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Advice to the
British Columbia Ministry of Finance
on its Review of the
Mortgage Brokers Act

Mortgage Professionals Canada
April 2020



Introduction

Mortgage Professionals Canada (MPC) is the national mortgage industry association representing 12,000 individuals and over 1,000 companies, including mortgage brokerages, lenders, mortgage insurers, and industry service providers. Our members make up the largest and most respected network of mortgage professionals in Canada. MPC represents members' interests to government, regulators, media and consumers. Together, the association is dedicated to maintaining a high standard of industry ethics, consumer protection and best practices.

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The mortgage broker channel originates over 35% of all mortgages in Canada and 55% of mortgages for first-time homebuyers, representing approximately \$80 billion dollars in annual economic activity. With our diverse and strong national membership, Mortgage Professionals Canada is uniquely positioned to speak to issues affecting all aspects of the mortgage origination process, with all levels of government in Canada.

Mortgage Professionals Canada welcomes this review of the *Mortgage Brokers Act* (the Act) and supports the Government of British Columbia as it seeks to minimize money laundering, empower and optimize the regulatory abilities of the new Registrar of Mortgage Brokers, modernize regulation to optimize consumer protection, and maximize consumer confidence.

In this submission, MPC will address some of the questions posed in the *Mortgage Brokers Act* Review Public Consultation Paper, but would also like to take the opportunity to discuss additional items and reform suggestions our members have asked be considered by the government and BCFSA.



Submortgage Brokers and the Need for Legislative and Regulatory Revision

Currently, Section 1 of the current Act defines submortgage brokers as employees of mortgage brokers:

“submortgage broker” means any person who, in British Columbia, actively engages in any of the things referred to in the definition of mortgage broker and is employed, either generally or in a particular case, by, or is a director or a partner of, a mortgage broker;¹

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In practice, while some submortgage brokers are employees of the brokerage, in most brokerage business structures, submortgage brokers are, in fact, independent contractors. These submortgage brokers manage their own day-to-day affairs, are typically independently responsible to source and assist mortgage and home financing customers, and for the underwriting, submission and closing of these transactions. The mortgage broker is typically responsible to ensure the submortgage broker’s regulatory compliance, provides streamlined access to many lenders’ products, and may provide training, technology tools, or other procedural and process support tools. The submortgage broker is compensated by a commission paid by the lender through the brokerage, of which the mortgage broker will deduct a portion for the provision of his or her services. Many submortgage brokers are in effect operating as sole proprietors, operating under a contractually defined service agreement, and responsible exclusively for their own income; the brokerage has no liability to pay a salary or any other statutorily required payments to, or on behalf of, the submortgage broker.

As such, we recommend the elimination of the use of the term “employed” within the definition of the Act, and instead introduce language that more accurately describes the submortgage broker’s relationship to mortgage broker as one of oversight and regulatory compliance accountability. If amended as such, the Act would more accurately reflect industry practices today.

Licensing

Firstly, related to the previous topic, we recommend that the term “submortgage broker” be replaced in favour of “mortgage agent.” In line with the identified goal of the Act review to “promote clear, consistent and harmonized regulation”, this amendment would bring licensing nomenclature in BC in line with the majority of other provinces in Canada. Unifying the licence naming convention would increase consumer understanding of responsibilities of each licence class. Amending this naming conventions should not create new legal obligations or confer new legal status.

Secondly, MPC believes there is a clear distinction between arranging a mortgage and arranging the capital to lend for a mortgage; licensing should be updated to reflect this.

On page 10 of the consultation paper, respondents are asked to opine on whether licencees should have a duty to act in the best interest of the borrower. Page 15 asks if licencees should act

¹ http://www.bclaws.ca/civix/document/id/complete/statreg/96313_01



in the best interest of an investor or private lender. These two questions are related and should be considered together.

The majority of mortgage broker and submortgage broker transactions are arranging for a loan between an established lender, that being a corporation specializing in the issuance of funds for loans secured against a property, or traditional mortgages. These corporations could be Schedule A banks, credit unions, non-deposit taking lenders (often called monoline lenders by industry), or Mortgage Investment Corporations. The education and examination requirements for licencees are primarily built to ensure technical proficiency and regulatory compliance understanding for these transactions. The minority, albeit a growing proportion, of licencee transactions involve private lenders, individuals or small groups of individuals investing funds in mortgages. Current licensing requirements do not focus on these transactions, nor is there any standard minimum education on simple investment advice counselling or investor suitability. MPC suggests this should be rectified.

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In the former transaction type, licencees should have a duty to act in the best interest of the borrower. Consumers expect a licencee to understand the various lenders' products, underwriting and risk appetite, and service levels, and suggest options that best meet their needs. This is not to suggest that the licencee must offer the borrower the lowest possible interest rate, rather, the licencee should understand the lifestyle and risk tolerance of the borrower and provide products that are reasonable. Factors such as portability, prepayment options and prepayment penalties, lender stability and longevity, and payment flexibility should all factor into the determination of recommendations made. Of course, the borrower's financial situation also plays a significant part in the determination of options available; not all lenders will offer appropriate products to all borrowers. However, the licencee should prioritize the interest of the borrower over the established lender.

In the latter transaction, the licensee more properly has an obligation to the lender. Since much of this type of activity provides funding for commercial activities, borrower suitability is adjudicated on a somewhat different basis. However, ensuring the borrower is an appropriate fit for the private lenders' risk appetite, and is likely to be able to meet his or her financial commitment to the mortgage investor over the life of the mortgage, should be the licensee's first concern.

Enforcing these best practice requirements will create a conflict of interest in some instances. When arranging a mortgage for a private lender, licencees should disclose to the borrower that they are acting as a representative of the lender primarily. If the borrower is knowledgeable of this fact and wishes to proceed, the licencee can arrange the transaction and advise both parties. If the borrower is not comfortable with the licencee not primarily representing the borrower's interest, the borrower may seek another licencee to represent them, thereby requiring two licencees, each representing one party, to conduct the transaction.

In submissions to other provincial Mortgage Broker Act reviews, MPC has advocated for separate license classes for licencees who arrange mortgages for established lenders, and owe a duty to the borrower, and those who arrange mortgages for private investors, or raise capital from private individuals to invest in mortgages. It is our contention that there exists a different



obligation and knowledge requirement on the part of those placing private capital in loans. It is possible for an individual to hold both licence classes, however. We feel it would be simplest to introduce a tiered licence for both mortgage brokers and submortgage brokers. A “restricted” mortgage broker license and a “restricted” submortgage broker licence could be issued to permit individuals to arrange mortgages through established lenders. For those wishing to arrange or oversee activity related to private lending, a separate examination could be completed to ensure the required minimum level of competency for this specially, and the restriction could be removed. Those qualified would therefore hold “unrestricted” licences, able to arrange and supervise private mortgages. Using this methodology rather than issuing a separate classification would remove the need for multiple licenses and multiple licence renewal dates for the individuals conducting private mortgage transactions. Separate additional fees may apply.

Mortgage brokers and submortgage brokers have a duty to ensure borrowers and those providing funding understand what they are signing. In order to help BCFSa and other provincial bodies have a better understanding of how many people are involved in the space and adequately counsel investors about the risks of any type of mortgage investment, any mortgage broker or submortgage broker raising capital separately should require additional mandatory certification.

We recommend that any changes to licensing be held for implementation until December, 2021. We ask this in order to fully investigate and incorporate relevant existing education course content, to conduct an industry awareness campaign, to help brokers and submortgage brokers understand what the changes will be and why they are occurring, and to work internally through our respective committees and working groups.

For any new added licence classes or structures, we recommend that specialized education be required. Additionally, an experiential or practical skills component should be incorporated into the education process and be mandated for licensure, to ensure a minimum level of competency and proficiency.

We also suggest that a B.C. Certificate of Graduation (Dogwood Diploma), an Adult Dogwood Diploma, or their domestic or international equivalent be the minimum prerequisite for any licensing.

Licensing of Employees of Federally Regulated Financial Institutions

Employees of federally regulated financial institutions who are placing mortgage products with their employer are exempted from the Act, because they are subject to the Bank Act. However, if they are placing a mortgage with an entity *other* than their employer, the public is not clearly protected under either the current Act or the Bank Act. One solution is to require individuals placing such ‘external’ mortgages to be licensed under the Act. Brokering is brokering. Alberta is now proceeding to implement such a feature and we believe British Columbia should follow suit. Such a measure would not affect a large majority of mortgage sales representatives of federally regulated institutions, but would ensure an equivalent base line knowledge is required by all individuals who arrange mortgage contracts for more than one lender.



The Act and licensing provisions outline an expected minimum standard of knowledge and professionalism with provisions in place to protect the public interest. There is a need to have clients/borrowers receive full disclosure from banks regarding the source of the funds. We have received numerous reports that applicants may not be aware that the bank is not the lender of record for their mortgage and their loan will be with another lender. This disclosure can occur late in the process (sometimes at their lawyer's office) and leave the client with little alternative but to accept the new lender.

We anticipate such a change would require consultations between regulatory bodies to achieve, but would be remiss not to recommend this licensing requirement within this submission.

Legislating a “duty to act fairly, honestly and in good faith”

MPC does not oppose the legislating of a “duty to act fairly, honestly and in good faith”, as exists across other sectors in BC.

On the question, “*Should a positive obligation to require reporting misconduct be legislated?*” If this question refers to self-reporting and the reporting of misconduct of those over whom one has a supervisory responsibility, it is a good thing. This should be limited to those scenarios, and not to any obligation to report *outside* of those two situations.

Mandatory Errors and Omission Insurance

MPC believes Errors and Omission (E&O) insurance should be required. MPC also support the MBRCC in its development of national standards for E&O insurance.

Disclosure of Brokerage Information

MPC believes the current existing structure allows for knowledgeable decision-making.

Disclosure of Compensation Receivable or Payable

MPC has no concerns with the Registrar having the ability to strengthen Act disclosure requirements after consultation with industry associations and the public.

Cost of Credit Disclosure for Home Equity Loan

MPC believes there should be a cost of borrowing disclosure for every mortgage secured against a residential property. We recommend forms be as streamlined and easy-to-read as possible, with minimal red tape. Industry associations can assist in this exercise should this suggestion be considered.



Reverse Mortgage Regulation

MPC recommends that regulation related to reverse mortgages be harmonized with other provinces.

Suitability of Investment

MPC supports amending the Act to apply suitability of investment and related disclosure requirements only in respect of private investors. In addition, MPC believes determining mortgage investment suitability for a private investor should be the duty of the mortgage broker.

Dual Representation and a Private Investor

While smaller communities may be adversely affected, MPC believes simultaneously acting for both a borrower and investor in the same transaction should be permitted only following a disclosure and a knowledgeable consent from the borrower that the broker's first obligation is to the lender. If the borrower is comfortable with this, the transaction can be served by a single, appropriately licensed, individual.

Disclosure to Lenders of Potential Conflicts of Interest

MPC believes mortgage brokers should disclose their actual or potential conflicts to all parties, private investor or not.

Regulations and Rule Making Powers

We are supportive of the BCFSa being provided with the power to make rules under the Act with the hope and expectation that stakeholders are active participants in the rule-making process. We want to work with the Registrar to ensure that any enforcement powers and penalties will be equitable, efficient, and effective.

Annual Information Returns from All Brokerages and Administrators

We see value in the introduction of a transparent annual information return. However, members have indicated to us that the introduction of a reporting requirement like this does bring considerable additional administrative and financial burden for businesses. We recommend discussions with industry to determine the most appropriate data to collect (and disclose, in aggregate) and work to find the most efficient means possible to collect it. MPC would appreciate and welcome the opportunity to assist in this exercise.



BPCPA and Enforcement

Members have indicated they are comfortable with the Act and BPCPA enforcement provisions split as they currently exist. We do not recommend any specific changes, and ask that consultations occur separately should the government wish to implement any changes to the current structure. Many of our lender members have suggested changes in this regard may create administrative difficulties in the event a property usage is incorrectly disclosed or the purchaser changes the expected usage mid transaction.

Enforcement and Administrative Monetary Penalties

A recurring theme, especially in light of anti-money laundering initiatives, is that of better enforcement and stiffer penalties. This comes with a greater emphasis on individual responsibility. MPC agrees that wrongdoers should be required to pay for their wrongs, but that administrative monetary penalties (AMPs) issued and collected should be retained by BCFSa to alleviate the licensing fee burden on the vast majority of honest brokers in our community.

In addition to the above topics which are discussed in the Consultation Paper, we would like to provide comments and feedback on the following issues not necessarily addressed, but still relevant to, the review.

Empowering BCFSa and Optimizing its Regulatory Abilities

We are appreciative that the ministry has made “promoting legislative consistency across provinces where feasible”² a stated goal, and agree that regulation and compliance should be aligned with other provinces across Canada.

MPC supports an inclusive legislative review process with stakeholders. We are proud to have assisted other jurisdictions as they renew their respective mortgage brokering acts. We have helped develop the new act in Quebec, as well as acts in development in Atlantic Canada and Ontario. We were specifically asked by members to note that Ontario’s mortgage brokering issues are similar to British Columbia’s, and that a significant portion of our mortgage brokering community operates in both provinces. Because of this, we ask that the BCFSa works to harmonize, where possible, its licensing requirements and regulation with those in other provinces, and coordinate efforts through the MBRCC.

² <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/mortgage-brokers-act-consultation-paper.pdf> page 3



Personal Service Business Corporations

Several of our mortgage brokering members have suggested the benefits of being able to incorporate as personal service business corporations. We note that Canadian Mortgage Brokers Association British Columbia (CMBA-BC) has recommended in their March 6, 2020 briefing note³ that the Act “should be amended to enable submortgage brokers to incorporate personal service mortgage broker corporations”. MPC believes there is merit in allowing submortgage brokers to be able to incorporate in order to harmonize incorporation rules with the real estate sector also under the purview of BCFSa.

Streamlining and Simplifications of Forms

The Ontario Ministry of Finance’s MBLAA report, specifically Recommendation #3: Reducing Regulatory Burden in Guidance, Bulletins and Forms⁴, says the following:

Reducing red tape in the mortgage broker sector will help boost productivity and competitiveness, and will allow mortgage brokerages to serve their clients more effectively. Therefore, it is recommended that FSRA consult with the mortgage broker sector with regard to guidance, forms, rules and bulletins that affect the sector, as well as to gather suggestions from the industry on how required disclosures to consumers can be simplified and clarified. Significant effort should be made to ensure that documents are written in plain language and simplified as much as possible in order to enable both the industry and consumers to understand them and to support better outcomes.

We recommend BCFSa create a consultative panel to discuss topics including the modernizing and simplifying of forms, and ask that MPC be a stakeholder participant in such efforts.

Consultative Panel on Marketing and Promotion

Members have expressed a desire to advertise as Realtors are able to. Currently, B.C. specifically only allows advertising by name, corporate registered name or DBA (doing business as), with an address and a minimized domain name. Realtors are allowed to brand themselves, for instance, as a “team”, as long as they clearly identify the entity they are licensed with. For instance, branding one’s self as “Chris Carter of Your Maple Ridge Mortgage Team” would not be allowed unless “Your Maple Ridge Mortgage Team” is also licensed.

We ask that the ministry and BCFSa consider this harmonization of advertising protocols to match those in the real estate sector. We recommend a consultative panel be created to discuss this and other harmonization and guidelines related to marketing, including social media and online presence, for the mortgage brokering sector.

³ <https://www.cmbabc.ca/wp-content/uploads/2020/03/Personal-Service-corp.pdf>

⁴ <https://www.fin.gov.on.ca/en/consultations/mblaa-report-september2019.html#rec3>



Modernizing Regulation to Optimize Consumer Protection

To optimize consumer protection, the public wants information provided through modernized regulations to be useful, sufficient, proffered, and accurate. The suppliers of the information want to ensure existing and potential clients are satisfied, and to avoid unduly onerous requirements.

Minimizing Money Laundering While Protecting Legitimate Privacy Interests

MPC shares and supports the government's strong desire to eliminate money laundering. To help stop money laundering, the government is working to enact recommendations from the 2018 Expert Panel on Money Laundering in BC Real Estate, including a public beneficial ownership registry for BC corporations. The government has also created the Land Owner Transparency Act (LOTA), which, as of this submission, was not yet in effect.

While we understand the rationale behind the LOTA, there should be a balance between fighting illegitimate activities while protecting legitimate privacy interests. We believe LOTA and the proposed Public Beneficial Ownership Registry for BC companies should reflect this; as written, LOTA does not seem to.

From LOTA, as assented to in May, 2019⁵

Administrator's duty to make information available

30 (2) Subject to and in accordance with this Act and the regulations, the administrator must make the following information contained in transparency records available for search **by any person** [emphasis added]:

- (a) primary identification information in respect of reporting bodies that are, at the time of the search, registered as owners of interests in land;
- (b) primary identification information in respect of
 - (i) individuals who are, at the time of the search, interest holders in relation to the reporting bodies or interests in land referred to in paragraph (a), or
 - (ii) in the case of reporting bodies that are trustees of relevant trusts, persons who are, at the time of the search, settlors of the relevant trusts;
- (c) prescribed information, if any.

⁵ <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/third-reading>



(3) Primary identification information contained in a transparency report in respect of an individual who is an interest holder or settlor must not be made publicly accessible under subsection (2) until at least 90 days after the transparency report has been accepted by the registrar for filing with the administrator.

MPC believes properties should only be searchable by the public by the address of the property. We would disagree with people being able to search by interest holder, and then see the full registered holdings of an individual.

An important potential issue with LOTA is the ability for people other than lawful authorities to communicate and publicize information found on such registries. It is wrong and unfair, for instance, for people who may have unfounded grievances to have the power of search then weaponizing searches against individuals and/or businesses with only legitimate privacy interests, whose reputations would be irreversibly tarnished before or absent due process. We suggest that only inspections and searches for law and regulatory enforcement or tax and related purposes conducted by enforcement officers, ministry officials or regulators be permitted to be made public, and that all searches made by those who are not enforcement officers, ministry officials or regulators be very limited in scope and kept confidential, with communication of contents forbidden. The current mechanism to prevent a “misuse of information” is a maximum penalty under LOTA of \$50,000, and a maximum of \$25,000 for individuals. We believe this maximum penalty to be too low, and ask that the maximum penalties should be doubled.

For clarity, we are supportive of the creation of the registry, and believe it to be a sound tool for preventions, and for authorities to use in their investigations. Allowing full public searchability of the registry is, we believe, poor public policy. The general public should not be granted the authority to police transactions, nor access information related to individuals’ net worth or financial position. Full access to the registry should be restricted to appropriate authorities.



Conclusion

On behalf of our approximately 1,300 members in British Columbia, thank you for considering MPC's recommendations and for your efforts to improve the *Mortgage Brokers Act*. We always welcome the opportunity to assist governments as they seek to streamline the administration and regulation of mortgage brokering. We look forward to discussing the aforementioned topics with your team at your convenience.

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We would like to also take this opportunity to thank Chris Carter, BCFA Vice President, Deputy Registrar of Mortgage Brokers for his recent efforts. As current Chair of the Mortgage Broker Regulators' Council of Canada, Mr. Carter is capably leading his board to help our industry in these difficult times. His preference for regular discussions between MBRCC and our industry's associations has led to invaluable mutual insight – with regulators from across Canada - as we all navigate the temporary but profound issues created by COVID-19.

Please allow a final comment, one addressing the concerns our members have relayed to us regarding potential changes being made through this consultation. We are currently operating – indeed, living - in unprecedented times. Like all who rely on BC's real estate industry, those currently employed by or through mortgage brokerages will be adversely affected for several months, at the very least. Given the rapidly changing state of B.C., Canada, and our world, it is likely advisable to delay aspects of this process and prioritize focus on the elements that are not likely to be affected by COVID-19 related events over the coming months. The prevention of major crimes such as money laundering and the facilitation of economic improvement at microeconomic and macroeconomic levels are timeless concerns. However, the details of regulatory requirements of potential annual filings and their costs could perhaps better be left for a more thorough discussion at a more settled time, a discussion we remain pleased to be a part of.

We always appreciate your thoughts, insight, and perspective. If you require any additional data, testimonials from our members and/or their clients, or any other specific information, we would be more than happy to provide it to you. Our Director of Government Relations and Regulatory Affairs is J.P. Boutros. He can be reached at jpboutros@mortgageproscan.ca, 416-644-5466, or at our office address below.

Sincerely,

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