

Consumer Credit Division

Financial Security Requirements

May 27, 2010

Communication to every: Mortgage Administrator
Mortgage Brokerage with Endorsement

Re: Financial Security Requirements

Section 9 of *The Mortgage Brokerages and Mortgage Administrators Act* (the “Act”) establishes that the Superintendent of Financial Institutions (the “Superintendent”) may require an applicant or a licensee to provide financial security. Section 9 states:

- 9(1) The superintendent may require:
- (a) an applicant to file financial security with the superintendent as part of the applicant’s application;
 - (b) a licensee whose licence has been suspended to file financial security with the superintendent before the licence is reinstated; or
 - (c) a licensee to file financial security with the superintendent at any time during the term of a licence.
- (2) A person required to file financial security with the superintendent pursuant to this section must, at all times, maintain that financial security.
- (3) Financial security filed pursuant to this section:
- (a) must be in the amount and in the form that the superintendent considers appropriate; and
 - (b) may be forfeited in the manner set out in the regulations.

The business models relating to mortgage administrators and mortgage brokerages with endorsements involve the handling of trust money. While section 7 of *The Mortgage Brokerages and Mortgage Administrators Regulations* (the “Regulations”) establishes that these entities require at least \$100,000 in regulatory capital, it is my position that this minimum amount is not sufficient to ensure that consumer interests in Saskatchewan are adequately addressed.

Therefore, pursuant to section 9 of the Act, I hereby inform you that the required amount and form of financial security required to be maintained by every mortgage business who receives or holds trust property, and applicants who intend to receive or hold trust property, is either:

1. The greater of:
 - (a) \$250,000; and
 - (b) 1% of the total value of property held in trust by that mortgage business, to a maximum of \$2,000,000.

The required form of financial security required to be maintained pursuant to this option is:

- (a) \$100,000 in the form of regulatory capital, as required by section 7 of the Regulations; and
- (b) the remaining amount in the form of regulatory capital or by way of a letter of credit in a form approved by the superintendent (“LOC”), or some combination of the two.

Or

2. A combination of regulatory capital and LOC that meets all of the following criteria:
 - a) LOC of at least 1% of the value of property held in trust on behalf of Saskatchewan residents;
 - b) Regulatory capital of at least \$100,000; and
 - c) The total of the LOC (per (a)) and regulatory capital (per (b)) is at least \$250,000.

Applicants seeking licensing as a mortgage administrator and mortgage brokerages seeking an endorsement will need to provide information regarding which of the two options they will comply with, and will need to provide the supporting information described in the applicable licensing kit.

For your reference, attached is a form of letter of credit and demand draft I find acceptable. Other letters of credit may also be found acceptable provided they contain the following elements:

- The name and address of the issuing financial institution;
- The name and address of the applicant (licensee or proposed licensee);
- The name of the beneficiary: the Saskatchewan Superintendent of Financial Institutions;
- The date of issue;
- The amount in Canadian dollars that may be drawn against the letter of credit;
- The expiry date and an “evergreen” clause that automatically renews the Letter of Credit every year unless the issuing financial institution provides 60 days notice to the Superintendent that it will be cancelled;
- A statement that the letter of credit is irrevocable;
- A provision for sight payment (payment on demand) upon the written demand of the Superintendent;
- A provision that more than one demand for payment may be made so long as the aggregate payments do not exceed the face amount written on the letter of credit;
- A statement that the issuing financial institution will honour each demand made in conformity with the terms of the Letter of Credit without recognizing any claims or defences the applicant may have arising from the applicant’s relationship with the Superintendent;

- A provision stating that the letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, 2007 Revision, International Chamber of Commerce, Paris, Publication No. 600.

Acceptable Financial Institutions:

I find the following financial institutions acceptable for the purpose of issuing Letters of Credit:

- a) A bank or authorized foreign bank as defined in the *Bank Act* (Canada);
- b) A corporation licensed pursuant to *The Trust and Loan Corporations Act, 1997* as a trust corporation, loan corporation or financing corporation;
- c) A credit union incorporated, continued or registered pursuant to *The Credit Union Act, 1998*; and
- d) An insurer licensed pursuant to *The Saskatchewan Insurance Act*.

When making application to be licensed as an administrator, or to request that an endorsement be added to a mortgage brokerage, applicants should provide the expected total amount of trust property they will hold from all of their operations, not just that relating to Saskatchewan residents. The financial security requirement will be based on this amount. Applicants whose financial statements do not demonstrate they have sufficient regulatory capital based on the calculation above will need to set out how they will provide additional financial security (i.e. obtain additional regulatory capital, or provide a letter of credit in the form attached).

Subsequently, with every annual filing tied to the June 30 licence year, these licensees will be required to:

1. Confirm that the licensee continuously maintained the financial security requirement throughout the previous year; and
2. Confirm that they have sufficient financial security so as to comply with the financial security requirements throughout the subsequent year.

If you have any questions regarding the above, please contact my office at (306) 787-6700 or fid@gov.sk.ca

Yours truly,

“J.M. Hall”

J.M. Hall
Superintendent of Financial Institutions

Att.

IRREVOCABLE STANDBY LETTER OF CREDIT

Issuing Financial Institution:

(Name and address of issuing financial institution)

Date: _____

(month/day/year)

Letter of Credit No.: _____

Amount: \$ _____

(in Canadian Dollars)

Applicant:

(insert full legal name and address of the licensee or proposed licensee – Mortgage Brokerage or Mortgage Administrator)

Beneficiary:

Saskatchewan Superintendent of Financial Institutions

(the “Superintendent”) as defined pursuant to
The Mortgage Brokerages and Mortgage Administrators Act
601 – 1919 Saskatchewan Drive
Regina, SK S4P 4H2

Attention: Consumer Credit Division,
Financial and Consumer Affairs Authority
Telephone: (306)787-6700
Fax: (306)787-9006

On behalf of our client, the Applicant, we hereby issue in your favour this Irrevocable Standby Letter of Credit for up to \$ _____ .
(in Canadian Dollars)

This letter of Credit is available with the Issuing Financial Institution, by payment against presentation of the following documents:

1. The Beneficiary’s Demand on the Issuing Financial Institution, signed by the Superintendent, indicating the amount to be drawn under this Letter of Credit, the

number of this Letter of Credit, the date of issue of this Letter of Credit and the name of the Issuing Financial Institution; and

2. This Letter of Credit, for endorsement by us of the amount drawn and, on final drawing, for cancellation.

This Letter of Credit is irrevocable and shall remain valid for one year, up to and including *(date)* _____. It is a condition of this Letter of Credit that it will, from time to time, be deemed to be automatically extended for one year from the present or any future expiration date unless, 60 days prior to an expiration date, we notify the Superintendent in writing by registered mail that we elect not to consider this Letter of Credit extended for an additional period, at which time you can draw for the balance of the amount of this Letter of Credit.

Partial drawings are permitted.

We will honour each drawing made in conformity with the terms of this Letter of Credit without inquiring whether you have, as between you and the Applicant, the right to make that drawing and without recognizing any claim of the Applicant.

This Letter of Credit:

(a) shall be governed by and construed in accordance with the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce, Paris, Publication No. 600 (the "Publication"), to the extent that its provisions are not inconsistent with this Letter of Credit; and

(b) engages us in accordance with the terms of the Publication.

For matters not covered by the Publication, the laws of Saskatchewan shall govern.

To the extent of a conflict between the laws of Saskatchewan, the Publication shall govern.

_____ *(the Issuing Financial Institution)* hereby irrevocably and unconditionally attorns to the nonexclusive jurisdiction of the courts of Saskatchewan and all courts competent to hear appeals from those courts.

Issuing Financial Institution
Authorized Signing Officer

To the Irrevocable Standby Letter of Credit No. _____

Issued by _____ (*Issuing Financial Institution*)

DEMAND DRAFT

Drawn Under Letter of Credit No: _____ Dated: _____

To: _____
(*name and address of Issuing Financial Institution*)

The undersigned hereby demands that _____ (*name of Issuing Financial Institution*) pay to the order of the undersigned the sum of \$ _____ in Canadian Dollars under the Letter of Credit described above.

Dated at Regina, Saskatchewan:

(*month/day/year*)

Saskatchewan Superintendent of Financial Institutions

Per: _____
Saskatchewan Superintendent of Financial Institutions