

Information Bulletin

Bulletin Number: MB 11-005

Topic: FORM 9 – LENDER DISCLOSURE STATEMENT

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To assist brokers to provide disclosure to mortgage investors / lenders, the Registrar of Mortgage Brokers has approved an enhanced Form 9 Investor / Lender Information Statement.

Obligation to Provide Form 9 Disclosure

Under section 17.1 of the *Mortgage Brokers Act* (the “Act”), a mortgage broker who:

- arranges a mortgage in which another person is to be the lender;
- arranges the sale of a mortgage lender’s interest in a mortgage to a new lender; or
- is a mortgage lender and sells its interest in the mortgage to another person who will be the new mortgage lender;

must provide the mortgage lender with a Form 9 Lender Disclosure Statement along with the attachments listed in the Form.

Timing of the Form 9 Disclosure

The Form 9 must be provided to the mortgage lender prior to any mortgage funds being released from trust, or if there are no mortgage funds being held in trust, prior to the mortgage funds being advanced to the borrower. Regardless of any applicable agreement, the lender is not obligated to advance funds under the transaction unless the mortgage broker has provided the Form 9 and all applicable attachments to the lender. In addition, Form 9 containing updated information must be delivered to the lender upon any subsequent renewal of the initial mortgage.

Retention of the Form 9 Disclosure

A mortgage broker must retain a copy of the Form 9 for a period of at least seven years.

Exemptions from Obligation to Provide Form 9 Disclosure

A mortgage broker is exempt from the obligation to provide a mortgage lender with Form 9 Disclosure if the mortgage lender is a savings institution or another “sophisticated person” as defined in the Regulations to the Act (*see complete list of sophisticated persons below).

In addition, a mortgage broker is exempt from the obligation to provide a mortgage lender with Form 9 Disclosure if:

- the mortgage is part of a pool of mortgages and an interest in the pool is being offered by the mortgage broker as a security as defined in the *Securities Act*, and fully guaranteed by the government of Canada or by a province of Canada; or
- an offering memorandum or a prospectus has been provided to the mortgage lender in accordance with the requirements of the *Securities Act*.

Content of the Form 9 Disclosure

The enhanced Form 9 requires the mortgage brokers to disclose the following information to investors and lenders.

Section B – Borrower Name and Address

Complete the name and address of the borrower and any guarantor in section B. If there are multiple lenders with fractional interests in a single mortgage transaction, a separate Form 9 must be completed for each individual lender. For example, if a mortgage for \$100,000 has two separate investors where one lender invests \$60,000 and the other lender invests \$40,000, then the mortgage broker must complete two separate Form 9 disclosures. Each Form 9 would identify the pertinent investment information for each lender. However, if persons share a joint interest as lenders, the mortgage broker is only required to complete one Form 9 Disclosure for the joint investors. For example, if a person and their spouse jointly invest \$100,000 in a \$100,000 mortgage, then that is considered a single investment requiring only one Form 9. It should be noted however that both the person and their spouse should sign acknowledging receipt of the Form 9 Disclosure.

Section C – Other Parties to the Transaction Represented by the Mortgage Broker

Mortgage brokers have a duty of undivided loyalty to persons they represent. However, if they represent more than one party to the transaction, they will have divided loyalties which may affect their judgment or their sense of duty to act in the best interests of a party. Mortgage brokers must therefore disclose to the lender in section C which parties they represent or act for in the transaction. It should be noted that even if a mortgage broker does not represent a lender, they will still have a duty of care and fair dealing to the lender. For example, where a mortgage broker indicates that they do not represent the lender, the broker must still provide all required disclosures, be honest in its representations to the lender and exercise reasonable care and skill in their dealings on behalf of the lender.

Section D – Pre-Existing or Existing Mortgage in Default

If the lender will be acquiring an interest in a currently registered mortgage, or will be refinancing with a new mortgage to replace a current mortgage registered against the same title, the mortgage broker must disclose in section D any defaults by the borrower that occurred over the past twelve months which the broker is aware of. Mortgage brokers must exercise due diligence in completing section D, including obtaining title searches, reviewing the charges registered on title and obtaining statements with outstanding balances from current lenders or charge holders.

Section E – Registered Interest

The mortgage broker must disclose in section E how the lender's interest as a mortgage lender will be secured. Typically, the lender's interest will either be:

- registered as a mortgage directly against the property title by filing a Form B mortgage document with the Land Title Office, which identifies the lender as the mortgage lender; or
- held in trust by a trustee or nominee, with a mortgage registered directly against the property title by filing a Form B mortgage document with the Land Title Office, which identifies the trustee or nominee as the mortgage lender (holding the mortgage in trust for the beneficial lender).

Section F – Mortgage Investment

The mortgage broker must disclose in section F the percentage interest that the lender has in the mortgage. For a non-syndicated mortgage, the mortgage broker must identify that the lender is contributing funds which will represent the entire mortgage investment.

For a syndicated mortgage, the mortgage broker must identify that the lender is contributing funds which will represent a portion of the mortgage investment. The lender's fractional interest should be stated as a percentage of the total mortgage investment. The number of other parties who have an interest in the mortgage investment should also be stated.

For example, if Lender A contributes \$20,000 to a \$100,000 mortgage investment and there are five other investors, section F should state that Lender A will have a 20% interest in the mortgage and that there are five other parties who have an interest in the mortgage investment.

Section G – Trust Funds

If the funds of the lender will be held in trust pending completion of the mortgage transaction, the mortgage broker must state in section G the name of the party who will be holding the funds in trust, e.g. the mortgage broker, lawyer or notary public.

Section H – Mortgage Administration

If the mortgage will be administered by someone on behalf of the lender, the mortgage must provide the name and address of the administrator in section H. In addition, any fees associated with the administration of the mortgage must be stated or alternatively, a copy of the Administration Agreement which describes the fees must be attached to the Form 9.

NOTE: Section 19(f) of the Act requires that persons who carry on the business of collecting money secured by a mortgage (“administrators”) obtain registration as a mortgage broker. In addition, under section 14.1 of the Act, a mortgage broker is prohibited from administering a mortgage for someone, without entering into an administration agreement, which sets out the remuneration of the broker and other expenses and costs relating to the mortgage, responsibilities of the broker for decisions respecting collection of monies, prepayments of principal, discharges or partial discharges of the mortgage, and commencement or continuation of enforcement proceedings in the event of default.

Section I – Property Description

In section I, the mortgage broker must indicate whether or not the lender’s investment will be registered as an inter alia mortgage against more than one property title. If the mortgage is inter alia, do not complete sections I and K of the Form 9 but proceed to and complete the “Form 9 Addendum for Inter Alia Mortgages”. If there are more than two properties which are subject to the inter alia mortgage, add additional Addendum pages to describe each additional property.

Section J – Mortgage Particulars

The mortgage broker should complete section J to disclose the particulars of the mortgage transaction. The maximum indebtedness of the mortgage is the total amount of all draws which can be made by the borrower under the mortgage.

Section K – Rank of Mortgage and Loan to Value Ratio

The mortgage broker should obtain a recent title search of the property or properties to be encumbered and determine the number of mortgages registered against title, whether any mortgages will be discharged, the priority of each remaining mortgage and the priority of the mortgage investment which is the subject of the Form 9.

In addition, the mortgage broker should obtain statements regarding outstanding balances from charge holders who rank in priority to the mortgage investment which is the subject of the Form 9.

The mortgage broker should also determine from these charge holders the maximum financial exposure on their security where the borrower may have a running account, line of credit or access to future advances. For example, a charge holder may indicate a balance outstanding on a line of credit of \$200,000, which is secured by a mortgage with a registered principal amount of the mortgage of \$300,000. In determining the

loan to value ratio in section K, the mortgage broker must disclose the maximum financial exposure to the charge holder, which is \$300,000.

There may be instances where a mortgage broker is unable to obtain statements regarding outstanding balances from charge holders. A mortgage broker may also obtain this information from statements provided directly by the borrower. In these situations, the mortgage broker should obtain Land Title Office documentation (e.g. a copy of the mortgage document) which may give an indication of the balance outstanding or the maximum financial exposure to the charge holder.

Section L – Attached Documents

In section L, the mortgage broker must indicate, by checking the tick boxes on the left side of the form, the documents which are attached and form part of the Form 9. Please note that a copy of the appraisal must be attached if the appraisal was used to determine property value.

Mortgage brokers are also required to provide lenders with all other information an investor of ordinary prudence would consider to be material to a decision whether to lend money on the security of the property, so that they can make an informed decision before they commit to invest. This information might include the following:

1. If the mortgage is for a construction or development project:
 - a. Detailed description of the project;
 - b. A schedule of the funds that have been advanced or are to be advanced to the borrower;
 - c. The identity of any person who will monitor the disbursements of fund to the borrower and the use of those funds by the borrower; and
 - d. Environmental considerations affecting the value of the property.

2. If the property is rental property:
 - a. Details of leasing arrangements and vacancy status; and
 - b. Environmental considerations affecting the value of the property.

Definitions:

A “sophisticated person” is defined to mean:

- (a) a government of Canada or any province of Canada or a crown corporation or agency of a Canadian federal or provincial government;
- (b) a municipal corporation, public board, or commission in Canada,
- (c) a savings institution;

- (d) a cooperative credit society as defined in the *Cooperative Credit Associations Act* (Canada) or a savings and credit union, federation or confederation as defined in the *Savings and Credit Unions Act* (Quebec);
- (e) the Business Development Bank of Canada;
- (f) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension supervisory authority;
- (g) an insurance company;
- (h) a trust company or insurer authorized under the laws of Canada or of a province of Canada other than British Columbia to carry on business in Canada or that province;
- (i) a mortgage broker acting as principal;
- (j) a subsidiary, as defined by the *Business Corporations Act*, of a person referred to in paragraph (a) to (i);
- (k) a person registered under the *Securities Act* or the securities legislation of another province in Canada as an investment dealer or equivalent, acting as principal or as an agent or trustee for accounts that are fully managed by it;
- (l) a person registered under the *Securities Act* or the securities legislation of another province in Canada as a portfolio manager or equivalent, acting as principal or as an agent or trustee for accounts that are fully managed by it;
- (m) a mutual fund or non-redeemable investment fund, if the investment portfolio of the fund is managed by a person that is registered under the *Securities Act* or the securities legislation of another province in Canada as a portfolio manager or equivalent; or
- (n) a person or trust that acquires mortgages or interests in mortgages for the purpose of offering, as a security as defined in the *Securities Act*, interests in a pool of those mortgages or interests in mortgages.

Please visit our website to access the enhanced Form 9 using the following link:

http://www.fic.gov.bc.ca/index.aspx?p=mortgage_brokers/MBRegistrationForms.

The Registrar has permitted the above variation from the prescribed Form 9, which can be found in the Act Regulations: http://www.bclaws.ca/civix/document/id/complete/statreg/100_73.

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.