

MBLAA Legislative Review 2019 - MPC / CMBA Ontario

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Page | 1

Dear Ms. Stephens:

Re: Consultation on the 2018 legislative review of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Hereinafter, MBLAA)

We welcome this review of the MBLAA, which gives us an opportunity to improve Ontario's mortgage industry for all stakeholders.

About Us

Mortgage Professionals Canada (MPC) was founded in 1994 as CIMBL. MPC is the national mortgage industry association representing over 11,000 individuals and 1,000 companies, including mortgage brokerages, lenders, mortgage insurers, and industry service providers. Approximately 60% of our members work or operate their businesses in Ontario.

The Independent Mortgage Brokers Association of Ontario took the business name Canadian Mortgage Brokers Association – Ontario in 2016 to join with the other provincial CMBA associations and the national CMBA association. CMBA Ontario furthers the interests of brokers and agents by promoting the industry and uniting it in ethical practice.

Both our associations are dedicated to maintaining a high standard of industry ethics, consumer protection, and best practices. On behalf of our members, CMBA Ontario and Mortgage Professionals Canada jointly offer the following comments for consideration by you and the Parliamentary Assistant to the Minister of Finance, Mr. Doug Downey.

Licensing and Education:

There is a distinction between arranging a mortgage and arranging the capital to lend for a mortgage; licensing should be updated to reflect this.

Mortgage brokers and agents have a duty to ensure clients and those providing funding understand what they are signing. In order to help the Financial Services Regulatory Authority of Ontario (hereinafter FSRA), and other provincial bodies have a better understanding of how many people are involved in the space and adequately counsel investors about the risks of any type of mortgage investment, any mortgage broker or agent raising capital separately should require additional mandatory certification and licensing. Although the above-noted licensing changes can be achieved



without necessarily changing MBLAA itself (via “authority rules” under the FSRA Act, and MBLAA s.55(1)), we felt it important to also comment here.

We recommend that any changes to licensing be held for implementation until December, 2020, in order to fully investigate and incorporate relevant existing education course content, to conduct an industry awareness campaign, to help brokers and agents understand what the changes will be and why they are occurring, and to work internally through our respective committees and working groups.

Education

- We suggest that an Ontario Secondary School Diploma or its domestic or international equivalent be the minimum prerequisite for any licensing.
- For any new added licence classes, we recommend that specialized education requirements be part of the licensing qualification. Additionally, an experiential or practical skills component should be incorporated into the education process and be mandated for licensure, to ensure a minimum level of competency and proficiency.
- We feel that a biannual continuing education requirement is sufficient. An annual requirement would be an onerous burden on licensees and regulators.
- We recommend that testing requirements in continuing education be made more robust, in order to better support learning objectives. Again, a practical skills component would be of value.

Reporting Requirements, Exemptions and Regulator Enforcement

- Mortgage finance companies are licensed as mortgage brokerages; however, their primary business is lending. As such, their reporting requirements should be more focused on the lending practice. Adjusting the reporting requirements for this class of business will provide better information to the regulator and reduce administrative challenges when trying to review the compliance of such businesses. If they are also doing brokering, they should still be required to report on that activity.
- Employees of federally regulated financial institutions who are placing mortgage products with their employer are exempted from MBLAA, because they are subject to the Bank Act. However, if they are placing a mortgage with an entity *other* than their employer, the public is not clearly protected under either the Bank Act or MBLAA. One solution is to require individuals placing such ‘external’ mortgages to be licensed under the MBLAA. Brokering is brokering. Alberta is now proceeding to implement such a feature and we believe Ontario should follow suit. Such a measure would not affect a large majority of mortgage sales representatives of federally regulated institutions, but would ensure an equivalent base line knowledge is required by all individuals who are arranging mortgage contracts for more than one lender.

The MBLAA and licensing provisions outline an expected minimum standard of knowledge and professionalism with provisions in place to protect the public interest. There is a need to have clients/borrowers receive full disclosure from banks regarding the source of the funds. Our respective associations have received numerous reports that applicants may not be aware that the bank is not the lender and their loan will be with another lender. This disclosure can occur late in the process (sometimes at their lawyer's office) and leave the client with little alternative but to accept the new lender.

We anticipate such a change would require consultations between regulatory bodies to achieve, but would be remiss not to recommend this licensing requirement within this submission.

- The public register of brokerages and administrators (O. Reg. 190/08 1(1)), maintained under s.28(1) of the Act, should be amended to also contain any enforcement action regarding the individual and/or brokerage (and, in an online forum, should directly link to the details of such enforcement action). To give effect to this and provide greater accountability, more stringent enforcement measures must be put into place and penalties must be greatly increased to provide an effective deterrent.

Miscellaneous


- We recommend the Act (and its Regulations) be reviewed to either eliminate the use of, or qualify/define the term "employee" within the Act's Definitions, to ensure that the appropriate denotation is understood. In most brokerage structures, agents and brokers are, in fact, independent contractors, but are still subject to supervision and oversight from the broker. If the term "employee" is not defined to include licensees who are not necessarily in an employee/employer relationship with the brokerage as per CRA guidelines, challenges to certain regulatory requirements could be made. While the Canada Revenue Agency may see agents as independent contractors, they may not be seen in that way in terms of employment law. Any definition should ensure that both are considered.
- There is currently no "general" whistleblower protection for a licensee who reports unsuitable conduct to the Superintendent. MBLAA s. 46 does prohibit reprisal/adverse employment action, however it is not entirely clear if this provision is universal, or if it is only in effect if the reporting is subsequent to a Superintendent's examination or inquiry. Clarification on the scope of the prohibition re reprisals would greatly assist the broker community.
- We recommend an addition to the MBLAA s. 20(1) surrender clause to include that upon surrendering its licence, a mortgage brokerage which is ceasing operations (and not being absorbed by another brokerage) requires a trailing insurance requirement. The recommended timeframe for the ongoing E&O requirement is matched to the record retention requirement of six (6) years following the dissolution or cessation of a mortgage brokerage/administrator, or the suspension or cancellation of its licence. This is a requirement that may require working with the E&O insurance providers, however it would raise the level of consumer protection. This should be considered in relation to having insurance requirements changed from the

brokerage to the agent as noted above. We note that the issue was brought up in past years by our associations to FSCO.

- We recommend the Act be amended to harmonize the use of “agent” and “broker” with other provinces. The term “broker” should be the standard. We recommend the term “Principal Broker” be used as the differentiator.
- While the MBLAA review is to concentrate on the statute, a recurring theme is that of better enforcement and stiffer penalties. This comes with a greater emphasis on individual responsibility. We agree that wrongdoers should be required to pay for their wrongs, but that administrative monetary penalties (AMPs) issued and collected should be retained by FSRA to alleviate the licensing fee burden on the vast majority of honest brokers in our community.
- We recommend the MBLAA be re-examined to look for ways to streamline the administration and regulation of the industry. Industry associations can assist in this exercise, if the suggestion is to be considered, and can play a greater role in industry self-regulation.

We thank you for the opportunity to be part of this review. We trust that these comments and your recommendations to Mr. Downey will further protect the interests of all Ontario mortgage brokering industry stakeholders.

Sincerely,



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