Real Estate Council Alberta

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COST OF CREDIT DISCLOSURE – MORTGAGE BROKERAGE

Purpose: To explain the cost of credit disclosure requirements and the responsibilities of mortgage broker professionals.

This bulletin applies to all mortgage brokerages, brokers, and associates.

A mortgage broker professional that represents a lender in a deal in mortgages must disclose to a borrower in writing the cost of credit disclosure requirements in the *Consumer Protection Act* of Alberta. Mortgage broker professionals who arrange for the financing of real estate must understand their responsibilities under the *Consumer Protection Act*.

Service Alberta is the department of the Government of Alberta responsible to administer and enforce the *Consumer Protection Act* and the *Cost of Credit Disclosure Regulation*. The Real Estate Council of Alberta (RECA) has the authority to enforce provisions in the *Real Estate Act* Rules (Rules), *Consumer Protection Act*, and the *Cost of Credit Disclosure Regulation*. The Rules require industry professionals to practice in accordance with any other laws that govern trading in real estate, mortgage transactions, or appraisals in Alberta.

The *Consumer Protection Act* states a loan broker "means a person who for compensation directly assists a person in obtaining credit or a loan of money for business or personal use, including credit or a loan made from the loan broker's own funds". This definition captures the activities of mortgage brokerages while dealing in mortgages. A person who fails to comply with the legislation may receive fines up to $300,000, or three times the amount obtained, whichever is greater, or up to two years imprisonment. Mortgage brokers may also receive a sanction under the *Real Estate Act*.

Part 9 of the *Consumer Protection Act* only applies to residential mortgage loans where the borrower will reside in the dwelling or to farming operation mortgages. Commercial and investment mortgages are not subject to the cost of credit disclosure provisions of the *Consumer Protection Act*.

INFORMATION BULLETINS

Last Revised May 2018

Part 9 of the *Consumer Protection Act* refers to a credit agreement as an agreement where a person extends credit to another person 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. When you secure a mortgage loan by a charge against real property, this is fixed credit agreement. The legislation outlines the requirements for initial disclosure on loans, prepayment rights, and the timing of required disclosures.

The requirement to give a disclosure statement depends on the extent of the broker's involvement in the transaction. The broker may or may not give a disclosure statement. The *Real Estate Act* Rules (Rules) requires a mortgage broker to give a disclosure statement when:

- the lender does not enter into credit agreements in the course of carrying on a business. The mortgage broker must disclose all obligations of a credit grantor in these situations
- 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

The Rules require mortgage brokerages to make cost of credit disclosures when they 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 that they secure with a mortgage.

INFORMATION BULLETINS

Last Revised May 2018

Failure to give the disclosure information is an offence under the *Consumer Protection Act* and conduct deserving of sanction under the *Real Estate Act*.

Disclosure statement

The *Cost of Credit Disclosure Regulation* outlines the specific information a mortgage broker must include in a disclosure statement. The statement must be in writing or in a form that will allow the borrower to retain a copy. The information must be clear, concise and in a logical order. It must also be set up in a way that brings the statement to the borrower's attention. The information you must include 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 that make up the outstanding balance
- 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 where you add unpaid interest to the principal
    - the application of payments between interest and principal;
- where the interest rate may change during the term
    - the initial interest rate, the circumstances where you add unpaid interest to the principal and the application of payments as between interest and principal
    - the method of determining the interest rate throughout the term
    - 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 Annual Percentage Rate of Interest (APR) for the agreement
- the nature of any default charges in 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. For credit agreements other than mortgage loans, there are specific requirements under the *Consumer Protection Act* and/or associated Regulations.
- the nature of, and the amount and timing of payments for any optional services the borrower purchases where payments are made to or through the credit grantor
- 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 a shorter period if it is in the agreement

When the optional service is insurance for example, the credit grantor must disclose in writing that the borrower may purchase the insurance through an agent or insurer of the borrower's choice.

Timing of disclosure

The *Cost of Credit Disclosure Regulation* requires borrowers to receive a disclosure statement for mortgages at least two business days before they incur any obligation to the credit grantor or make any payment in connection with the mortgage loan. 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. The lawyer must sign and attach to the waiver a statement to that effect confirming the receipt of the independent legal advice
- if the mortgage loan allows the borrower prepayment rights consistent with s. 68 of the *Consumer Protection Act* for payment of non-mortgage loans. This is where a borrower can pay the outstanding balance of the credit agreement without any prepayment charge or penalty

The waiver statement must be in writing, disclose the borrower's rights clearly and prominently, and borrowers must sign the waiver. If the borrower waives the time-period, the credit grantor must deliver the statement to the borrower before the 2 days elapse.

If the information in the document is not complete or correct, the borrower has the option to cancel the agreement or to statutory damages.

Charging a fee

Where the borrower is an individual who enters into a credit arrangement for personal or family purposes, mortgage brokerages must not charge, collect, or attempt to collect a fee or commission from a borrower until:

- the lender provides written confirmation to fund the mortgage and the borrower receives and accepts the confirmation
- the lender provides the disclosure statement, the borrower receives the statement, and two business days pass or the borrower waives the time period for delivery

Calculating Cost of Credit

When you calculate the total cost of credit, you must take into account the value the borrower receives or may receive in connection with the loan agreement. This includes:

- 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 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 from the credit grantor for maintenance of a tax account on a high-ratio mortgage.

The total cost of credit is the difference between the value the borrower receives 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 include:

- the transfer of money or property to the credit grantor for any purpose in connection with the credit agreement;
- the transfer of money or property 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 the credit grantor incurs and then charges to the borrower
    - is for a services of a lawyer
    - is for title insurance by an insurer chosen by the borrower

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. This program is available to all AMBA mortgage brokerage members or to mortgage brokerages using the D & H Expert 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. The basis for these payments is the interest at the end of the period

Renewals

Where the amortization period for a mortgage loan 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 if the credit grantor is willing to renew the loan for a further term. If a credit grantor renews the mortgage, the loan must also include a disclosure statement that includes the information identified in s.10 of the *Cost of Credit Disclosure 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. 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 forgive the interest under certain conditions. If there are conditions, the advertisement must disclose the conditions and the APR for the period if the borrower does not meet the conditions.

Related information

Legislation

- *Real Estate Act* Rules, s.71(1)(b), s.73(4), s.74(1)(a)]
- *Consumer Protection Act*
- *Consumer Protection Act* Regulations
- *Cost of Credit Disclosure Regulation*