

# Information Bulletin

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**Bulletin Number:** MB 11-002

**Topic:** INDIVIDUAL REGISTRATION APPLICATIONS SUITABILITY REVIEWS AND CRIMINAL RECORD CHECKS

**Issue Date:** MAY 2011

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Individual applicants for registration under the *Mortgage Brokers Act* (the “Act”) are required to qualify for registration by passing the approved education courses (set out in Bulletin MB 10-002) and demonstrating that they are suitable for registration and that the proposed registration is not objectionable.

## Applicant Suitability

In order for the staff of the Registrar of Mortgage Brokers (the “Registrar”) to assess an applicant’s suitability for registration or renewal of registration, applicants must answer questions on the application form related to the following matters.

## Criminal Convictions and Pending Criminal Charges

The applicant must disclose whether he or she has been charged or convicted without pardon of any criminal offence or offences, under any law of any province, state or country. If the applicant does have a criminal record or pending criminal charges, he or she must provide a detailed explanation of them, including the circumstance under which the charges were laid, the specific offences, whether they resulted in convictions, relevant dates, and a description of the disposition of the charges and any penalty imposed.

The existence of a criminal record or outstanding criminal charges will not necessarily preclude the applicant from registration. In determining whether a criminal record or an outstanding criminal record will make an applicant unsuitable for registration, the Registrar will take into consideration:

- The seriousness and number of offences;
- The nature of the offence or offences, and whether they relate to acts of dishonesty or deception, or demonstrate a risk of potential harm to the public;
- The length of time which has elapsed since the date of the offence or offences;
- Any efforts the applicant has made to rehabilitate himself or herself; and
- The sentence imposed by a court, and whether the sentence has been completed successfully.

## Regulatory Issues with Related Licensing or Registration

Applicants are required to disclose whether they have been licensed, registered or authorized in any capacity under the *Financial Institutions Act*, the *Mortgage Brokers Act*, the *Real Estate Services Act*, the *Real Estate Act*, the *Securities Act* or any other similar legislation in British Columbia (“BC”) or elsewhere. Applicants must also disclose whether they have ever been refused a license or registration, or been disciplined by a regulatory body in any capacity, including being advised by a regulatory body that should they reapply for a license or registration, they would be subject to a suitability review.

## Judgments and Pending Litigation

Applicants must disclose whether they have had any judgments rendered against them within the last 5 years for any reason whatsoever and from any civil court in BC or elsewhere. If a judgment has been rendered against an applicant within the last 5 years, he or she should explain whether the judgment has been satisfied. If a judgment has not been satisfied, the applicant must state the amount outstanding and describe any repayment arrangements for each outstanding judgment.

Applicants must also disclose whether there are any pending legal proceedings that have been brought against them. Civil proceedings brought against an applicant will name the applicant as a defendant or respondent and include foreclosure proceedings where the applicant is named as a defendant or respondent. Any legal proceeding is no longer pending once a court has rendered a judgment, or the proceeding has been stayed, discontinued, or dismissed. For any pending legal proceedings against the applicant, he or she must describe the cause of action or claim and provide a copy of any statement of claim or defense.

## Bankruptcy

Applicants must disclose whether they have ever been subject to bankruptcy proceedings, and if so, they should explain whether they have been discharged and attach proof of the discharge. Applicants who are undischarged bankrupts must provide a copy of the assignment in bankruptcy and a list of all creditors. An applicant’s bankruptcy history is not likely to preclude him or her from registration but may result in the imposition of conditions, such as being prohibited from handling trust funds.

## Failure to Disclose

The Registrar expects that each applicant will complete registration applications with truthful and complete information. The Registrar considers it a serious matter for any applicant to provide false information in an application by either making false statements or failing to provide complete and

truthful statements. Providing false or incomplete information to the Registrar's staff may affect an applicant's suitability to be registered and may result in the refusal, suspension or cancellation of registration. Applicants are advised to read the application questions carefully, and to contact their Designated Individual and the Registrar's staff if uncertain about how to provide a clear response to a question or issue.

## **Certified Criminal Record Checks**

As of June 1, 2011, the Financial Institutions Commission shall no longer be able to obtain criminal record checks on applicants, and applicants for initial registration and registration renewal must supply the Registrar's staff with a current and original "Certified Criminal Record Check" ("CCRC"), which is dated not more than six months prior to the date of application.

### **Obtaining a Certified Criminal Record Check**

An applicant may obtain a CCRC based on his or her name and date of birth by attending at their local police station or a third party service provider. Third party service providers include Canadian Corps of Commissionaires, L-1 Identity Solutions, Express Pardons, BackCheck and International Fingerprinting Services. Applicants must complete a "Third Party Waiver of Consent" form which authorizes the police authority to send the CCRC directly to the Registrar's staff, or the applicant must forward his or her original CCRC to the Registrar's staff. In circumstances, where a CCRC based on the name and date of birth of the applicant shows a significant criminal record or the Registrar has concerns over the identity of the applicant, the applicant may be required to obtain a CCRC based on the applicant's fingerprints.

### **Certified Criminal Record Checks for Renewal Applications**

The Registrar's staff may process a current registrant's application for renewal of registration without having received the CCRC at the time of application by providing proof of submission of a CCRC request. In the event, that the Registrar grants renewal of registration to an applicant without a CCRC, the applicant's registration will be conditional on:

- the applicant demonstrating that they have submitted a request for the CCRC at the time of application;
- the Registrar's staff receiving the CCRC within a specified time period following renewal of registration; and
- any other conditions which may be considered appropriate by the Registrar.

## Collection, Use, Disclosure and Retention Policy

Applicants for registration must consent to the Registrar's and FICOM's collection, use, and disclosure of personal information, including their CCRC, for registration and other regulatory purposes under the Act and in accordance with the *Freedom of Information and Protection of Privacy Act* by providing a signed Form 16. The Registrar's staff only uses a CCRC for the purposes of determining suitability for registration under the Act. The CCRC is held in confidence by the Registrar's staff and is not disclosed to any party other than the sponsoring mortgage broker and its Designated Individual, or in accordance with the requirements of a suitability proceeding under the Act. All applicants for registration and current registrants who are not granted registration by the Registrar will have an "opportunity to be heard", which will enable them to present evidence and arguments regarding their suitability to be registered before the Registrar.

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At the office of the Registrar of Mortgage Brokers, we issue information bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Mortgage Brokers Act, Business Practices and Consumer Protection Act* and Regulations. While the comments in a particular part of an information bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an information bulletin generally applies as of the date on which it was published, unless otherwise specified.