Advisory

Cash Back Clauses

Date:	November 24, 2025
Distribution:	Real Estate Licensees, Mortgage Brokers
Advisory Number:	25-048

PURPOSE

BC Financial Services Authority ("BCFSA") is issuing this advisory to caution real estate licensees and mortgage brokers about the risks involved when including "cash back" clauses in a real estate transaction.

BACKGROUND

BCFSA has been informed that registrants and/or licensees may be assisting consumers in using "cash back" clauses in real estate transactions. "Cash back" typically refers to the practice of a buyer paying an inflated price for a home (e.g., above the asking price), where the buyer and seller agree that the seller will return a portion of the sale price to the buyer in cash, once the sale goes through. The agreement is commonly recorded in a separate document and not in the Contract of Purchase and Sale.

The use of such a clause can be problematic for a variety of reasons, including:

- Cash back clauses can constitute **mortgage fraud**. Mortgage fraud includes the deliberate attempt to misrepresent or omit information that results in the approval of a mortgage loan or the applicant being approved for terms that they normally wouldn't qualify for. The lender may not be informed of the true nature of the transaction, including the "cash back" arrangement, which may affect the loan-to-value ratio and, if known, result in a different lending decision.
- Cash back clauses may also be a vehicle for **money laundering**. Licensees and registrants who observe cash back arrangements should submit a Suspicious Transaction Report to Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"), as part of their obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
- Licensees and registrants who knowingly facilitate cash back arrangements may cause **serious harm to their own reputation and the reputation of the broader real estate industry** by participating in fraudulent or unlawful activities, likely resulting in disciplinary action. Widespread use of cash back arrangements can also artificially inflate the price of real estate for future purchasers.

REAL ESTATE LICENSEE CONSIDERATIONS

As a real estate licensee, you have several responsibilities to your client as set out in Sections 30 [Duties to clients], 33 [Duty to act honestly] and 34 [Duty to act with reasonable care and skill] of the Real Estate Services Rules. You are also expected to uphold the standards of conduct, as set out in Section 35 of the *Real Estate Services Act*. Participating in a fraudulent cash back scheme constitutes both professional misconduct and **"**conduct unbecoming a licensee" and will result in regulatory scrutiny, including likely disciplinary action. Conduct unbecoming includes any conduct that is contrary to the best interests to the public, undermines public confidence in the real estate industry, and/or brings the real estate industry into disrepute.

As a result, it is recommended that you do not participate or facilitate any “cash back” clauses. If a buyer or seller asks you to participate in a cash back scheme, you should speak to your managing broker and be aware of any brokerage policies concerning cash back clauses.

If you are asked to participate in what you judge to be a fraudulent cash back scheme, you must refuse and look to report this to FINTRAC. If you suspect criminal activity, you should also contact the police.

MORTGAGE BROKER CONSIDERATIONS

Mortgage brokers and sub mortgage brokers are subject to standards of conduct outlined in Section 8 of the *Mortgage Brokers Act*. While lenders typically safeguard their interests by requesting recent property appraisals before approving financing, brokers have a responsibility to ensure they do not act in a manner that is prejudicial to the public interest. This includes ensuring clients disclose any cash-back clauses to the lender, as such clauses are generally treated as a reduction in the property’s purchase price and result in the lender approving a lower mortgage amount. Brokers should direct clients to seek legal advice to fully understand the implications of any cash back arrangements.

As with real estate licensees, you must report any suspected fraudulent cash back activity to FINTRAC. If you suspect criminal activity, you should also contact the police.

ADDITIONAL INFORMATION

- FINTRAC: Real Estate Brokers or Sales Representatives, and Real Estate Developers
- FINTRAC: Mortgage Administrators, Brokers and Lenders
- Section 30, 33, 34, Real Estate Services Rules
- Section 35, *Real Estate Services Act*
- Section 8, *Mortgage Brokers Act*