

# Information Bulletin

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**Bulletin Number:** MB 10-007

**Topic:** ADVANCE FEES AND DEPOSITS HELD IN TRUST

**Issue Date:** SEPTEMBER 2010

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1. At the beginning of every transaction, a mortgage broker should have each client sign a Client Service Agreement and Authorization which sets out:
  - the parameters of the services to be provided to the client;
  - the cost of or fees for the services to be provided by the mortgage broker, if any;
  - all authorizations that may be required by the mortgage broker or lender, such as a credit bureau authorization and a consent to disclose information necessary to the completion of the mortgage (e.g. to the client's real estate agent, insurance agent and conveyancing lawyer or notary public); and
  - the client's responsibility to bear other costs of the mortgage (e.g. the appraisal or legal fees).
2. Section 5 of the BPCPA prohibits mortgage brokers or lenders from engaging in deceptive acts or practices for transactions that are for primarily personal, family or household purposes. In addition, section 4(3) makes it a deceptive act or practice for any mortgage broker or lender to arrange a mortgage for a fee, unless the fee is deducted from the mortgage advance at the time of closing. Therefore, a registered mortgage broker or lender cannot take advance fees from clients for arranging residential mortgages, as fees can only be taken from the advance of mortgage funds at the time of mortgage funding.
3. It is permissible for mortgage brokers and lenders to take sums of money from clients in advance of mortgage funding to cover actual costs of the mortgage transaction which are paid to third parties (e.g. legal costs, appraisal fees) where the individual has agreed to compensate the mortgage broker or lender for such costs.
4. Mortgage brokers and lenders who take refundable monies in advance of mortgage funding for:
  - transaction costs, as set out in paragraph 3; or
  - advance fees, in the case of commercial or non-residential transactions,must keep such monies in a trust account, in the name of the mortgage broker or lender.

5. Registered mortgage brokers and lenders who handle trust monies must be authorized to do so by the Registrar. Any registrant which is not currently authorized to handle trust monies and wishes to do so must contact the Registrar's staff and obtain authorization.

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