

MORTGAGE BROKER CONFLICT OF INTEREST DISCLOSURE GUIDELINES

FREQUENTLY ASKED QUESTIONS

Updated June 23, 2017

Q. When will I need to start disclosing compensation?

A. To provide industry with a reasonable time period to adjust business processes and practices, the Registrar will not enforce improved disclosure requirements until after **June 30, 2017**.

Q. What version of the Form 10 should I be using until June 30, 2017?

A. Mortgage brokers/brokerages and submortgage brokers can choose to use either the prescribed Form 10 (as set out in the Act Regulations and discussed in the guideline) or they may continue to use the existing enhanced Forms 10 and 11 until June 30, 2017.

Effective July 1, 2017, the enhanced Forms 10 and 11 will be discontinued, and only the prescribed Form 10 is to be used.

Q. Who is responsible for providing Form 10 disclosure to borrowers and lenders? Is it the mortgage broker/brokerage or the individual submortgage broker involved in the deal?

A. The mortgage broker/brokerage and submortgage broker are both legally required to provide Form 10 disclosure to borrowers and/or lenders. Submortgage brokers commonly provide the actual Form 10 to borrowers and/or lenders as the authorized representative of the mortgage broker/brokerage. However, each has the same obligation to describe their respective interests regardless of who actually provides the form.

Note that the prescribed Form 10 requires separate descriptions for the mortgage broker/brokerage and for any “associates” and “related parties”. Individual submortgage brokers are among those defined as being “associates” of the mortgage broker/brokerage.

Q. Do commission splits between the mortgage broker/brokerage and the submortgage broker need to be described, or is it sufficient to only disclose the total amount of compensation to be received by the mortgage broker/brokerage?

- A. The amount of compensation each party receives needs to be described. The prescribed Form 10 requires separate descriptions for the mortgage broker/brokerage and the submortgage broker.

The Registrar will accept a disclosure that states the total compensation the mortgage broker/brokerage receives expressed as a dollar figure. The split between the mortgage broker/brokerage and submortgage broker can simply be expressed as a percentage.

Q. If a deal is co-brokered with two different mortgage broker firms involved, can a single Form 10 be provided on behalf of both brokerages?

- A. Each mortgage broker/brokerage and individual submortgage broker involved has a shared obligation to provide Form 10 disclosure.

While the Registrar will accept a single Form 10 being provided on behalf of all mortgage brokers/brokerages each participant in the transaction will be held accountable for the adequacy of disclosure, regardless of who provides the Form 10 to the end user. In any event, the Registrar expects that the Form 10 fully describes the interests related to all mortgage brokers/brokerages and submortgage brokers involved in the transaction.

Note that in a co-brokering situation, where one broker deals with the borrower and the other deals with the lender, the following is required:

- The Form 10 provided to the borrower should identify both the broker who submits the deal to the lender as well as the originating broker, and describe the interests both mortgage brokers, related parties and associates, acquire in the deal; and
- The Form 10 provided to the lender should also identify both the broker who originates the deal with the borrower, as well as the broker who submits the deal to the lender, and describe the interests both mortgage brokers, related parties and associates, acquire in the deal.

Q. I have registered my own personal corporation (PC) as a mortgage broker and I am the sole employee and submortgage broker. My PC is affiliated with a larger brokerage firm and I have my commissions paid directly to my PC, rather than to myself personally. I place my business through the main brokerage firm as the “broker of record” with the lender. How do I provide Form 10 disclosure in this situation?

A. The arrangement described is similar to a co-brokering arrangement. There are now two mortgage brokers/brokerages acting in the transaction – your PC in dealing with borrowers and the main brokerage dealing with lenders. Accordingly, each mortgage broker has an obligation to provide Form 10 disclosure to lenders and borrowers as discussed in the Q&A above regarding co-brokering.

Q. How do I describe compensation for a particular transaction when a submortgage broker who acts in a transaction is paid a salary by the mortgage broker/brokerage instead of any commission per transaction?

A. The salary paid to a submortgage broker is not an “interest in the transaction,” and does not need to be disclosed. However, the total compensation paid by the lender to the mortgage broker in relation to the transaction requires disclosure.

Q. The Guidelines refer to the requirement to describe any direct or indirect interests “related parties” and “associates” may receive related to mortgages arranged by my brokerage. How can I determine this information in order to meet my legal obligations as a registered mortgage broker?

A. The *Mortgage Brokers Act* requires that registered mortgage brokers/brokerages and submortgage brokers describe any direct or indirect interests they receive as well as those received by “related parties” and “associates” as discussed in page 4 of the Guidelines and defined in section 13 of the *Mortgage Brokers Act Regulations*.

The obligation to provide disclosure lies with registered mortgage brokers/brokerages and submortgage brokers, and the Registrar will hold registrants accountable for meeting their disclosure obligations under the *Mortgage Brokers Act*.

To meet their disclosure obligations, registrants should assess their businesses in order to identify related parties and associates of their mortgage broker/brokerage. Registrants should then determine what, if any, direct or indirect interests those parties are receiving, based on mortgage transactions the registrant arranges. To that end, registrants may need to approach related parties and associates, and request information to assist the registrant to meet their disclosure obligations.

Q. What if mortgage brokers, or unregistered related parties or associates of mortgage brokers/brokerages, have contracts with lenders that contain confidentiality provisions?

- A. The obligation to provide disclosure lies with registered mortgage brokers/brokerages and submortgage brokers, and the Registrar will hold registrants accountable for meeting their disclosure obligations under the *Mortgage Brokers Act*.

Registrants may need to approach related parties and associates, and request information to assist the registrant to meet their disclosure obligations.

Q. How do I disclose a possible volume bonus which may or may not be paid in the future, and is contingent on how much business I place with that lender for the year and/or dependent on what volume tier I might hit with different possible bonus amounts?

- A. The Registrar considers volume bonus programs to be an indirect interest which at the time of the transaction may be acquired, and therefore is required to be described in Form 10.

The Registrar is aware that future payments may be difficult to predict with certainty. While the adequacy of disclosure will depend on the facts of the transaction, the Registrar will generally accept a simple statement of the maximum potential bonus that might be earned expressed as a dollar amount, based on future volume targets being met.

Mortgage brokers/brokerages and submortgage brokers are expected to explain how the volume bonus program works to borrowers, and what is required in order for a mortgage broker to earn the volume bonus in the future.

However, if you already know what your volume bonus will be for a transaction, then you will simply state that amount directly in the Form 10.

Q. Some lenders award “points” for deals, which can be accumulated and exchanged for valuable goods or services. How do I describe loyalty programs to borrowers?

- A. Rewards points have a monetary value and can be quantified. Lenders are expected to provide this information to mortgage brokers to enable them to describe the value of the points earned in a dollar amount.

Q. A lender my brokerage firm places a large volume of business with provides me a large marketing allowance or pays for my marketing expenses, or provides other benefits to me or my firm in addition to base compensation and volume bonus. Are these type of

benefits considered to be interests in the transaction that need to be included in Form 10 disclosure to borrowers?

- A. Yes. These types of benefits are indirect interests acquired from arranging mortgages with that lender and need to be described to borrowers in the Form 10 disclosure.

Note that one-off small perks from lenders may be provided to brokers from time-to-time and may not be anticipated by the broker when arranging a particular mortgage. This type of random benefit will not likely attract the attention of the Registrar. However, more substantial benefits provided by lenders based on placing business with that lender would likely attract the attention of the Registrar.

If arranging a mortgage with a particular lender contributes to any benefit a lender provides to the broker, for example volume-based benefits, then it is an interest that arises from that transaction, whether directly or indirectly, and is therefore an interest too to be described in Form 10.

Q. Some technology providers pay mortgage brokers a fee for every deal processed through their system. Is this an interest in the transaction that needs to be described in Form 10 disclosure?

- A. No. Fees from technology providers are separate and incidental to the mortgage transaction.

Q. Do lenders who are registered as “mortgage brokers” under the Act also have to provide a Form 10 to borrowers?

- A. No. Lenders with whom a third-party mortgage broker has arranged a mortgage on behalf of a borrower are not required to provide a Form 10 to the borrower. Only the originating mortgage broker/brokerage and submortgage broker, who are acting in the transaction as an independent intermediary or “middle person”, are required to provide a Form 10.

Q. What if the mortgage in a transaction is from a “private label” lender exclusive to a particular mortgage broker? Are there any special conflict of interest disclosure requirements?

- A. The disclosure requirements are the same for any transaction. The mortgage broker/brokerage and submortgage broker are required to describe any interests acquired by related parties.

The Registrar encourages all industry participants, including related parties and associates of registered mortgage brokers / brokerages, to support registrants in complying with the *Mortgage Brokers Act* by ensuring they are equipped with all the necessary information to provide complete and accurate disclosures.

Q. My brokerage firm, franchise or network offers group creditor life insurance to borrowers, incidental to the sale of the mortgage. Do I need to disclose compensation received from selling this in the Form 10?

- A. No. Compensation from the sale of group creditor insurance is separate and incidental to the mortgage transaction. Only interests arising from the mortgage transaction itself are relevant to conflict of interest disclosure requirements under the Act.

Q. May I provide borrowers a document to explain the costs I occur in running my business when I describe my compensation to borrowers in the Form 10?

- A. Yes, mortgage brokers/brokerages are free to provide borrowers and/or lenders any additional information they wish in explaining their business operations. However, this information cannot be in any way tied to the Form 10 disclosure. In particular,
- Be clear to users that the information is not part of the required Form 10 disclosure. The information should be provided separate from the Form 10; and
 - Be clear to users that the information is not a required disclosure and it is not in any way endorsed by the Registrar.

Q. Sometimes the mortgage loan amount may vary from the time the Form 10 is provided to a borrower and the time it actually funds. How accurate does the compensation disclosure need to be?

- A. The Registrar expects values to be determined in good faith, and to be reasonable and defensible, as contemplated at the time the disclosure is provided.

Major variations in the compensation disclosed and the actual compensation received that cannot be reasonably explained will attract the attention of the Registrar. Minor variations

that, for example, result from adjustments at closing, are unlikely to attract the attention of the Registrar.

If there is a material change to the mortgage transaction after a Form 10 is provided, the Registrar will expect that a new Form 10 is provided to borrowers and/or lenders to reflect the change.

Q. The prescribed Form 10 only has space for a single borrower's signature. Do I need only one borrower to sign the Form 10, or all borrowers when there is more than one borrower in the transaction?

A. The *Mortgage Brokers Act* requires that a Form 10 be provided individually to each person who is a borrower (lender) in the transaction. However, the Registrar will generally accept a single Form 10 containing the signatures of each borrower (lender), and will accept modification of the prescribed Form 10 to include additional signature lines to accommodate more than one borrower (lender) in the transaction. A common example would be where both spouses are borrowers in the transaction.

Note that the objective is to ensure that Form 10 disclosure is provided to each person who is a borrower (lender) in the mortgage transaction.