



## MORTGAGE BROKERAGE RELATIONSHIP OPTIONS

**Summary: All industry members have a responsibility to ensure their role in a transaction is clearly understood by their clients and third parties. This means a mortgage broker must be clear about with whom he or she has a working relationship – be it the lender, the borrower or both, as the case may be. The Real Estate Council of Alberta has introduced a new form to assist mortgage industry members in explaining to borrowers the nature of their relationship with the mortgage brokerage and use of the form fulfills the requirements of section 65(c) of the *Real Estate Act Rules*. [See: *Real Estate Act*, *Real Estate Act Rules*, s.41(e), s.65(c)(i)(ii)]**

The *Real Estate Act Rules* require that all industry members ensure their role in a transaction is clearly understood by their clients and third parties [*Real Estate Act Rules*, s.41(e)]. This means mortgage borrowers must clearly understand with whom their mortgage broker has a working relationship. Real Estate Council of Alberta research into mortgage brokerage/consumer relationships has demonstrated that consumers often do not clearly understand their relationship with the brokerage, the role of the brokerage and the relationship the brokerage may have with lenders.

Agency is a relationship established when two parties agree to have one party act on behalf of the other. In an agency relationship, the agent (the industry member) will act on behalf of its principal. In the case of mortgage brokerage, the principal may be the lender or the borrower, or the mortgage brokerage may act as an intermediary.

### Relationship Options

Mortgage brokerages will typically decide between three different relationship options and stick with the chosen option, though in some cases, a brokerage may be open to different relationships with different borrowers and lenders, as the particulars of a given situation dictate.

In the case of mortgage brokerages, the brokerage may have a service relationship with the lender, the borrower or neither – in which case the brokerage would act as an intermediary between the lender and the borrower. The mortgage brokerage and its representative's role and obligations to the borrower and the lender will vary depending on the nature of the service relationship between the mortgage brokerage and the lender or borrower.

### Lender Relationships

Mortgage brokerages may choose to represent the lender and will treat the borrower as a customer of the brokerage. In this service relationship, the brokerage has an obligation to represent the lender's best interests, and will owe to the lender general, fiduciary and regulatory obligations.

When representing a lender, the mortgage brokerage may treat the borrower as a customer of the lender. The *Real Estate Act* Rules defines customer as meaning a person who has contacted, but not engaged or employed, an industry member to provide services. The brokerage will treat the borrower (customer) honestly and exercise reasonable care and skill in providing information with respect to the lender's mortgage options, keep the borrower informed of the progress of the transaction, complete documentation for submission to the lender and communicate information from the lender to the borrower.

For more information about lender relationships, please see RECA Information Bulletin: *Mortgage Brokerage – Lender Relationships*.

## **Borrower Relationships**

Mortgage brokerages may represent (act on behalf of) only the borrower. In this service relationship, the mortgage brokerage has an obligation to represent the borrower's best interests at all times. The mortgage brokerage has general, fiduciary and regulatory obligations to borrowers when they are clients of the brokerage. Specifically, because the brokerage is acting on behalf of the borrower, the brokerage will recommend a particular financing option(s) to the borrower, advocate on the borrower's behalf, and provide confidential advice. The brokerage duties to the lender are to be honest and exercise reasonable care and skill.

For more information about borrower relationships, please see RECA Information Bulletin: *Mortgage Brokerage – Borrower Relationships*.

## **Acting as an Intermediary**

Mortgage brokerages may act as an intermediary between the borrower and the lender. In such a relationship, the brokerage is authorized to offer mortgage products from one or more lenders to borrowers who are seeking a mortgage. The brokerage duties to the borrower include the following: be honest, exercise reasonable care and skill, gather the borrower's intended property and financial information to determine the lending options available, disclose and explain appropriate options for the borrower's consideration, complete and submit documentation to the lender and keep the borrower informed of the progress of the application. The brokerage duties to the lender are be honest, exercise reasonable care and skill, complete and submit documentation to the lender, disclose what steps were taken to verify information and documentation as part of the application process and keep the lender informed of the progress of the application.

If a mortgage broker industry member were to attempt to represent both the lender and the borrower in the same transaction, it is impossible for that industry member to fulfill his or her fiduciary obligations to both parties. An agent cannot be loyal to two parties in the same transaction nor can an agent act only in the best interests of one party when the interests of the other party are different. The requirement to disclose relevant information and keep a principal's information confidential is a conflict. Typically, an agent assumes the role of an advocate on behalf of their principal. If an agent is attempting to represent two parties in the same transaction, it is a conflict of interest and as a result, mortgage brokerages can only act on behalf of the borrower OR the lender.

For more information about mortgage brokerages acting as intermediaries, please see RECA Information Bulletin: *Mortgage Brokerage – Acting as an Intermediary*.

## Required Relationship Disclosure

Regardless of the relationship model a mortgage brokerage chooses, the brokerage – and industry members registered with the brokerage – must ensure that any borrowers with whom they are working (either as clients or customers) understand their relationship with the brokerage and its industry members [*Real Estate Act* Rules, s.65(c)(i) and (ii)].

RECA has recently developed a Mortgage Borrower Relationship Disclosure Document to assist borrowers in understanding their relationship with mortgage brokerages. When a mortgage broker correctly uses the RECA-developed form, it meets the disclosure requirements of section 65(c)[(i) and (ii)]. The form is available through the RECA website at [www.reca.ca](http://www.reca.ca).