

RESPONSIBILITIES AND PROHIBITIONS – MORTGAGE BROKERAGE

Purpose: To explain mortgage brokerage responsibilities and prohibitions

This bulletin applies to all mortgage brokerages.

A broker of a mortgage brokerage must ensure the brokerage complies with its responsibilities and prohibitions. These responsibilities and prohibitions help ensure the brokerage and its mortgage brokerage professionals deal in mortgages competently and in accordance with legislation. Mortgage brokerage prohibitions focus on the proper employment of industry members within the brokerage, and payment of commissions and referral fees.

Responsibilities

Mortgage brokerages must:

- deal in mortgages only in the name on the brokerage's licence
- ensure they clearly indicate the brokerage name in all advertisements including brokerage, broker, and associate advertisements
- disclose in writing to borrowers:
 - the service relationship
 - the nature of the relationship with the lender
 - the range of lenders the brokerage uses
 - how the brokerage will receive compensation for the transaction
 - the nature of any additional monies or benefits it will receive from the lender
 - any factors that influence payment of any additional monies or benefits
 - any additional fees payable by the borrower

A brokerage's licence authorizes the brokerage to deal in mortgages only in the name that appears on its licence. If the brokerage's name is 123 Mortgage Services Ltd., it must always appear in full on all brokerage agreements and advertising. A brokerage may not abbreviate the name to 123 Mortgage. Consumers must be able to identify the corporate entity with which they are dealing.

The brokerage may register a trade name of 123 Mortgage for the brokerage, in which case the Real Estate Council of Alberta (RECA) must

approve the trade name. If RECA approves the trade name, it would also appear on the brokerage licence.

Other responsibilities

Brokerages also have a responsibility to immediately notify the executive director in writing:

- of any circumstance where the broker is no longer able to perform the duties of a broker
- of the termination or resignation of the broker
- of the opening or closing of a trust account
- of a change in the brokerage's registered business office address
- of a change in the financial institution at which the brokerage maintains a trust account
- of a change in the partners of the brokerage if the brokerage is a partnership, and a change in the officers or directors of a corporation if the brokerage is a corporation

Prohibitions

There are a number of prohibitions that govern a brokerage's operation, particularly with respect to the employment of mortgage industry professionals, and the payment of commissions and referral fees.

Mortgage brokerages must not employ, permit or engage a mortgage industry professional to deal in mortgages on its behalf if that industry professional is registered with another brokerage. Brokerages must not employ an individual to deal in mortgages until RECA authorizes them and the individual has met all requirements of real estate legislation, including paying all levies, fees, premiums, fines, administrative penalties and other amounts.

Mortgage brokerages must not pay any commission or remuneration, either directly or indirectly, in connection with a deal in mortgages except:

- to a broker or associate registered with the brokerage or to not more than one corporation of which that broker or associate owns not less than 50 per cent of the shares of the corporation
- to a brokerage licensed under the Rules or similar legislation in another jurisdiction

Mortgage brokerages must not pay referral fees or any other remuneration either directly or indirectly in connection with a deal in mortgages:

- to a person, if the person does not have a licence but requires a licence for the services performed
- to any licensed mortgage brokerage in Alberta or another jurisdiction when the brokerage has knowledge the other brokerage is going to pay

or share the remuneration with a person who requires a license in relation to those services, but does not hold a licence

Mortgage brokerages must not offer a lender or investor a mortgage loan guarantee either on behalf of itself or on behalf of any other industry member.

Examples

- Jake Smith is an associate licensed with XYZ Mortgage Inc. XYZ Mortgage Inc. is a new brokerage, and does not have a standard document to make the required disclosures. Mr. Smith helps a client obtain a mortgage from a lender that requires an appraisal. Mr. Smith orders the appraisal on his client's behalf and includes the cost of the appraisal in the total mortgage amount. Mr. Smith did not disclose this cost to the client. He must disclose, in writing, any additional fees payable by the borrower.
- A potential borrower goes to a mortgage associate to ask about financing options for a property in which he is interested. The associate does some research for the potential borrower and outlines some options. The associate does not make any disclosures to the borrower as the associate thought it was just an information sharing session. The associate pulls a credit bureau report on the potential borrower to provide him with additional options when he purchases a property. The borrower does not deal with that associate but instead proceeds with another mortgage broker. The borrower finds out the first associate had done a credit bureau report. RECA receives a complaint from the potential borrower and RECA opens an investigation. The brokerage has no record of the borrower or the potential deal.

The associate collected enough personal information to pull a credit bureau on the borrower. These actions would indicate the associate thought there was a potential deal. The associate has breached the legislation. The associate did not make the required disclosures, did not recent consent from the borrower for a credit bureau report or to collect, maintain, use and disclose the borrower's personal information. Additionally, the brokerage did not have a record of the potential deal.

Related information

Legislation

- *Real Estate Act* Rules – section 32, s.65, s.66, Part 3 Accounting Records and Reporting Requirements

Information Bulletins

- Advertising - Clearly Indicated
- Advertising – Licensed Name

- Records – Mortgage Brokerage
- Referrals – Industry Member Requirements
- Referrals – Payment to Unlicensed Persons
- Responsibilities – Mortgage Broker

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