

PERSONAL MORTGAGE DEALS

Purpose: This bulletin defines a conflict of interest and explains the requirements of a mortgage broker professional who deals in mortgages on their own behalf.

This bulletin applies to mortgage brokerages, brokers and associates.

Mortgage broker professionals have a number of written disclosures they must give to other parties to the deal when they become involved in personal mortgage deals, either directly or indirectly.

Avoiding conflicts of interest – and the appearance of conflicts of interest – is an important part of working as a mortgage broker professional. If you are personally involved, directly or indirectly, in mortgage deals, you must ensure you give the written disclosures required by the *Real Estate Act* Rules (Rules). You must give your written disclosure to the borrower, lender, vendor or purchaser of the mortgage.

What is a conflict of interest?

The Rules considers a conflict of interest as a real or apparent incompatibility between a mortgage professional's interests and the interests of a client or potential client.

If you deal in mortgages on your own behalf, it could be a conflict of interest. This may also put your brokerage in a conflict of interest.

By giving the appropriate disclosures, you are giving notice that you are dealing in mortgages on your own behalf and have a personal interest in how the deal proceeds.

Should the other party to the deal not feel comfortable with the conflict that has arisen, they can choose not to proceed or seek independent advice.

Written disclosures required

When dealing in mortgages on your own behalf, you must disclose the following in writing to your client borrower, client lender, or vendor or purchaser of the mortgage as the case may be:

- the interest, either direct or indirect, that you have in the transaction
- that you are authorized under the *Real Estate Act*
- the brokerage you are registered with
- the complete details of any negotiations for a further disposition of the mortgage or the your interest in it
- any information you have that could materially affect the acceptance, issuance, sale or purchase of the mortgage

You must disclose the above in writing, at the earliest practical opportunity, and any potential conflict of interest.

Example

A developer is looking for a source of money to complete a small development and it may be difficult to arrange financing through traditional sources. The developer approaches a mortgage broker associate with whom he has a long-term relationship. The associate has a small network of private mortgage investors.

The developer needs \$100,000 of funding to complete the project and he anticipates he will only need the money for a maximum of one year. The associate contacts his regular investors and is unable to arrange the financing. He ends up loaning the money to the developer through a corporation he owns with his wife. He will sell his interest in the mortgage as soon as possible and continues to search for another investor.

The associate will administer the mortgage through his brokerage and charge a fee through a written service agreement. The developer will pay the associate's brokerage a \$15,000 fee for arranging the mortgage. The loan is at an annual rate of interest of 14%.

A number of conflicts of interest exist because of the structure of the deal. These conflicts include that:

- the associate's corporation is the lender
- the associate's brokerage, through the mortgage associate, is acting on behalf of the investor (not the developer) in the mortgage
- the associate is attempting to dispose of his interest

The disclosures required of the mortgage professional to the borrower include that:

- the associate and his wife has a direct interest in the mortgage as the lender
- the associate is attempting to dispose of his interest
- the brokerage is represents the lender and the ongoing administration of the mortgage
- the developer is a customer of the brokerage
- the name of the associate's brokerage

Related information

Legislation

- *Real Estate Act* Rules - sections 1(1)(h), s.41(f), s.75