



# Compliance Checklist for Mortgage Brokerages, Brokers & Agents

as of January 1, 2009

This Compliance Checklist was developed by the Financial Services Commission of Ontario (FSCO) to assist Mortgage Brokerages, Brokers and Agents in complying with the new regulations relating to standards of practice (Ontario Regulations 187/08 and 188/08) and reporting requirements (Ontario Regulation 193/08) under the Mortgage Brokerages, Lenders and Administrators Act, 2006. All of these requirements are set out in the law – they are not suggestions.

## Customer Relations

- Ensure the mortgage product presented is suitable for your customer.** Consider the needs and circumstances of the borrower, lender or investor to ensure that any mortgage or mortgage investment presented is suitable for your customer. This requirement does not apply if the customer is another Mortgage Brokerage or financial institution.
- If asked, provide the name in which you are licensed along with your Mortgage Brokerage/Broker/Agent licence number.**
- Prominently disclose the Mortgage Brokerage's authorized name and licence number in all public relations materials.** If the name of a Mortgage Broker or Agent is included, use the name in which he/she is licensed and the title "Mortgage Broker", "Broker", "Mortgage Agent" or "Agent."
- If the Mortgage Brokerage is a franchise, clearly indicate that it is independently owned and operated.** The public relations materials must clearly indicate that the company is independently owned and operated if the Mortgage Brokerage's authorized name is the name of a franchise, or includes the name of a franchise.
- Disclose the role in which the Mortgage Brokerage is acting.**
  - Disclose in writing to the borrower or lender whether the Mortgage Brokerage is acting for the lender, the borrower, or both the borrower and the lender without preference to the interests of either.
  - This requirement does not apply when the Mortgage Brokerage is the lender.
  - Disclosure must be in plain language that is clear and concise. It should not include false, misleading or deceptive information.
- Use plain language and be clear, brief and logical in written disclosures, consents and acknowledgements.**
- Issue a receipt upon receiving trust funds.** Indicate the amount that was received, the date, the name of the individual/business that provided the funds, the purpose of the funds, the Mortgage Brokerage's terms for holding the funds, and the name of the Mortgage Broker/Agent who received the funds.
- Return original documents to their owners when requested, at no charge.**
- Provide a written response to a written complaint.** Tell the client that he/she may contact FSCO if he/she is not satisfied with your response and believes the law has not been followed.

## Disclosure

- Disclose in writing to the borrower the number of lenders on whose behalf the Mortgage Brokerage acted during the previous fiscal year and whether the Brokerage itself was a lender.** Upon request, disclose in writing the name of the lender, if any, with whom the Brokerage arranged more than 50 per cent of the total number of mortgages and mortgage renewals during the previous fiscal year. Or whether the Mortgage Brokerage itself was the lender of more than 50 per cent of the total number of mortgages and mortgage renewals.





# Compliance Checklist for Mortgage Brokerages, Brokers & Agents

as of January 1, 2009

- Disclose information about fees the Mortgage Brokerage receives or will/may receive from others.** Disclose in writing to the borrower whether fees are payable by others to the Mortgage Brokerage in connection with the mortgage. Include the person/entity paying the fees, the basis for calculating the amount of the fee, and if a benefit other than money, the nature of that benefit. Also disclose whether the Mortgage Agent/Broker receives, or may receive any incentive from another person/entity, and who that person/entity is. Obtain written acknowledgement from the borrower.
- Disclose information about fees the Mortgage Brokerage is paying.** Disclose to the borrower in writing whether the Mortgage Brokerage has paid, may pay, or will pay a fee to another person/entity in connection with the mortgage, the name of person/entity receiving the fee, and the basis for calculating the fee or other remuneration. If it is a benefit other than money, disclose the nature of the benefit. Obtain written acknowledgement from the borrower.
- Disclose information about referral fees the Mortgage Brokerage is receiving.** Disclose in writing to the borrower whether the Mortgage Brokerage is receiving, directly or indirectly, a fee for referring a borrower, lender or investor to another person/entity for a fee or other remuneration. Include a description of the Brokerage's relationship with the other person/entity.
- Disclose material risks.** Disclose in writing to the borrower, lender or investor the material risks of the mortgage or mortgage investment. Get written acknowledgement that the customer has received this disclosure. This disclosure requirement does not apply to designated classes of lenders and investors defined in Section 2 of Ontario Regulation 188/08.
- Disclose potential conflicts of interest.** Disclose in writing to a borrower, lender or investor, any conflict of interest that the Mortgage Brokerage, Broker or Agent may have in connection with the mortgage or trade in a mortgage. This does not apply if the lender is another Mortgage Brokerage, or if the investor is another Brokerage or financial institution. Obtain written acknowledgement of the disclosure.
- Disclose the cost of borrowing to the borrower.** Provide the borrower a written disclosure statement on the cost of borrowing as detailed in the Cost of Borrowing and Disclosure to Borrowers (Ontario Regulation 191/08), Sections 8 and 9. Provide this disclosure at least two business days before the borrower makes any payment in relation to the mortgage or enters into the mortgage agreement. This timing requirement does not apply if the borrower consents in writing before the earliest of these dates described.
- For reverse mortgages, ensure the borrower provides a signed statement from a lawyer** stating that the lawyer has provided independent legal advice to the borrower.
- Disclose information based on an estimate or assumption.** Inform the borrower/lender/investor in writing that the information is an estimate, or is based on an assumption.
- Inform the lender as soon as possible, if you doubt the borrower's legal authority** to mortgage a property, or if you doubt the accuracy of the borrower's application or supporting documentation.
- Verify the identity of each borrower, lender and investor.** Advise the borrower, lender or investor, as the case may be, if you are unable to verify the identity of another party to the transaction. Do this before the borrower enters into the mortgage agreement, submitting the borrower's mortgage application to a lender, or the trade completion date of a mortgage investment.
- Disclose to an investor if a mortgage has been in default during the past 12 months.** Include the amount and duration of the default in the disclosure. Get written acknowledgement that the investor has received this information.



# Compliance Checklist for Mortgage Brokerages, Brokers & Agents

as of January 1, 2009

- Give a completed *Investor/Lender Disclosure Statement* to the investor/lender.** Include all relevant documentation and provide disclosure at least two business days before:
  - the Mortgage Brokerage receives funds from the lender/investor;
  - the Mortgage Brokerage enters into an agreement to receive funds from the lender/investor;
  - the lender enters into an agreement to enter into a mortgage, or the investor enters into an agreement to purchase/exchange/sell a mortgage;
  - the borrower receives funds for his/her mortgage;
  - the trade completion date.

This waiting period may be reduced to one business day if the lender/investor consents in writing.

- For mortgage renewals,** provide the lender a completed *Renewal Form* and supporting documents.

## Business Practices

- Mortgage Brokers/Agents can work for only one Mortgage Brokerage at a time.**
- If you are operating another business,** make sure it does not jeopardize your Mortgage Brokerage's integrity, independence or competence.
- Do not use any information that was obtained while carrying on Mortgage Brokerage business for any other purpose, without first obtaining the written consent of the individual or business who is the subject of the information.**
- Notify FSCO's online *Licensing Link* within five days of changes to your contact information or status.** A Mortgage Broker/Agent must notify FSCO of changes to his/her mailing address, e-mail address, telephone or fax number, and if he/she is no longer authorized to act on behalf of a Mortgage Brokerage. Late notifications by Mortgage Brokers/Agents may result in a \$250 penalty.

## Prohibited Activities

The Mortgage Brokerages, Lenders and Administrators Act, 2006 and regulations, prohibit:

- **Trading or dealing in mortgages without a licence** – as of July 1, 2008, all Mortgage Brokerages, Administrators, Brokers and Agents must be licensed with FSCO to carry on business in Ontario, unless an exemption applies.
- **Using an unauthorized name** – you can use only the name in which you are licensed.
- **Collecting advance fees for mortgages of \$300,000 or less** – if the principal amount of the mortgage is \$300,000 or less, the Mortgage Brokerage cannot require or accept an advance payment/deposit for services to be rendered and expenses to be incurred by the Brokerage or any other person.
- **Receiving funds from investors/lenders in advance** – the Mortgage Brokerage cannot receive funds from an investor unless an existing mortgage is available, or from a lender unless a mortgage application has been made on a specific property.
- **Indicating that Mortgage Brokerage fees are approved by the government** – you cannot claim that Mortgage Brokerage fees are approved by a government authority. The only exception is fees under the Land Titles Act or the Registry Act.
- **Offering guarantees to lenders/investors** – you cannot offer a guarantee to a lender/investor regarding a mortgage loan or mortgage investment.
- **Engaging in tied selling** – borrowers/lenders/investors cannot be required to obtain a product or service as a condition for obtaining another product or service from the Mortgage Brokerage.
- **Acting for a borrower/lender/investor if you believe a mortgage is unlawful.**