



# Compliance Checklist for Managing the Mortgage Brokerage

as of January 1, 2009

This Compliance Checklist was developed by the Financial Services Commission of Ontario (FSCO) to assist Mortgage Brokerages in complying with new regulations relating to standards of practice (Ontario Regulation 188/08) and reporting requirements (Ontario Regulation 193/08) under the Mortgage Brokerages, Lenders and Administrators Act, 2006 (the Act). All of these requirements are set out in the law – they are not suggestions.

## Managing the Mortgage Brokerage

- Establish and implement policies and procedures to supervise and ensure the Mortgage Brokerage and its Mortgage Brokers and Agents comply with the law.** Include policies and procedures on:
  - The description and disclosure of the Mortgage Brokerage's role in relation to borrowers and lenders.
  - Verifying the identity of borrowers, lenders and investors.
  - Determining the suitability of a mortgage or mortgage investment for a borrower, lender or investor.
  - Identifying material risks and disclosing them to the borrower, lender or investor.
  - Identifying and disclosing potential conflicts of interest to the borrower, lender or investor.
  - Receiving incentives other than money from other persons and entities.
  - Providing incentives other than money to Mortgage Agents and Brokers of other Mortgage Brokerages.
  
- Screen and monitor all your Mortgage Brokers/Agents.** Immediately notify FSCO if a Mortgage Broker or Agent is not suitable for licensing.
  
- Establish a complaints process for resolving complaints from the public.**
  - Designate an employee or someone authorized to act on behalf of the Mortgage Brokerage to receive and attempt to resolve complaints from the public.
  - Provide a written response to each written complaint.
  - Keep a record of all written complaints received from the public and all written responses.
  
- Maintain errors and omissions insurance.** Each Mortgage Brokerage is required to have errors and omissions insurance covering fraudulent acts. The insurance must cover a minimum of \$500,000 for any one occurrence and \$1 million for all occurrences during a 365-day period. Notify FSCO if errors and omissions insurance is cancelled or not renewed. Failure to notify FSCO may result in a \$1,000 penalty.
  
- File an *Annual Information Return*** by March 31st each year. Late filings may result in a \$1,000 penalty.
  
- Maintain a mailing address in Ontario that is suitable for service by registered mail.** A valid e-mail address is also required. Failure to comply with this requirement may result in a monetary penalty.
  
- Notify FSCO within five days of the following changes:**
  - A change in the location of your principal place of business, or the opening or closing of any other office that is open to the public.
  - A change in your mailing address, e-mail address, telephone number or fax number.
  - A change in a Director, Officer, Partner or Principal Broker.
  - A Mortgage Broker or Agent that is no longer authorized to act on behalf of your Mortgage Brokerage.

A late notification may result in a \$500 penalty.



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## Keeping Records

- Maintain complete and accurate records of:**
  - Financial records for all mortgage brokering activities in Ontario. (Financial records must distinguish between deemed trust funds and other assets).
  - Every mortgage application, instrument and renewal agreement that is received or arranged.
  - Mortgage Brokerage agreements on dealing/trading in mortgages and mortgage lending.
  - All documents and written information given to and received from clients and prospective clients.
- Take adequate precautions to guard against falsification of records or improper access to clients' personal information.**
- Retain all records that the Mortgage Brokerage is required to maintain for at least six years:**
  - After the maturity or expiry of mortgage agreements and mortgage renewals.
  - After completion or other expiry of a purchase, sale or trade of a mortgage.
- Store all records at your main office.** Inform FSCO if you are storing your records in a different location. Electronic records do not need to be stored at your main office as long as they can be quickly retrieved.

## Trust Funds

The following checklist only applies to Mortgage Brokerages that receive trust funds.

- Notify FSCO within five days if you are required to establish a trust account.** Late notifications may result in a \$1,000 penalty.
- Hold deemed trust funds in a trust account.** Money received from borrowers/lenders/investors for dealing/trading in mortgages needs to be held in a trust account.
- Other funds do not need to be placed in a trust account:**
  - Funds earned by the Mortgage Brokerage for rendered services.
  - Funds for reimbursing expenses.
  - Funds payable to the Mortgage Brokerage as a mortgage lender.
- Maintain a trust account in a bank, credit union, or loan and trust company in Ontario.**
- Conduct the following activities when administering the trust account:**
  - Deposit trust funds within two business days.
  - Keep trust funds separate from other funds.
  - Pay any interest earned to the beneficial owner, unless otherwise agreed upon in writing.
  - Disburse trust funds according to the terms under which the funds were received.
- Keep records of transactions related to trust funds.**
  - Keep a copy of the receipt the Mortgage Brokerage provided when the funds were received.
  - For deposits – note the amount, date, name of the person/business from whom the money was received and purpose of the deposit (including particulars of the mortgage).
  - For disbursements – note the amount, date, name of the person/business to whom funds were disbursed, as well as the purpose (including particulars of the mortgage).



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- For interest payments — identify the particular deposit of deemed trust funds to which the interest payment relates, the amount of interest associated with the deposit, and the date the interest was paid.
- Prepare a monthly reconciliation statement for the trust account.**
  - The statement should be signed by the Mortgage Brokerage's Principal Broker certifying it is accurate. This must be done within 30 days of receiving the monthly account statement from your financial institution (if statements are received), or 30 days after the month ends.
  - The reconciliation statement must set out any differences between the Mortgage Brokerage's records and the financial institution's records. It also needs to report the balance owing to each person/business, as of the date of the monthly account statement (if statements are received), or the last day of the month.
- Notify FSCO immediately if there are any shortfalls in the trust account.**
- Prepare an annual trust account reconciliation within 90 days of fiscal year end.** A Mortgage Brokerage that is required to prepare monthly reconciliation statements during the fiscal year must also prepare an annual reconciliation statement for that year. The annual reconciliation statement must summarize the contents of each required monthly reconciliation statement. It is not required to be filed with FSCO.