



TERRY KIRKHAM, REGISTRAR  
THE MANITOBA SECURITIES COMMISSION  
500 - 400 ST MARY AVE  
WINNIPEG MB R3C 4K5

April 20<sup>th</sup>, 2016

Dear Terry,

I am writing on behalf of the Mortgage Professionals Canada members who are practicing mortgage brokers in the province of Manitoba.

During a recent meeting with a number of our Manitoba Chapter members, several regulatory items were discussed. We identified some areas of concern with the current regulations for which further clarification from the Manitoba Securities Commission is required. As such, we would like to request a meeting with yourself and your legal counsel to discuss a re-examination of some of the MSC's positions as well as possible amendments to the existing regulations.

To follow is an outline of our concerns and requests.

**Topic:           The interpretation that Section 11(2) of the *The Mortgage Brokers Act* extends to URL addresses**

*"The name under which a registered mortgage broker is to carry on business is part of the registration and shall be set out in the certificate of registration, and the mortgage broker shall carry on business under that name and no other."*

It is our position that a URL is not, in and of itself, a representation of a business. Much like a building address, unless you are able to actually see the physical location, you have no idea what type of business is operating there. A URL is an equivalent of a street address on the Internet. The *contents* of a specific web page should be used to determine if an organization is "carrying on business" as may be required by legislation or regulation. The URL in isolation is simply a placeholder for content to exist.

The position taken by the MSC places Manitoba mortgage brokers at a significant competitive disadvantage to brokers in other provinces; no other regulator has insisted that a URL must match a broker's registration. Furthermore, as a global platform, the Internet does not restrict users to locate business results found only within their regulatory borders. A large number of mortgage brokers have also invested considerable amounts of money in the promotion of their websites, establishing them as a *place* to do business in accordance with the *content* found within them and, not within the actual URL.

Search Engine Optimization is a critical consideration in any business marketing strategy. Search engines, such as Google and Bing, ultimately determine the sites that the vast majority of consumers visit. Consumers know that when using Google, they are likely to find matching results almost every time within the first page of their search results. As such, endearing your website to Google's relevancy ranking algorithm is incredibly important.

There are a number of considerations that affect how high a web page is ranked. Most importantly is the relevance of the material contained within the web page to the search words used. In addition, Google considers the amount of traffic a site receives. Sites with more traffic rank higher. Google assumes Internet users view relevant material more frequently and so this popularity indicator is heavily weighted. The number of other websites that link to a page also adds to the relevance ranking because, again, Google considers the Internet's webmasters, or page owners are likely to link to pages they consider most valuable for the people visiting their site.

All of this is important to understand because, by forcing brokers to remove their existing websites and relaunch them with new URLs, the MSC is essentially stripping them of many of the mechanisms that would prompt Google to present them to consumers. Existing visitor traffic would no longer be able to find a broker's site at the address they are familiar with, and all links to the old site would no longer serve to bolster the new one which takes considerable time to build. Many brokers have spent years creating awareness of their websites. Forcing their removal will also lead to significant frustrations for consumers who would no longer be able to find a broker through a standard web search.

We would request that the MSC reconsider the official interpretation currently being used. During our previous discussions on this matter, you mentioned that your main frustration was with the number of marketing campaigns currently employed by sub-brokers that are not approved by their designated individual. We agree this is a problem however, we don't feel the URL interpretation is the solution. It is punitive to those who have built marketing campaigns over a long period of time with the same web address and does not affect those whose marketing practices are questionable. **We ask that the MSC please reconsider this position.**

**Topic: Real Estate Brokers permitted to act as Mortgage Brokers**

There is currently an exemption within the Mortgage Broker Regulations that permits a Real Estate broker to act as a mortgage broker in some circumstances. It is our understanding that the MSC has previously stated that this exemption should be removed. The exemption creates a classification of mortgage brokers in Real Estate that is technically unregulated. There exists a significant opportunity for potential conflicts of interest to also arise, specifically because of the single lender language also contained within it. **We would ask for this exemption to be removed from the regulations and also seek feedback from the MSC regarding its inclination to change this language and the probable timeline for completion.**

**Topic: Disclosure documents require signing prior to completion of an application**

Manitoba brokers are under the impression that the MSC expects them to ensure disclosure documents are signed prior to the completion of a mortgage application. Our members report

that the MSC auditors expressed this position while conducting audits in member offices. Our review of the regulations leaves us with a different understanding. Section 26 (1) begins with the wording, "Before arranging a mortgage,..." In our interpretation, a mortgage is "arranged" once it is closed. The process for arranging a mortgage cannot begin without the completion of an application. The disclosure itself, specifically the details regarding the broker's compensation and its origin, i.e. from the borrower or the lender, cannot be determined without knowledge of some of the answers found on the application. With this in mind, we feel **the more appropriate interpretation of this section would be to ensure the disclosure document is signed when the mortgage commitment is offered to the client.** This will allow brokers to provide a better explanation of proper procedures to borrowers and provide sufficient time through the transaction process for the broker to accurately complete the disclosure required.

**Topic: Co-brokering is currently viewed as prohibited**

Our members indicated that the MSC has advised them that co-brokering arrangements in Manitoba are not permitted. In our review of the Act and Regulations, we can find no language to support this position. Co-brokering between those licensed within the province provides choice for consumers by way of access to private lenders that may otherwise be unavailable to brokers with whom the consumer has a relationship. Disallowing this common business practice would ultimately be detrimental to consumers and cost them more money. In addition, co-brokering provides the opportunity for a broker to assist consumers looking to relocate to/from Manitoba. **We ask that you clarify the MSC's position on co-brokering.**

**Topic: Pooling is currently viewed as prohibited**

Similar to co-brokering, the MSC has advised members that pooling arrangements in Manitoba are not permitted. As certain lenders offer specific products only to individuals they have approved based on volume, other licensees will "pool" their deal under an approved individual to access that product on behalf of their client. Once again, this practice generally provides consumers with better products and lower costs of borrowing. If not permitted, Manitoba consumers would potentially be paying more on average for their mortgage. **We ask that you provide clarification on the MSC's position regarding the practice of volume pooling.**

**Topic: Commitment Fees/Retainer**

As some consumers leverage the commitment they receive by a licensee to collect, and ultimately accept, funding with another financial institution, we would like some guidance on the implementation of a mechanism to ensure that the consumer is acting in good faith with their broker. Our Manitoba Chapter members discussed a number of possible solutions to this issue that would ensure brokers were adequately compensated for their time. We would ask the MSC for clarity regarding broker eligibility to collect fees from the client as well as receive compensation from a lender as a restricted or non-restricted mortgage broker, either as a retainer for their time, or perhaps as a deposit which would be forfeited should financing be arranged elsewhere, and returned in the event the broker ultimately arranges the mortgage. **We ask for a comment from the MSC as to what mechanism brokers could employ that would ensure fair payment for a broker's time while also meeting regulatory requirements.**

**Topic: Electronic storage of mortgage documents and digital signatures are not permitted**

On this topic, our members are asking for an update on the MSC's position. Requiring original ink signatures seems to us to be a very outdated position in today's business environment where electronically stored signatures are upheld as legal across Canada. For business continuity and disaster recovery plans, electronic document storage is significantly safer, more secure and more easily managed and retrieved as necessary. We understand the MSC had previously indicated it was reviewing its position on this issue. **We would like electronic documents and electronic signatures storage to be permitted by the MSC.**

**Topic: Provide an education session on how to be compliant**

Our final point for discussion is whether the MSC could create a training platform to assist brokers and ensure compliance with the act and regulations. If the MSC would prefer not to manage the training directly, Mortgage Professionals Canada would be happy to work together to create a platform that satisfies the broker community's concerns and is amenable to the registrar. We are happy to provide any assistance we can.

In closing, I'd like to once again ask for an opportunity to discuss these issues with you and your office. Could you please suggest a date in the next two weeks when Tom Antonick and myself can meet at your office to discuss the aforementioned items.

Thank you for your time on these important issues. We look forward to discussing them with you in person.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Paul Taylor', with a long horizontal line extending to the right.

Paul Taylor  
President and CEO  
Mortgage Professionals Canada