

MORTGAGE BROKERAGE – WHEN IS A LICENCE REQUIRED FOR REFERRALS?

Purpose: This bulletin explains when you need a mortgage broker licence for receiving referrals.

This bulletin applies to mortgage brokerages, brokers and associates. It also applies to real estate brokerages, brokers, associate brokers and associates that refer potential borrowers to a lender or mortgage broker.

Your real estate broker licence does not let you deal in mortgages

Real estate industry professionals often want to help their clients to get a mortgage to buy a property. Although that is commendable, you must be careful not to carry on mortgage broker activities without a mortgage broker licence. The Real Estate Council of Alberta (RECA) considers encouraging a client to go to a particular financial institution for a mortgage is soliciting—a mortgage broker activity.

The *Real Estate Act* (Act) does not apply to banks and financial institutions. RECA governs the activities of persons in Alberta that deal in mortgages on behalf of others. A real estate broker licence does not authorize you to deal in mortgages. If you deal in mortgages, you need a mortgage broker licence from RECA.

How we define mortgage

Mortgage has a broad meaning under the Act. It is an interest in land established in writing that secures performing a duty or paying a debt. A lessee's interest in a leased property is leasehold mortgage. It is registering a mortgage on title to secure payment for a loan.

Dealing in mortgages includes these activities

- solicit a person to borrow or lend money and secure it by a mortgage.
- negotiate a mortgage between a borrower and a lender.
- manage mortgage payments, renewals, repayments and other administrative duties for lenders.
- buy, sell or exchange mortgages or offer to do so.
- "holding out" or representing yourself as a person who can do any of the above.

Examples of referrals where you need a mortgage broker licence

In the 2002 case of *Toronto Dominion Bank v. Real Estate Council of Alberta*, the court reviewed the definition of mortgage broker and, in

particular, what it means to solicit a person to borrow or lend money to secure it by a mortgage.

The judge concluded the following five referral scenarios were cases of soliciting business for financial institutions and needed a mortgage brokerage licence:

Referring a client to a lender without promoting the lender

A real estate broker refers his client to a specific lender. The real estate broker does not promote the lender or give any specific information to the client, but asks the client to tell the lender who referred him. The client uses that lender and mentions the name of the real estate broker as requested. The lender pays the real estate broker for the referral.

Referring a client to a lender by promoting the lender

A real estate broker refers his client to a specific lender. The real estate broker promotes the lender by saying things like, the lender has quick service, a good mortgage program, competitive rates, or that his former clients have had good dealings with that lender. The real estate broker asks the client to tell the lender who referred her. The lender pays the real estate broker for the referral.

Referring a client to a lender in person

The real estate broker refers his client to a specific lender. The real estate broker delivers the client's mortgage application to the lender, arranges a meeting between the client and the lender, or attends the mortgage application session with the client. The lender pays the real estate broker for the referral.

Referring a client to an on-site lender

A lender has an employee at the real estate office. The real estate broker actively recommends the on-site lender and steers clients toward the lender's on-site employee for pre-approval or mortgage financing. The lender pays the real estate broker for the referral.

Referring a client to a lender, you have a special agreement with

A real estate brokerage has an agreement with a specific lender. The lender offers the clients of the real estate brokerage a special mortgage program (for example, special mortgage rates or a "cash back" payment after closing). Sometimes the lender's employee is at the real estate office. The real estate broker actively refers his clients to the lender and the mortgage program. The lender pays the real estate broker for the referral.

The judge concluded her decision by saying that real estate brokers who want to encourage their clients to go to a particular lender can get a mortgage broker licence.

Referring a client to a mortgage brokerage

A real estate broker refers his client to a specific associate at a mortgage brokerage. The mortgage brokerage deals with one lender. The mortgage broker meets with the client, collects the appropriate information and submits the application to a lender. The real estate broker's role was to refer the client to the mortgage broker. The lender pays the real estate broker for the referral.

Examples of referrals where you do not need a mortgage broker licence

Referring a client to a mortgage brokerage

A real estate broker refers his client to a specific associate at a mortgage brokerage. The mortgage brokerage deals with multiple lenders. The mortgage broker meets with the client, collects the appropriate information and submits the application to a lender. The real estate broker's role was to refer the client to the mortgage broker. The lender pays the real estate broker for the referral.

The difference between this example and the examples where the lender cannot pay a referral is the mortgage brokerage deals with multiple lenders. The real estate broker did not solicit a mortgage on behalf of a specific lender.

Related information

Legislation

- *Real Estate Act* - section 1(1)(j)(r)

Information bulletins

- Holding Oneself Out as an Industry Member
- Referrals – Industry Professional Requirements
- Referrals – Payments to Unlicensed Persons