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Mortgage Broker Conflict of Interest Disclosure Guidelines

The Registrar of Mortgage Brokers

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Introduction

The *Mortgage Broker Conflict of Interest Guidelines* (guidelines) assist mortgage broker firms and individual submortgage brokers to meet their conflict of interest disclosure obligations under the *Mortgage Brokers Act* (the Act).

The guidelines encourage industry to think about conflicts, identify conflicts, and describe conflicts in a way that is easy for consumers to understand. The guidelines are not intended to be prescriptive, exhaustive, or to otherwise replace the requirements of the Act.

To determine compliance with the Act, the Registrar will review mortgage transactions to ensure disclosure responds to the guidelines, follows the spirit and intent of conflict of interest disclosure, and that disclosure is accurate in light of the information known at the time.

Under the Act the term “mortgage broker” means the brokerage firm, which can be a corporation, partnership, or a sole proprietor. The term “submortgage broker” means a person who engages in any of the activities of a mortgage broker and is employed by a mortgage broker.

The Act requires mortgage brokers (i.e. brokerage firms) and individual submortgage brokers to disclose and document conflicts of interest to both borrowers and lenders. Failing to disclose and document direct or indirect interests in mortgage transactions is considered contrary to the public interest. It is not sufficient for a submortgage broker to disclose a conflict of interest solely to their mortgage broker; they must ensure that the disclosure is also made to the lender or borrower.

Submortgage brokers who are authorized representatives of the mortgage broker may complete the required form for conflict of interest disclosure (Form 10) and provide it to borrowers and/or lenders on behalf of the mortgage broker. Where a mortgage broker relies on a submortgage broker to provide the disclosure on its behalf, it remains the mortgage broker's responsibility to ensure that complete and accurate information about the mortgage broker's interests is disclosed in transactions.

In discussing the obligations of mortgage brokers and submortgage brokers, these guidelines will use the term “mortgage broker” to refer to both, except when necessary to distinguish between them. The Mortgage Broker Conflict of Interest Guidelines assist mortgage broker firms and individual submortgage brokers to meet their conflict of interest disclosure obligations under the Act.

Principles of Conflict of Interest Disclosure

The Registrar expects registrants (i.e., mortgage brokers and submortgage brokers) to provide disclosure in a manner that is consistent with the following core principles:

1. Clear and understandable:
 - Interests should be described in simple language, free of unnecessary technical and industry terminology.
2. Comprehensive, complete and accurate:
 - Sufficient qualitative and quantitative information should be provided to fully describe interests.
3. Meaningful to users:
 - Users should have a full understanding of the interests, and be able to make informed decisions and otherwise act on the information.

Mortgage Brokers Act Requirements

Section 8(1)(i) of the Act states that if, in the Registrar's opinion, a person has conducted or is conducting business in a manner that is prejudicial to the public interest, the Registrar may do one or more of the following after providing an opportunity to be heard,

- (a) suspend a person's registration;
- (b) cancel a person's registration;
- (c) order a person to cease a specified activity;
- (d) order a person to carry out specified actions that the Registrar considers necessary to remedy the situation,

Section 17.3 of the Act requires that mortgage brokers provide conflict of interest disclosure to borrowers in the prescribed Form 10, which is found in the Act Regulations. Section 17.4 requires the same type of disclosure be provided to lenders.

The Act requires that:

- (1) Every mortgage broker who acts in a mortgage transaction in which there is an interest as described in subsection (2) (a) must, within the prescribed time, provide to every person who is a borrower (or lender) under a mortgage in that transaction a written disclosure statement that meets the requirements of subsection (2).

(2) The disclosure statement referred to in subsection (1) must

- (a) disclose any direct or indirect interest the mortgage broker or any associate or related party of the mortgage broker has or may acquire in the transaction;
- (b) include the prescribed contents and be accompanied by any documents that are prescribe;
- (c) be dated and signed by the mortgage broker; and
- (d) contain disclosure that is true, plain and not misleading of the matters in the prescribed contents referred to in paragraph (b).

The "prescribed contents" as noted in (2) (b) above are contained in the prescribed Form 10, which requires mortgage brokers to:

1. Describe any direct or indirect interest the mortgage broker has or, as currently contemplated, may acquire in the transaction for which this disclosure statement is provided.
2. Describe any direct or indirect interest that a related party or associate of the mortgage broker, as defined in the Mortgage Brokers Act regulations has or, as currently contemplated, may acquire in the transaction for which this disclosure statement is provided.

Section 13 of the Act Regulations provides a detailed definition for "associate" and "related party:"

"Associate" includes, but is not limited to:

- Individual submortgage broker employed by the mortgage broker
- Business partners
- Corporations owned by the mortgage broker
- A relative, including a spouse of a mortgage broker

"Related party" includes, but is not limited to:

- Parties that influence the mortgage broker
- Parties that the mortgage broker influences
- Parties that, together with the mortgage broker, influence a third party
- Parties that, together with the mortgage broker, are influenced by a third party

Registrants are advised to review these sections of the Act in detail and may consider seeking their own legal advice to assess their individual circumstances and address any specific questions or concerns.

Using the Prescribed Form 10

The prescribed Form 10, as set out in the Act Regulations, is the required form for conflict of interest disclosure for mortgage brokers. A copy of the form is attached at the end of this document with a courtesy link to the fillable form.

Mortgage brokers and IT service providers may create their own electronic versions of the Form 10 to integrate into mortgage application software or web-based platforms; however, the content of any electronic form must be exactly the same as is found on the prescribed Form 10. Mortgage brokers and IT service providers are free to create their own auto-text, boiler-plate, or drop-down menus with standardized text within the form; however, descriptions must adhere to the principles and legal requirements as set out in these guidelines. It must also include a free-text option to enable descriptions of interests not otherwise contemplated.

Mortgage brokers may also append additional documents to the prescribed Form 10 whenever necessary to provide complete descriptions of interests.

Timing of Conflict of Interest Disclosure Statement

Section 14 of the Act Regulations sets out when the Form 10 must be provided:

To the borrower

The Form 10 must be provided to the borrower at the earliest opportune time before they sign:

- the mortgage; or
- any ancillary agreement with the mortgage broker or lender, including but not limited to an agency agreement with the mortgage broker, that commits the borrower to the mortgage transaction.

To the lender

The Form 10 must be provided to the lender:

- on or before release of the funds from trust at the direction of the lender; or
- on or before the advancement of funds by the lender (if the funds are not paid into trust).

Regulatory Expectations

GENERAL GUIDANCE

- The Registrar expects registrants (i.e., mortgage brokers and submortgage brokers) to describe direct and indirect interests in a manner that responds to the “Principles of Conflict of Interest Disclosure” provided earlier in the guidelines.
- Generally, a conflict of interest exists when there is a risk that a registrant’s advice to one party may be influenced by the interests of another party.
- Any interest which has a monetary value must be expressed as a dollar amount.
- Any interest which has no monetary value must be described in a manner that is true, plain, and not misleading.
- If a related party or associate acquires an interest in the transaction, the nature of the relationship must be described clearly to enable users to understand the relationship.

DIRECT INTERESTS

- A direct interest is one in which the interest flows directly to the registrant. It can include monetary and non-monetary interests.
- Any interest which has a monetary value must be expressed as a dollar figure.

- Any interest that has no monetary value must be described in a manner that is true, plain, and not misleading.
- A non-exhaustive list of common direct interests includes:
 - Base commissions;
 - Known volume or efficiency bonuses;
 - Monetary value of loyalty or rewards points;
 - The mortgage broker receives a fee from the borrower;
 - A mortgage broker is the lender or has ownership interests in the lender or is a part of a syndicate lender;
 - Expected trailer fees or other compensation payable during the term of the mortgage;
 - Potential volume or efficiency-based bonuses;
 - The amount of volume-based compensation paid by a lender to the mortgage broker;
 - The amount of any fee paid by a lender to a mortgage broker related to mortgage transactions being directed by that mortgage broker to that lender (including but not limited to access fees and fees paid by a lender to be identified as a preferred lender);
 - Expected trailer fees or other compensation payable, as a dollar amount, based on current circumstances, if the borrower renews the mortgage with the lender at maturity;
 - Desk, franchise or network fees, or similar, payable by mortgage brokers based on achieving certain targets, such as volume, with a preferred lender of the firm;
 - Any benefit arising from achieving a certain status or designation with a lender; and,
 - Beneficial ownership interests in the lender or the borrower.
 - Referral fees paid or received in exchange for referring a client to another party (e.g., referral fees paid to or received from real estate professionals, accountants, financial planners, etc.).

INDIRECT INTERESTS

- An indirect interest is one in which the interest flows to an individual or entity with whom the registrant has an interest or connection. An indirect interest can be any kind of benefit, including monetary and non-monetary.
- A non-exhaustive list of common indirect interests includes:
 - A family member of the registrant is the lender or has ownership interests in the lender or is a part of a syndicate lender;
 - A family member or business partner of the registrant is the borrower;
 - The amount of volume-based compensation paid separately to the corporate head of any network or franchise entity to which the registrant is related or associated, based on aggregated volume for the network;
 - The amount of any fees paid by a lender to a network, or franchise for any purpose related to mortgage transactions being directed by that firm or associate or related party to that lender (including but not limited to access fees and fees paid by a lender to be identified as a preferred lender);
 - Ability to offer preferential pricing to borrowers in future mortgage transactions based on volume or efficiency-based targets being met; and
 - The registrant's non-mortgage brokerage business may derive a financial or other benefit from the loan proceeds, including for the purposes of construction or development purposes.

CO-BROKERING

- In co-brokering situations involving two or more mortgage broker firms, each firm has a separate and distinct obligation to describe their respective conflicts of interest, as well as those of their related parties and associates (including submortgage brokers) in a separate Form 10, which must be provided to borrowers and/or lenders as required.
- If two or more submortgage brokers within the same mortgage broker firm "co-broker," then only one Form 10 is to be provided to borrowers and/or lenders as required.

Managing Your Disclosure Obligations

Mortgage broker firms and owners are encouraged to document how the disclosure practices they adopt respond to these guidelines, including any policies and procedures established related to submortgage broker disclosures. Mortgage brokers and submortgage brokers may wish to seek their own legal advice for guidance in meeting their disclosure obligations under the Act.

Conflict of Interest Disclosure Statement Form 10

INSTRUCTIONS

1. Please type or print clearly
2. If additional information is required, reference and attach a schedule to this form

Neither the Registrar of Mortgage Brokers nor any other authority of the government of the Province of British Columbia has in any way passed on the merits of the matters dealt with in this disclosure statement. This information statement has not been filed with the Registrar of Mortgage Brokers and the Registrar has not determined whether or not it complies with Part 2 of the *Mortgage Brokers Act*.

PART 1 – INFORMATION

FULL NAME OF MORTGAGE BROKER

TELEPHONE NUMBER

ADDRESS (complete address including postal code)

ADDRESS OF PROPERTY TO BE MORTGAGED (complete address including postal code)

LEGAL DESCRIPTION OF PROPERTY TO BE MORTGAGED

Describe any direct or indirect interest the mortgage broker has or, as currently contemplated, may acquire in the transaction for which this disclosure statement is provided.

Describe any direct or indirect interest that a related party or associate of the mortgage broker, as defined in the *Mortgage Brokers Act Regulations* has or, as currently contemplated, may acquire in the transaction for which this disclosure statement is provided.

PART 2 – CERTIFICATION

I certify that I am the mortgage broker or an authorized representative of the mortgage broker in this transaction and based on my knowledge, belief and information provided by third parties, this Disclosure Statement contains no untrue statement and does not omit to state a fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made.

FULL NAME OF MORTGAGE BROKER

ADDRESS (complete address including postal code)

SIGNATURE OF MORTGAGE BROKER OR AUTHORIZED REPRESENTATIVE

NAME OF AUTHORIZED REPRESENTATIVE OF MORTGAGE BROKER (PRINT NAME)

DATE SIGNED (YYYY/MM/DD)

ACKNOWLEDGEMENT OF RECEIPT

SIGNATURE

PRINT NAME

DATE SIGNED (YYYY/MM/DD)



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