

# Information Bulletin

**Bulletin Number:** MB 09-004

**Topic:** CONFLICT OF INTEREST PROTECTIONS FOR BORROWERS DEALING WITH ORIGINATING LENDERS

**Issue Date:** MAY 13, 2009

Mortgage brokers who arrange mortgages for borrowers, in which the loaned mortgage funds belong to the mortgage broker itself or a related party or associate of the mortgage broker (“Originating Lenders”), will be in a conflict of interest with the borrower. The mortgage arranging activities of Originating Lenders create either an actual or a perceived conflict of interest, as they, unlike mortgage brokers who are independent of lenders, may put their interests as lenders ahead of those of borrowers by failing to obtain the best and most competitive mortgage terms for borrowers.

The Registrar’s office has received a significant number of complaints from borrowers who have borrowed money from Originating Lenders. In some circumstances, borrowers have been pressured by a submortgage broker of the Originating Lender to sign mortgage documents before being given an opportunity to fully review the paperwork, which is necessary to ensure that mortgage terms, such as interest rates, penalty provisions, interest buy down fees, lender and broker fees, and other administrative fees match the verbal assurances provided to them by the submortgage broker. Pursuant to section 66 of the *Business Practices and Consumer Protection Act* (the “BPCPA”), borrowers are entitled to receive cost of credit disclosure two days in advance of incurring an obligation under a mortgage or making a payment relating to a mortgage agreement. Borrowers who are not given an opportunity to fully review cost of credit disclosure may not understand the costs associated with their mortgage, be able to assess whether they can afford the mortgage, or compare the terms of the mortgage with that of competitor lenders.

Under section 8(1) of the *Mortgage Brokers Act*, mortgage brokers, including Originating Lenders, can be disciplined by the Registrar if they:

- Are party to a mortgage transaction which is harsh and unconscionable or otherwise inequitable;
- Conduct business in a manner that is otherwise prejudicial to the public interest; or
- Breach a provision of Part 2 or 5 of the BPCPA prescribed under section 9.1 (2). Part 2 of the BPCPA governs unfair practices and Part 5 governs cost of credit disclosure.

Originating Lenders who deal with borrowers must therefore take the following steps to ensure that the interests of borrowers are better protected:

- 1) Originating Lenders must not proceed with a mortgage transaction without ensuring that a borrower obtains independent legal advice at a separate office location from that of the mortgage broker prior to the borrower executing the mortgage documentation;
- 2) Originating Lenders must, without any exception or waiver, provide cost of credit disclosure required under Part 5 of the BPCPA to borrowers at least two business days prior to the borrower executing the mortgage documentation; and
- 3) Originating Lenders must provide conflict of interest disclosure to borrowers in Form 10, as required by section 17.3 of the *Mortgage Brokers Act*.

The Registrar of Mortgage Brokers may seek to impose regulatory penalties against any mortgage broker who acts as an Originating Lender and fails to take the steps identified above. For further information about this matter, please contact the staff of the Registrar of Mortgage Brokers at [mortgagebrokers@ficombc.ca](mailto:mortgagebrokers@ficombc.ca).

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