

---

**BULLETIN NUMBER:** MB 12-003

**TITLE:** CONDITIONS OF REGISTRATION

**LEGISLATION:** *MORTGAGE BROKERS ACT*

**DATE:** AUGUST 2012

---

Mortgage brokers that handle or receive trust funds in the course of their mortgage broker activities are subject to the Conditions of Registration under Section A. Mortgage brokers that do not handle or receive trust funds in the course of their mortgage broker activities are subject to the Conditions of Registration under Section B.

**Interpretation:**

In the Conditions of Registration:

- (a) “Act” means the *Mortgage Brokers Act*;
- (b) “mortgage”, “mortgage broker”, “person”, “registrar” and “submortgage broker” have the meanings as defined in Section 1 of the *Mortgage Brokers Act*;
- (c) “trust funds” include, but are not limited to:
  - (i) funds received from investors pending the transfer (sale) of mortgages to those investors;
  - (ii) funds received from investors pending disbursement to borrowers;
  - (iii) funds received from borrowers pending disbursement to investors;
  - (iv) funds received from borrowers for payments on mortgages that the mortgage broker has sold in whole, or in part, to third party investors and that the mortgage broker administers for the third party investors;
  - (v) refundable fees of any type paid to the mortgage broker pending the approval of a mortgage application; and
  - (vi) funds held on behalf of another person for whatever reason, pending completion of a transaction, including the issuance of shares.

---

**Registrar of Mortgage Brokers**

Suite 2800, Box 12116  
555 West Hastings  
Vancouver, BC V6B 4N6  
Telephone: 604 660-3555  
Facsimile: 604 660-3365  
[www.fic.gov.bc.ca](http://www.fic.gov.bc.ca)

- (d) unless the context otherwise requires, other words and expressions have the meanings given to them in the Act.

**SECTION A:** *applicable to any mortgage broker that handles trust funds*

**Mortgage brokers that handle or receive trust funds are subject to the following requirements:**

Account Requirements

1. When a mortgage broker, in the course of its business, receives funds on behalf of others (clients or investors), it shall:
  - (a) open and maintain, with a savings institution in British Columbia, at least one trust or pooled trust account, in the name of the mortgage broker, for the purpose of administering such funds;
  - (b) issue a written receipt if money is received in the form of cash;
  - (c) ensure all trust accounts are designated as trust accounts in the records of the depository and all cheques and bank statements for trust accounts are so designated;
  - (d) ensure that for each trust account maintained, the mortgage broker retains all banking records relating to account transactions, including statements, cancelled cheques, and other source documents making or confirming deposits or withdrawals;
  - (e) make every disbursement from a trust or pooled trust account by cheque or bank transfer containing sufficient detail to permit them to be identified with the corresponding disbursement or disbursements recorded in the mortgage broker's books; and
  - (f) not issue a cheque, allow a bank transfer, or present a cheque for payment or collection unless there is, in the trust or pooled account against which it is drawn, a sufficient credit balance to cover the withdrawal.

Trust Deposits

2. The mortgage broker must deposit all trust monies received on behalf of others into a trust or pooled trust account promptly, and in any case no later than two (2) banking days after the date of receipt, unless otherwise agreed to in writing by the parties.

Trust Agreement

3. When receiving or disbursing trust funds on behalf of others, the mortgage broker must ensure that the terms of the trust governing the use of the money are in writing and agreed to by the mortgage broker and the client and any other related parties.

Withdrawals From Trust

4. Money received by a mortgage broker from a person buying or proposing to buy a mortgage from the mortgage broker on account of the purchase price thereof may be withdrawn by the mortgage broker from the trust account when the mortgage concerned has been transferred to that person, or their nominee, but not before.
5. The mortgage broker must ensure that it does not pay a personal or general office expense of the mortgage broker from a trust or pooled trust account.

Fees and Commissions

6. The mortgage broker must ensure that money in a mortgage broker trust account that is intended as remuneration for the mortgage broker is only withdrawn when it is earned, and not at any time prior to it being earned.

Services Charges

7. The mortgage broker must ensure that the savings institution at which the trust account is maintained does not deduct any service charge or other charge whatsoever from the monies in the trust account.

Negative Balances

8. The mortgage broker must ensure that:
  - (a) it does not make any payment out of a trust account if:
    - (i) the payment would reduce the amount currently recorded in a trust account record or a trust ledger for the account to a negative balance; or
    - (ii) the trust account record or trust ledger to which the payment relates is already at a negative balance.

- (b) if at any time there is a negative balance as referred to above, immediate steps are taken to eliminate the shortage by depositing the mortgage broker's own funds into the trust account as soon as the shortage is determined.
- (c) if at any time a trust shortage is apparent, however the amount of the shortage has not been determined, the Designated Individual notifies the Registrar in writing of the existence of a trust shortage and what steps are being taken to determine the amount of the shortage. If a mortgage broker cannot immediately fund a trust shortage, the Designated Individual must notify the Registrar in writing of the amount of the trust shortage and what corrective action the mortgage broker will be taking.

### Records Requirements

9. The mortgage broker must maintain the following records:
  - (a) for each trust or pooled trust account maintained by the mortgage broker;
    - (i) a record showing amounts received and disbursed, the reason for the receipt or disbursement, and any unexpended balance; and
    - (ii) monthly reconciliations of banking statements to the record referred to in subsection (i), prepared on a monthly basis.
  - (b) separate trust ledgers for each mortgage transaction, showing all amounts received and disbursed in relation to the transaction and any unexpended balance in relation to the transaction;
  - (c) monthly trust liability and asset reconciliations:
    - (i) listing each mortgage transaction in relation to which the mortgage broker holds the trust money, and the amount being held in relation to each transaction; and
    - (ii) reconciling the money held in the trust account to the unexpended balances in the trust ledgers for the account.
10. The Designated Individual, or a person appointed by the Designated Individual, must review the reconciliations and show evidence of this review by signing and dating the monthly reconciliations.

11. A mortgage broker may receive electronic copies of cheques used to make disbursements from an account in which money is held in trust, only if copies of both the front and the back of the cheque are received and the original cheque is available on request.

#### Records For Electronic Transactions

12. When a mortgage broker deposits trust funds electronically, the following conditions must be met:
  - (a) a mortgage broker that deposits funds electronically, using an ABM bank card and an automatic banking machine, into an account in which money is held in trust shall maintain the automated banking machine deposit receipt that indicates the account number, time, date, and amount of the deposit.
  - (b) a mortgage broker that deposits funds electronically, using the Internet, into an account in which money is held in trust shall maintain a written record signed and dated by the broker or authorized person that indicates the account number, date, amount, and details of the deposit.
13. When a mortgage broker transfers trust funds electronically, the following conditions must be met:
  - (a) an ABM card may be used to transfer funds from an account in which money is held in trust only if the following conditions are met:
    - (i) the ABM card must be issued prohibiting cash withdrawals from the account;
    - (ii) before funds are transferred from the account to another account there must be written supporting documentation for the transfer and an ABM record of the transfer must be produced and maintained; and
    - (iii) the record is reviewed, signed, and dated by the Designated Individual on the date of the transfer or the next business day.
  - (b) a mortgage broker shall not make an electronic transfer using Internet banking from an account in which money is held in trust unless:
    - (i) there is written supporting documentation for the transfer;
    - (ii) a printed record providing details of the transfer is produced; and
    - (iii) the printed record is reviewed, signed, and dated by the Designated Individual on the date of the transfer or the next business day.

Accountant's Report and other Financial Requirements

14. A mortgage broker must, within 120 days after the end of each fiscal year of the mortgage broker, file with the Registrar, the following:
  - (a) the Mortgage Broker's Representations, in a form and containing the information required by the Registrar; and
  - (b) an Accountant's Report respecting that fiscal year, or, where the mortgage broker did not carry on business for the entire fiscal year, that part of the fiscal year for which the mortgage broker carried on business, in a form and containing the information required by the Registrar.
15. The Accountant's Report must be prepared and completed by either,
  - (a) a certified general accountant under the *Accountants (Certified General) Act*;
  - (b) a chartered accountant under the *Accountants (Chartered) Act*.
16. The Accountant's Report shall be prepared pursuant to an Engagement Letter between Accountant and Client, in a form and containing the information required by the Registrar.
17. In preparing the Accountant's Report, the accountant shall comply with the guidelines prescribed by the Registrar.

**SECTION B:** *applicable to any mortgage broker that does not handle trust funds*

Mortgage brokers that do not handle or receive trust funds in the course of their mortgage broker activities are subject to the following annual filing requirements:

1. Every registered mortgage broker shall, annually, not more than 30 days after the end of their fiscal year, file with the Registrar, a Statutory Declaration sworn before a lawyer or notary public, confirming that no trust funds were handled or received during the fiscal year and that no funds were received that should have been held in trust.
2. In the event the activities of the mortgage broker are changed during the year so that it no longer meets the criteria in point 1 above, the mortgage broker must fulfill all the requirements under Section A of the Conditions of Registration.

*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.*