



COST OF CREDIT DISCLOSURE – MORTGAGE BROKERAGE

Summary: A mortgage broker that represents a lender in a deal in mortgages must ensure the written disclosure requirements outlined in the *Fair Trading Act* of Alberta are provided to the borrower. [See: *Real Estate Act* Rules, s.71(1)(b), s.73(4), s.74(1)(a)]

Note: For the purposes of this Information Bulletin, and where the context permits, “mortgage broker” means mortgage brokerage, broker and associate.

Service Alberta is the department of the Government of Alberta responsible for the enforcement administration of the *Fair Trading Act* and the *Cost of Credit Disclosure Regulation*. The Real Estate Council of Alberta (RECA) has the authority to enforce provisions that mirror the *Fair Trading Act* and the *Cost of Credit Disclosure Regulation*. Examples of these provisions are s.71(1)(b) and s.73(4) and s.74(1)(a) in the *Real Estate Act* Rules. This Information Bulletin was prepared with the assistance of Service Alberta and is meant to help mortgage brokers understand their cost of credit disclosure requirements.

The *Fair Trading Act* defines a “loan broker” as a person who, for compensation, assists a person in obtaining credit and it captures the activities of mortgage brokerages while dealing in mortgages. Mortgage brokers involved in arranging for or providing the financing for a real estate deal, must understand their responsibilities under this legislation. Failure to comply with the legislation could result in fines up to \$100,000, or three times the amount obtained, whichever is greater, or up to two years imprisonment, or both, if convicted. Mortgage Brokerages may also be sanctioned under the *Real Estate Act*.

As it relates to mortgage brokerages dealing in mortgages, Part 9 of the *Fair Trading Act* only applies to mortgage loans related to residential mortgages, where the borrower would reside in the dwelling or to mortgages related to farming operations. Commercial or investment related mortgages are not subject to the cost of credit disclosure provisions of the *Fair Trading Act*.

Part 9 of the *Fair Trading Act* defines a “credit agreement” as an agreement under which credit is extended and includes: a loan of money, a credit sale or an agreement under which a loan of money or a credit sale may occur in the future. A “mortgage loan” is a loan secured by a charge against real property, and would be considered to be a “fixed credit” agreement. The legislation outlines the requirements for initial disclosure on loans, prepayment rights and the timing of required disclosures.

Depending on the extent of the broker’s involvement in the transaction, the broker may or may not be required to provide a disclosure statement. A mortgage broker will be required to provide a disclosure statement when:

- The lender does not enter into credit agreements in the course of carrying on a business. [see s.72(1)(2) of the *Fair Trading Act*]. In this situation, all the disclosure duties of the credit grantor are imposed on the mortgage broker.

- The lender enters into credit agreements in the course of carrying on a business and the credit grantor deducts the mortgage brokerage fee from the mortgage loan. [see s.73 of the *Fair Trading Act*]

Section 73(4) of the Rules pursuant to the *Real Estate Act* also make this a requirement of mortgage brokerages that represent lender clients that are not banks, treasury branches, credit unions, loan corporations, trust corporations, insurance companies or any person engaged in the business of making loans secured with mortgages.

Failure to provide the required disclosure information is an offence under the *Fair Trading Act* and conduct deserving of sanction under the *Real Estate Act*.

Disclosure Statement

Section 8 of the *Cost of Credit Disclosure Regulation* outlines the specific information that must be included in a disclosure statement. The statement must be in writing or in a form that will allow the borrower to retain a copy of it. The information must be clear, concise and presented in a logical order. It must also be set up in a way that brings the statement to the borrower's attention. The information that must be included in the initial disclosure statement is:

- a description of the subject-matter of any security interest;
- the outstanding balance of the loan as of the effective date of the disclosure statement;
- the nature and amount of any advances, charges or payments accounted for in the outstanding balance referred to above;
- the terms of the agreement;
- the amortization period of the loan where it is longer than the term of the agreement;
- the date on which the interest begins to accrue and the particulars of any grace period;
- where the interest rate will not change during the term, the interest rate,
 - the circumstances under which unpaid interest will be added to the principal, and
 - the application of payments between interest and principal;
- where the interest rate may change during the term,
 - the initial interest rate, the circumstances under which unpaid interest will be added to the principal and the application of payments as between interest and principal,
 - the method of determining the interest rate throughout the term, and
 - unless the amount of scheduled payments is automatically adjusted to account for changes in the interest rate, the lowest annual interest rate, based on the initial balance, at which the payments would not cover the interest that would accrue between payments;
- the nature and amount of any charges other than interest payable in connection with the agreement;
- the amount and timing of any payments to be made after the effective date of the disclosure statement;
- the total amount of all payments and advances to be made in connection with the agreement;
- the total cost of credit for the agreement;

- the APR (Annual Percentage Rate of Interest) for the agreement;
- the nature of any default charges provided for by the agreement;
- for a mortgage loan, a statement of the conditions, if any, under which the borrower may make prepayments, and any charge for prepayments. Note, for credit agreements other than mortgage loans, there are specific requirements under the *Fair Trading Act Regulation* [s.8(1)(s)];
- the nature of, and the amount and timing of payments for, any optional services purchased by the borrower for which payments are to be made to or through the credit grantor; and
- a statement indicating the borrower's right to cancel optional services of a continuing nature. A borrower may cancel an optional service on giving 30 days notice or such shorter period as is provided for by the agreement under which the services is provided.

With respect to the purchase of optional services like insurance, the credit grantor must disclose in writing that the borrower may purchase the required insurance through an agent or insurer of the borrower's choice. A borrower may cancel any optional service of a continuing nature that is provided by the credit grantor, by giving 30 days notice or a shorter notice as provided under the credit agreement.

Notice

The borrower must receive a disclosure statement for mortgages at least two business days before s/he incurs any obligation to the credit grantor or makes any payment in connection with the mortgage loan [see s.5(1)(c) of the *Cost of Credit Disclosure Regulation*]. If the information in the document is not complete or correct, the borrower may be entitled to cancel the agreement or to statutory damages. A borrower may waive the time for delivery of the disclosure statement under certain conditions. These conditions are as follows:

- If the borrower receives independent legal advice from a lawyer who is independent of the credit grantor, regarding the consequences of signing a waiver. The lawyer must not act on behalf of the credit grantor. A statement to that effect confirming the receipt of the independent legal advice signed by the lawyer must be attached to the waiver.
- If the waiver is in respect to a the mortgage loan to which the waiver relates that provides the borrower with prepayment rights that are similar to those in s.68 of the *Fair Trading Act* for prepayment of non-mortgage loans. For example, a borrower is entitled to pay the outstanding balance of the credit agreement without any prepayment charge or penalty.

The waiver statement must be in writing, signed by the borrower, and disclose the borrower's rights clearly and prominently. If the borrower waives the time period, the credit grantor must deliver the statement to the borrower before the required 2 days elapses.

Mortgage Brokerages must not charge or attempt to collect a fee or commission from a borrower until the lender has provided written confirmation to fund the mortgage and two business days have elapsed since the disclosure was provided or the borrower waived the two business day time-period in accordance the *Cost of Credit Disclosure Regulation* if Part 9 of the *Fair Trading Act* applies to the credit agreement.[see *Real Estate Act Rules*, s.71].

Calculating the Cost of Credit

In calculating the total cost of credit, the value received or to be received by the borrower in connection with the loan agreement must be taken into account. That would include:

- the money given to the borrower,
- a payment, discharge or consolidation by the credit grantor of a pre-existing monetary obligation of the borrower,
- a charge for any of the following, if the credit grantor incurs the expense for the purpose of arranging, documenting, insuring or securing a credit agreement and then charges the expense to the borrower:
 - a fee paid to a third party to record or register a document or to obtain a document or information from a public registry of interests in real property,
 - a fee for professional services required for confirming the value, condition, location etc. of the property that serves as security for the loan agreement,
 - premiums for insurance that protects the credit granter against risk of default on a high-ratio mortgage,
 - premiums for casualty insurance,
- a fee charged by the credit grantor for maintenance of a tax account on a high-ratio mortgage.

The total cost of credit is the difference between value received by the borrower and the value given by the borrower to the credit grantor in connection with the credit agreement. Some examples of value given by the borrower would include:

- money or property transferred to the credit grantor for any purpose in connection with the credit agreement;
- money or property transferred to a third party (not the lender) to pay for services that the credit grantor requires the borrower to obtain relating to the credit agreement, unless the charge:
 - is for an expense if it had been incurred by the credit grantor and then charged to the borrower
 - is for a services provided by a lawyer
 - is for title insurance provided by an insurer chosen by the borrower.

Despite the above, amounts paid into or out of a tax account for a mortgage loan are ignored when calculating the APR and total cost of credit.

Part 3 of the *Cost of Credit Disclosure Regulation* outlines the formulas for calculating the APR and the total cost of credit. The Alberta Mortgage Broker's Association has a computer program that calculates the APR and total cost of credit. The program takes into account the variables that are unique to the specific mortgage related financial transaction that is being proposed. This program is available to all AMBA mortgage brokerage members or to mortgage brokerages using the FILOGIX system.

Floating Interest Rates

If the interest rate floats, the credit grantor must, at least every 12 months, give the borrower a disclosure statement that includes the following information:

- the annual rate of interest at the beginning and end of the period;
- the outstanding balance at the beginning and end of the period;

- if there are scheduled payments in the agreement, the statement must disclose the amount and timing of all remaining payments, based on the annual rate of interest at the end of the period.

Renewals

Where the amortization period for a mortgage loan under a scheduled-payment agreement is longer than its term, the credit grantor must, as least 21 days before the end of the term deliver to the borrower a written notice stating whether or not the credit grantor is willing to renew the loan for a further term. If a mortgage is being renewed, the loan must also include a disclosure statement that includes the information identified in s.10 of the Regulation.

Advertising

If an advertisement offering credit identifies the interest rate or the amount of any payment, it must also disclose the APR, the cash price, and the term of the contract. In addition, if the advertisement refers to an “interest free period,” the advertiser must disclose whether the transaction is unconditionally interest free or if interest will accrue during the period but will be forgiven under certain conditions. If there are conditions, the advertisement must disclose the conditions and the APR for the period if the conditions are not met.

Practice Tip

For more information on the *Fair Trading Act* and *Cost of Credit Disclosure Regulation* the legislation can be found in the Consumer Information section of the Service Alberta website at www.servicealberta.ca. A copy of the *Act* and the *Regulation* can be purchased from the Queen's Printer Bookstore in Edmonton or Calgary.