement that mortgage brokers must disclose to all parties involved in a mortgage deal what steps, if any, they have taken to verify information that has been provided by the borrower or lender, as the case

may be. Additionally, mortgage brokers must maintain copies of supporting documentation with respect to any information verification they have carried out.

Though the *Real Estate Act* Rules do not require mortgage brokerage industry members to verify information they receive from a borrower or a lender, they are required to disclose what, if any, information verification steps they have taken. In this way, all parties are aware they may need to do their own due diligence to verify certain important information if the mortgage brokerage has not done it or the lender may choose not to deal with that mortgage broker if the mortgage broker is not verifying information.

That said, mortgage brokers, if they have reason to believe information they have been provided with is false or if it appears to be inconsistent, they should take steps to verify the facts. If they can verify the information and it is truthful and consistent, proceed.

If they are unable to verify the information they have been provided with, they should refuse to act on behalf of the party providing the false or inconsistent information and/or they should provide full disclosure to all parties of their concerns and inability to verify the information provided. This is part of an industry member's responsibility to ensure they are acting honestly and in accordance with the legislation. RECA expects industry members to look for inconsistencies in information that has been provided by a prospective borrower.

Independent of their specific role in a mortgage deal, mortgage brokers are required at all times to ensure that communication when dealing in mortgages does not involve the mortgage broker knowingly submitting false or misleading information. For more information, see RECA Information Bulletin: *Avoid Misrepresentations* and RECA Information Bulletin: *Mortgage Fraud – Red Flags*.

Examples

1. A mortgage broker is approached by a borrower to have the broker assist in securing financing for a property recently purchased. The borrower has purchased a property that has a legal suite in the basement, and he is looking for a mortgage with 90% loan-to-value ratio. Upon interviewing the borrower, the broker determines the man is currently living in a property he owns, but that he plans on moving into the upstairs unit in the new house he has purchased. The application is submitted to the lender indicating it will be the principle residence of the borrower and is approved based on this information.

Prior to possession date and the funding of the mortgage, the broker becomes aware that the borrower/owner has entered into one-year leases to rent out both the basement suite and the upstairs unit of the property. As the broker has been provided with information through the application process and submitted that information to the lender that is false or at the very least, appears to be misleading; he should notify the lender in writing of the fact that the borrower will not be living in the property as indicated on the application. Failure to notify the lender may even be considered as participation in a fraudulent activity.

2. A couple meets with a mortgage broker to obtain financing on a home they have purchased. They are fully qualified for the property in question and they have a \$200,000 down payment for the \$500,000 house. They have a firm possession date for the sale of their current home and both their salaries support the

purchase of the home in question. In casually speaking with the mortgage broker, the husband mentions he is going to be laid off 30 days after possession of their new house. This is a material fact and the broker must disclose it to the lender from which the broker wishes to obtain mortgage financing for the couple. If the mortgage broker does not disclose information about the husband's lay off, he or she may be in contravention of the *Real Estate Act* Rules.