

D R A F T

PART 1
Preliminary matters

Title

1 These regulations may be cited as *The Mortgage Brokerages and Mortgage Administrators Regulations*.

Interpretation

2 In these regulations:

- (a) “**Act**” means *The Mortgage Brokerages and Mortgage Administrators Act*;
- (b) “**approved educational program**” means:
 - (i) with respect to an applicant for a broker’s licence, an educational program that is required to be completed pursuant to the legislation of Alberta, British Columbia or Ontario to obtain a licence to broker mortgages as a broker, or as a person of comparable status;
 - (ii) with respect to an applicant for an associate’s licence, an educational program that is required to be completed pursuant to the legislation of Alberta, British Columbia or Ontario to obtain a licence to broker mortgages as an associate, or as a person of comparable status;
- (c) “**investor disclosure form**” means the investor disclosure form in Form A of the Appendix;
- (d) “**investor renewal disclosure form**” means the investor renewal disclosure form in Form B of the Appendix;
- (e) “**land titles registry**” means the land titles registry as defined in *The Land Titles Act, 2000*;
- (f) “**private investor**” means any person, but does not include:
 - (i) a body corporate that has assets that have an aggregate realizable value, net of related liabilities, of at least \$2 million and that provides written confirmation of this

to the mortgage brokerage or mortgage administrator, as the case may be;

(ii) an administrator or trustee of a registered pension plan within the meaning of subsection 248(1) of the *Income Tax Act* (Canada);

(iii) a mortgage brokerage or a mortgage administrator investing on its own behalf;

(iv) the Crown, or an agent of the Crown, in right of Saskatchewan, of Canada or of any province or territory of Canada; or

(v) a person in respect of which all of the owners of interests, other than the owners of voting securities required by law to be owned by directors, are persons or entities described in (i) to (iv);

(g) “**syndicated mortgage**” means a syndicated mortgage within the meaning of Part XLIII of the Appendix to *The Securities Commission (Adoption of National Instruments) Regulations*.

Non-application of Act

3(1) The Act does not apply to a person that exclusively refers prospective borrowers to prospective lenders, or that exclusively refers prospective lenders to prospective borrowers, if:

(a) before making the referral, the person informs the prospective borrower in writing:

(i) that the person has received or will or may receive a fee or other remuneration, directly or indirectly, for making the referral;

(ii) of the amount of the fee or other remuneration mentioned in (i); or if the amount of the fee or other remuneration is not ascertainable at that time, a reasonable estimate of the fee or other remuneration;

(iii) if the remuneration mentioned in (i) is in a form other than money, the nature of the remuneration; and

(iv) of the nature of the relationship between the person and the prospective lender;

(b) in the case of referring a prospective borrower to a prospective lender, the only information that the person provides to the prospective borrower, other than the information set out in clause (a), is the name, address, telephone number, fax number, email address or website address of the prospective lender or an individual who acts on behalf of the prospective lender; and

(c) in the case of referring a prospective lender to a prospective borrower:

(i) the person obtains the written consent of the prospective borrower to give the information set out in subclause (ii) to the prospective lender; and

(ii) the only information that the person provides to the prospective lender is the

name, address, telephone number, fax number, email address or website address of the prospective borrower or an individual who acts on behalf of the prospective borrower.

(2) For the purposes of subsection 3(2) of the Act, the Act does not apply to:

(a) any of the following entities with respect to mortgage administrator activities and the holding of trust property or with respect to mortgage brokerage activities if the entity undertakes the mortgage brokerage activities in a name under which the entity carries on its primary business:

(i) a bank or an authorized foreign bank as defined in the *Bank Act* (Canada);

(ii) a credit union incorporated, continued or registered pursuant to *The Credit Union Act, 1998*;

(iii) a corporation holding a valid licence pursuant to *The Trust and Loan Corporations Act, 1997* to carry on business as a trust corporation or loan corporation;

(iv) an insurance company that holds a valid licence pursuant to *The Saskatchewan Insurance Act*;

(v) a retail association as defined in the *Cooperative Credit Associations Act* (Canada);

(b) a corporation holding a valid licence pursuant to *The Trust and Loan Corporations Act, 1997* to carry on business as a financing corporation with respect to mortgage administrator or mortgage brokerage activities if:

(i) the corporation lends money on the security of mortgages in the usual and ordinary course of its carrying on business as a financing corporation;

(ii) the corporation does not receive or hold trust property in the course of its mortgage administrator or mortgage brokerage activities; and

(iii) the corporation undertakes the mortgage brokerage activities in a name under which it carries on its primary business;

(c) a director, officer or employee undertaking mortgage brokering activities on behalf of an entity that is exempt from the Act with respect to mortgage brokerage activities if the director, officer or employee is undertaking those activities in his or her capacity as a director, officer or employee of that entity;

(d) a person with respect to mortgage brokerage activities and the holding of trust property in connection with mortgage brokerage activities, if:

(i) the mortgages involved in the mortgage brokerage activities are syndicated mortgages;

- (ii) an entity that is licensed pursuant to the Act or to which the Act does not apply with respect to mortgage brokerage activities brokers the mortgages on behalf of the borrowers; and
 - (iii) the person complies with *The Securities Act, 1988* with respect to the brokering of the syndicated mortgages;
- (e) a person with respect to mortgage brokerage activities and the holding of trust property in connection with mortgage brokerage activities, if:
- (i) the mortgage loans involved in the mortgage brokerage activities undertaken by the person are in excess of \$1 million;
 - (ii) *The Cost of Credit Disclosure Act, 2002* does not apply to any of the mortgage loans; and
 - (iii) either:
 - (A) none of the investors in the mortgages is a private investor; or
 - (B) if one or more of the investors in the mortgages is a private investor, another entity that is licensed pursuant to the Act or to which the Act does not apply with respect to mortgage brokerage activities brokers the mortgages on behalf of the private investor;
- (f) a person with respect to mortgage brokerage activities and the holding of trust property in connection with mortgage brokerage activities, if:
- (i) the person holds a valid registration as a dealer pursuant to *The Securities Act, 1988*;
 - (ii) the mortgage brokerage activities are with respect to the purchase and sale of an existing mortgage investment in which the prospective purchaser is one of the following:
 - (A) the Crown in right of Saskatchewan, of Canada or of any province or territory of Canada;
 - (B) a licensed mortgage brokerage purchasing for its own account;
 - (C) a bank or authorized foreign bank, credit union, trust corporation, loan corporation, insurance company, or retail association as defined in the *Cooperative Credit Associations Act (Canada)*;
 - (D) a corporation in respect of which both of the following are met:
 - (i) it holds a valid licence pursuant to *The Trust and Loan Corporations Act, 1997* to carry on business as a financing corporation; and

- (ii) it lends money on the security of mortgages in the usual and ordinary course of its carrying on business as a financing corporation;
 - (E) a corporation that is a subsidiary of a person or entity described in paragraphs (A) to (D);
 - (F) a corporation that is an approved lender pursuant to the *National Housing Act* (Canada);
 - (G) an administrator or trustee of a registered pension plan within the meaning of subsection 248(1) of the *Income Tax Act* (Canada);
 - (H) a person who is registered as an adviser or dealer pursuant to *The Securities Act, 1988*, if the person is acting as a principal or as an agent or trustee for accounts that are fully managed by the person;
 - (I) a person who is registered pursuant to securities legislation in another province or territory of Canada with a status comparable to that described in paragraph (H), if the person is acting as a principal or as an agent or trustee for accounts that are fully managed by the person;
 - (J) a person in respect of which all of the owners of interests, other than the owners of voting securities required by law to be owned by directors, are persons or entities described in paragraphs (A) to (I); and
- (iii) the person does not otherwise hold himself or herself out as a mortgage brokerage;
- (g) a person who undertakes mortgage administrator or mortgage brokerage activities solely to facilitate the provision of mortgage loans by the Crown in right of Saskatchewan or of Canada, or an agent of the Crown in right of Saskatchewan or of Canada, as part of a government program or government agency program with respect to affordable housing; or
- (h) a collection agent, as defined in *The Collection Agents Act*, with respect to mortgage administration activities if the mortgage administration activities are restricted to the enforcement of payment of overdue amounts under a mortgage loan.

PART II Licensing

Licence criteria

4(1) For the purposes of clause 8(1)(f) of the Act, an applicant for a mortgage brokerage licence may only be issued a licence if the applicant:

- (a) meets the following requirement:
 - (i) in the case of a corporation, the corporation was incorporated pursuant to the laws of any jurisdiction in Canada;

(ii) in the case of a partnership, the partnership was formed pursuant to the laws of any jurisdiction in Canada; or

(iii) in the case of a sole proprietor, the proprietor is a resident of Canada;

(b) has provided to the superintendent, in a form satisfactory to the superintendent, a criminal record check dated no earlier than three months before the date of the application with respect to the following:

(i) in the case of a corporation, all directors and officers of the corporation;

(ii) in the case of a partnership, all partners of the partnership;

(iii) in the case of a sole proprietor, the sole proprietor; and

(c) has provided to the superintendent, in a form satisfactory to the superintendent, a designation of a principal broker and the designated principal broker is eligible to be a principal broker pursuant to this Act and the regulations.

(2) For the purposes of clause 8(1)(f) of the Act, an applicant for a broker's licence may only be issued a licence if the applicant:

(a) is at least 18 years of age;

(b) is a resident of Canada;

(c) has provided to the superintendent, in a form satisfactory to the superintendent, a criminal record check with respect to the applicant dated no earlier than three months before the date of the application;

(d) has successfully completed an approved educational program;

(e) has been licensed as an associate for at least 24 of the last 36 months preceding the date he or she applies for the broker's licence; and

(f) is authorized by a mortgage brokerage to broker mortgages on behalf of the mortgage brokerage.

(3) For the purposes of clause 8(1)(f) of the Act, an applicant for an associate's licence may only be issued a licence if the applicant:

(a) is at least 18 years of age;

(b) is a resident of Canada;

(c) has provided to the superintendent, in a form satisfactory to the superintendent, a criminal record check with respect to the applicant dated no earlier than three months before the date of the application;

- (d) has successfully completed an approved educational program; and
- (e) is authorized by a mortgage brokerage to broker mortgages on behalf of the mortgage brokerage.

(4) For the purposes of clause 8(1)(f) of the Act, an applicant for a mortgage administrator's licence may only be issued a licence if the applicant:

- (a) was incorporated pursuant to the laws of any jurisdiction in Canada; and
- (b) has provided to the superintendent, in a form satisfactory to the superintendent, a criminal record check dated no earlier than three months before the date of the application with respect to all directors and officers of the corporation.

Fees re licences and endorsements

5(1) For the purposes of clauses 8(1)(e) and 91(h) of the Act, the fees that must be submitted are:

(a) in the case of an applicant for a mortgage brokerage licence:

- (i) an application fee of \$250; and
- (ii) an annual licence fee of \$400;

(b) in the case of an applicant for a broker's licence:

- (i) an application fee of \$250; and
- (ii) an annual licence fee of \$400;

(c) in the case of an applicant for an associate's licence:

- (i) an application fee of \$250; and
- (ii) an annual licence fee of \$400; and

(d) in the case of an applicant for a mortgage administrator's licence:

- (i) an application fee of \$750; and
- (ii) an annual licence fee of \$1,000.

(2) For the purposes of clauses 8(2)(e) and 91(h) of the Act, the fees that must be submitted by an applicant for an endorsement are:

- (a) an application fee of \$250; and
- (b) an annual endorsement fee of \$350.

- (3) The annual fee for a licence or an endorsement must be submitted:
- (a) with the application for the licence or endorsement; and
 - (b) every year after issuance of the licence or endorsement, along with the annual return filed pursuant to section 48 of the Act.

Errors and omissions insurance requirements

6(1) For the purposes of subclause 8(1)(d)(i) of the Act, an applicant for a mortgage brokerage or mortgage administrator licence must have errors and omissions insurance that:

- (a) is in a form approved by the superintendent;
- (b) includes extended coverage for loss from fraudulent acts; and
- (c) is sufficient to pay a minimum of:
 - (i) if the insurance is in support of a mortgage brokerage licence:
 - (A) \$500,000 with respect to any one occurrence involving the mortgage brokerage or any broker or associate authorized to broker mortgages on behalf of the mortgage brokerage; and
 - (B) \$1,000,000 with respect to all occurrences during a 365-day period involving the mortgage brokerage or any broker or associate authorized to broker mortgages on behalf of the mortgage brokerage; and
 - (ii) if the insurance is in support of a mortgage administrator's licence:
 - (A) \$500,000 with respect to any one occurrence involving the mortgage administrator; and
 - (B) \$1,000,000 with respect to all occurrences during a 365-day period involving the mortgage administrator.

(2) Every mortgage brokerage and mortgage administrator shall, at all times while it holds a licence, maintain errors and omissions insurance in the form and amount required pursuant to this section.

Capital requirements

7(1) In this section, "**regulatory capital**" means regulatory capital within the meaning of *The Trust and Loan Corporations Regulations, 1999*.

(2) For the purposes of subclause 8(1)(d)(ii) of the Act, no mortgage administrator shall be issued a licence unless it has regulatory capital of at least \$100,000.

(3) For the purposes of clause 8(2)(d) of the Act, no mortgage brokerage shall be granted an

endorsement unless it has regulatory capital of at least \$100,000.

Education and experience

8(1) An applicant for an associate's licence is deemed to have satisfied the education requirement mentioned in clause 4(3)(d) if, in the opinion of the superintendent, the applicant has a combination of education and experience that is equivalent to the requirement mentioned in that clause.

(2) An applicant for a broker's licence is deemed to have satisfied the education requirement mentioned in clause 4(2)(d) if, in the opinion of the superintendent, the applicant has a combination of education and experience that is equivalent to the requirement mentioned in that clause.

Realization on financial security

9(1) Notwithstanding that the Crown in right of Saskatchewan has not suffered any loss or damage:

(a) every bond filed with the superintendent pursuant to the Act must be construed as being a penal bond; and

(b) if any bond is forfeited pursuant to this section, the amount due and owing as a debt to the Crown in right of Saskatchewan by the person bound by the bond must be determined as if the Crown had suffered a loss or damage that would entitle the Crown to be indemnified to the maximum amount of liability set out in the bond.

(2) For the purposes of clause 9(3)(b) of the Act, every bond filed with the superintendent pursuant to the Act is forfeited on the demand of the superintendent if:

(a) the licensee in respect of whose conduct the bond is conditioned or any representative or agent of that licensee has been convicted of:

(i) an offence under the Act or these regulations;

(ii) an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the *Criminal Code*;

(b) a judgment in respect of a claim arising out of mortgage brokering or mortgage administration activities has been given against the licensee in respect of whose conduct the bond is conditioned or against any representative or agent of that licensee;

(c) the licensee in respect of whose conduct the bond is conditioned commits an act of bankruptcy, whether or not proceedings have been taken under the *Bankruptcy Act* (Canada); or

(d) a decision has been rendered by the superintendent in writing stating in effect that, after consideration and investigation of a complaint, the superintendent is satisfied that the licensee respecting whose conduct the financial security is conditioned or any agent or

representative of that licensee:

- (i) has contravened a provision of this Act; or
- (ii) has breached a contract with a borrower or investor

and such conviction, judgment, order or decision has become final by reason of lapse of time or of having been confirmed by the highest court to which any appeal may be taken.

(3) Notwithstanding that the Crown in right of Saskatchewan has not suffered any loss or damage, the superintendent may have recourse to a letter of credit provided to the superintendent pursuant to the Act by presenting a demand to the issuer of the letter of credit, together with the letter of credit, if the superintendent has reason to believe that any of the grounds set out in clauses (2)(a) to (d) exist.

(4) On a demand of the superintendent pursuant to subsection (3), the amount of the proceeds of the letter of credit is forfeited to the Crown in right of Saskatchewan.

(5) The superintendent may pay any money realized to any of the following on any conditions the superintendent considers appropriate:

- (a) the local registrar of the court in trust for any persons that may become judgment creditors of the person named in the bond respecting a claim arising out of mortgage brokering or mortgage administration activities;
- (b) any trustee, custodian, interim receiver, receiver or liquidator of the person named in the bond or his or her agent;
- (c) any person that the superintendent considers entitled to the money for a claim arising out of mortgage brokerage or mortgage administration activities.

(6) The superintendent shall pay any money not paid pursuant to subsection (5) to the following after the payment of any expenditures incurred by the superintendent in connection with the realization on the security and the determination and settlement of valid claims:

- (a) in the case of a surety bond, to the surety or obligor under the surety bond;
- (b) in the case of a letter of credit, to the obligor under the letter of credit.

Reinstatement fee

10 For the purposes of subsection 14(2) of the Act, the fee to reinstate a licence or endorsement that has been suspended is \$100.

Reinstatement of suspended licence or endorsement

11(1) For the purposes of clause 15(4)(a) of the Act, a licence issued to a mortgage brokerage that is suspended pursuant to subsection 15(1) of the Act may be reinstated by the superintendent if:

- (a) a broker becomes authorized to broker mortgages on behalf of the mortgage brokerage and the mortgage brokerage is named in the broker's licence; and
- (b) the mortgage brokerage submits the reinstatement fee to the superintendent.

(2) For the purposes of clause 15(4)(a) of the Act, a licence issued to a broker or an associate that is suspended pursuant to clause 15(2)(a) of the Act may be reinstated by the superintendent if:

(a) either:

- (i) the broker or associate becomes authorized to act on behalf of the mortgage brokerage named in the broker's licence or associate's licence at the time of suspension; or
- (ii) the broker or associate becomes authorized to act on behalf of another mortgage brokerage and the broker's licence or associate's licence is amended to name the new mortgage brokerage; and

(b) the broker or associate, as the case may be, submits the reinstatement fee to the superintendent.

(3) For the purposes of clause 15(4)(a) of the Act, a licence issued to a broker or an associate that is suspended pursuant to clause 15(2)(b) of the Act may be reinstated by the superintendent if:

(a) either:

- (i) the mortgage brokerage named in the broker's licence or associate's licence has its licence reinstated or is issued a new mortgage brokerage licence; or
- (ii) the broker or associate becomes authorized to broker mortgages on behalf of another mortgage brokerage and the broker's licence or associate's licence is amended to name the new mortgage brokerage; and

(b) the broker or associate, as the case may be, submits the reinstatement fee to the superintendent.

(4) For the purposes of clause 15(4)(a) of the Act, an endorsement that is suspended pursuant to subsection 15(3) of the Act may be reinstated by the superintendent if:

- (a) the mortgage brokerage licence issued to the mortgage brokerage is reinstated; and
- (b) the mortgage brokerage submits the reinstatement fee to the superintendent.

Cancellation of licence or endorsement

12 For the purposes of clause 15(4)(b) of the Act, the superintendent may cancel a licence or endorsement suspended pursuant to that section if it has not been reinstated within 30 days of the

suspension.

Criminal record checks

13(1) Every licensee shall provide to the superintendent, in the form required by the superintendent, an updated criminal record check with respect to each person with respect to whom the licensee was required to provide a criminal record check pursuant to section 4.

(2) A licensee shall provide the updated criminal record check required pursuant to subsection (1) every five years after the previous criminal record check was provided.

(3) In addition to the updated criminal record check required pursuant to subsection (1), the superintendent may, at any time, require a licensee to provide a criminal record check with respect to:

(a) any person with respect to whom the licensee has previously provided a criminal record check; or

(b) any other person involved in the mortgage brokerage or mortgage administrator business of the licensee that the superintendent deems necessary.

Change in circumstances

14(1) For the purposes of section 20 of the Act, every licensee shall notify the superintendent of the following:

(a) a change to a telephone number of the licensee:

(i) provided to the superintendent in the licence application submitted by the licensee; or

(ii) provided to the superintendent by the licensee as a new telephone number for contact purposes when notice of a change in telephone number was provided pursuant to this section;

(b) a change to the name of the licensee;

(c) any of the following actions respecting, or changes to, the authority of the licensee to engage in brokering mortgages or administering mortgages in another jurisdiction:

(i) a suspension;

(ii) a cancellation;

(iii) an imposition of terms and conditions or other restrictions;

(iv) a surrendering;

(d) if the licensee is charged with:

- (i) an offence contrary to the *Criminal Code*; or
 - (ii) any other offence pursuant to any law of any country, province or state, excluding traffic offences;
- (e) if a civil action or administrative proceeding is brought against the licensee alleging fraud, breach of trust, deceit or misrepresentation by the licensee;
- (f) if the Act requires errors and omissions insurance or financial security to be maintained by or with respect to the licensee, a change in circumstances that provides reasonable grounds to believe that the errors and omissions insurance or financial security may not be in force or effective in accordance with its terms or may otherwise fail to meet the requirements of the Act.
- (2) For the purposes of section 20 of the Act, every mortgage brokerage or mortgage administrator shall notify the superintendent of the following:
- (a) a change of the location of a business office in Saskatchewan of the mortgage brokerage or mortgage administrator, including any of the following:
 - (i) the opening of a new office;
 - (ii) the closing of an existing office;
 - (iii) the moving of an existing office to another location;
 - (b) if the mortgage brokerage or mortgage administrator does not have a business office in Saskatchewan, a change of the location of the principal business office of the mortgage brokerage or mortgage administrator;
 - (c) in the case of a partnership, a change of one or more of the partners;
 - (d) in the case of a corporation, a change of one or more of the directors or officers;
 - (e) if the mortgage brokerage or mortgage administrator ceases to carry on business in Saskatchewan as a mortgage brokerage or a mortgage administrator, as the case may be;
 - (f) if the mortgage brokerage or mortgage administrator becomes the subject of bankruptcy, receivership or winding-up proceedings;
 - (g) if the mortgage brokerage or mortgage administrator retains records with respect to its mortgage brokerage or mortgage administrator business at a location other than a business office or other location with respect to which the superintendent has been previously notified;
 - (h) if the mortgage brokerage or mortgage administrator changes its fiscal year.
- (3) For the purposes of section 20 of the Act, a mortgage brokerage shall notify the superintendent of the following:

- (a) if the person designated by the mortgage brokerage as its principal broker ceases to act in that capacity;
 - (b) if a broker or an associate ceases to be authorized to broker mortgages on behalf of the mortgage brokerage;
 - (c) if the mortgage brokerage believes that there may be reasonable grounds on which the superintendent could determine that:
 - (i) a broker or an associate is not suitable to be licensed pursuant to the Act; or
 - (ii) the continued licensing of a broker or associate pursuant to the Act would be objectionable.
- (4) For the purposes of section 20 of the Act, a broker or an associate shall notify the superintendent if the broker or associate ceases to be authorized to broker mortgages on behalf of the mortgage brokerage named on his or her licence.

PART III
Brokering Mortgages

DIVISION 1
Principal Brokers

Principal broker

15 For the purposes of clause 22(1)(b) of the Act, the following are the additional criteria for a principal broker:

- (a) the individual:
 - (i) is a broker authorized by the mortgage brokerage to broker mortgages on its behalf; and
 - (ii) has the following status in relation to the mortgage brokerage:
 - (A) if the mortgage brokerage is a corporation, he or she is a director or officer;
 - (B) if the mortgage brokerage is a partnership other than a limited partnership, he or she is a partner;
 - (C) if the mortgage brokerage is a limited partnership, he or she is the general partner or a director or officer of a corporation that is the general partner;
 - (D) if the mortgage brokerage is a sole proprietorship, he or she is the sole proprietor;

- (b) the superintendent is satisfied that:
 - (i) the individual is suitable to perform the duties and responsibilities of principal broker on behalf of the mortgage brokerage; and
 - (ii) the designation of the individual as principal broker is not for any reason objectionable.

Additional duties of a principal broker

16 For the purposes of clause 22(2)(c) of the Act, a principal broker shall:

- (a) take reasonable steps to ensure that the mortgage brokerage, and each broker and associate authorized to broker mortgages on behalf of the mortgage brokerage, complies with every requirement established pursuant to the Act and these regulations;
- (b) review the policies and procedures of the mortgage brokerage to determine whether they are reasonably designed to ensure:
 - (i) that the mortgage brokerage, and each broker and associate authorized to broker mortgages on behalf of the mortgage brokerage, complies with every requirement established pursuant to the Act and these regulations; and
 - (ii) that each broker and associate authorized to broker mortgages on behalf of the mortgage brokerage is adequately supervised;
- (c) recommend in writing to the mortgage brokerage that it make any changes in its policies and procedures that he or she believes are necessary to ensure that the standards mentioned in subclauses (b)(i) and (ii) are achieved, and retain a copy of that written recommendation; and
- (d) review every trust account reconciliation prepared pursuant to subsection 37(1) and certify that it is accurate by signing and dating it.

DIVISION 2**Duties Owed to Borrower****Additional information for borrowers**

17(1) For the purposes of this section:

- (a) a person is related to another person if they share any relationship other than an arm's length business relationship, and with respect to a mortgage brokerage would include a broker, associate, shareholder, partner, director, officer, employee or other representative of the mortgage brokerage; and
- (b) a person has or may have an interest in a mortgage transaction if the person will or may receive a benefit or advantage, whether directly or indirectly, if the mortgage transaction proceeds as proposed, including any benefit or advantage resulting from a

transaction ancillary to the mortgage transaction, but not including any remuneration to be received by the mortgage brokerage or related person directly from the borrower with respect to the mortgage brokerage services provided with respect to the proposed mortgage transaction and which have otherwise been disclosed to the borrower.

(2) For the purposes of clause 27(a) of the Act, every mortgage brokerage shall provide a borrower with the following information in writing:

- (a) whether the mortgage brokerage is directly or indirectly owned, in whole or in part, by a mortgage lender and, if it is, the name of that mortgage lender;
- (b) the total number of lenders to which the mortgage brokerage is capable of submitting a mortgage application at the time that the information is provided to the borrower;
- (c) the names of the lenders mentioned in clause (b); and
- (d) the steps that the mortgage brokerage took to confirm the identity of the lender and whether the mortgage brokerage was able to obtain that confirmation;
- (e) whether the mortgage brokerage or any related person has or may have an interest in the mortgage transaction and, if so, the nature of that interest;

(3) If a mortgage brokerage provides a statement pursuant to clause (2)(e) disclosing that it will or may receive remuneration if the mortgage transaction proceeds, the statement must also include:

- (a) the identity of the person providing the remuneration;
- (b) if the remuneration is in the form of money:
 - (i) the basis for calculating the remuneration; and
 - (ii) the amount of the remuneration, or if the amount is not ascertainable at the time the information is provided to the borrower, a reasonable estimate of the amount; and
- (c) if the remuneration is in a form other than money, the nature of the remuneration.

(4) The written information provided pursuant to clauses (2)(a), (b) and (c) must be provided to a borrower with respect to a mortgage loan at the mortgage brokerage's earliest opportunity, and in any event, at least two business days before the earlier of:

- (a) the borrower committing himself or herself to enter into the mortgage loan; or
- (b) the borrower making any payment or committing himself or herself to make any payment in connection with the mortgage loan, other than remuneration paid to the mortgage brokerage for its mortgage brokerage services.

(5) The written information provided pursuant to clauses (2)(d) and (e) must be provided to a

borrower with respect to a mortgage loan at the mortgage brokerage's earliest opportunity, and in any event, at least one business day before the earlier of:

- (a) the borrower committing himself or herself to enter into the mortgage loan; or
- (b) the borrower making any payment or committing himself or herself to make any payment in connection with the mortgage loan, other than remuneration paid to the mortgage brokerage for its mortgage brokerage services.

(6) Every mortgage brokerage that provides information in writing to a borrower pursuant to this section must obtain the written acknowledgement of the borrower confirming the written information was received by the borrower and the date on which it was received.

Criteria for mortgage loan most suitable for borrower

18(1) In this section and section 19, “**available mortgage loan**” means a mortgage loan for which:

- (a) the proposed investor has authorized the mortgage brokerage to submit applications on behalf of borrowers; and
- (b) the broker or associate brokering the mortgage loan on behalf of the mortgage brokerage believes that the borrower would likely qualify.

(2) For the purposes of clause 27(b) of the Act, every mortgage brokerage shall determine the mortgage loan that is most suitable for the borrower by ascertaining the borrower's informed selection of mortgage loan from among the available mortgage loans, based on a consideration of all of the following features:

- (a) whether the mortgage loan is conventional or high ratio;
- (b) the interest rate;
- (c) whether the interest rate is fixed or variable;
- (d) whether the interest rate for a fixed mortgage, or the formula for calculating it for a variable rate mortgage, may change during the term of the mortgage;
- (e) the term of the mortgage loan;
- (f) whether the mortgage loan is closed, partially open or fully open;
- (g) the amortization period;
- (h) any other options or distinguishing features of the available mortgage loans.

Written assessment for borrower

19(1) The written assessment provided to a borrower pursuant to clause 27(c) of the Act must:

- (a) identify the mortgage loan determined by the mortgage brokerage to be most suitable for the borrower, including the identity of the lender and referring to the features of the selected mortgage loan mentioned in clauses 18(2)(a) to (h);
- (b) describe why the mortgage loan selected is the most suitable for the borrower, making specific reference to the features mentioned in clauses 18(2)(a) to (h) that were primarily responsible for that determination;
- (c) state whether the mortgage loan determined to be most suitable for the borrower has the lowest interest rate of:
 - (i) all of the available mortgage loans; and
 - (ii) all of the available mortgage loans that have the same features mentioned in clauses 18(2)(a) to (h); and
- (d) if the statement provided pursuant to subclause (c)(ii) states that the mortgage loan determined to be most suitable for the borrower does not have the lowest interest rate of all of the available mortgage loans, describe why the mortgage loan was selected over the other mortgage loans having the same features that offered lower interest rates.

(2) In order to determine which mortgage loan has a lower interest rate for the purposes of clauses (1)(c) and (d), the mortgage brokerage must use the stated initial interest rate for a mortgage loan.

(3) The written acknowledgment obtained pursuant to clause 27(d) of the Act with respect to the written assessment must indicate the date on which the written assessment was provided to the borrower.

DIVISION 3 Private Investors

Investor disclosure - new mortgage loan

20(1) For the purposes of clause 28(1)(b) of the Act, every mortgage brokerage shall provide the private investor with the following information and documentation:

- (a) a completed investor disclosure form;
- (b) a written statement indicating the steps that the mortgage brokerage took to confirm the identity of the borrower and whether the mortgage brokerage was able to obtain that confirmation;
- (c) a written statement indicating the material risks of the investment;
- (d) if an appraisal of the applicable property has been done in the preceding 12 months and is available to the mortgage brokerage, a copy of the appraisal;

- (e) if an appraisal of the applicable property is not available as described in clause (d), documentary evidence of the value of the property, other than an agreement for purchase and sale;
- (f) if an agreement of purchase and sale with respect to the property has been entered into in the preceding 12 months and is available to the mortgage brokerage, a copy of the agreement of purchase and sale;
- (g) documentary evidence of the borrower's ability to meet the mortgage payments;
- (h) a copy of the application for the mortgage and of any document submitted in support of the application;
- (i) documentary evidence of any down payment made by the borrower for the purchase of the property;
- (j) a copy of any agreement that the private investor may be asked to enter into with the mortgage brokerage;
- (k) all other information, in writing, that an investor of ordinary prudence would consider to be material to a decision about whether to make the investment in the mortgage.

(2) For the purposes of subsection 28(1) of the Act, the information and documentation mentioned in subsection (1) must be provided to the private investor and the written acknowledgments required pursuant to subsection 28(2) of the Act must be obtained from the private investor at the earliest opportunity, and in any case, at least two business days before the earliest of:

- (a) the private investor committing himself or herself to make the investment in the mortgage;
- (b) the mortgage brokerage entering into an agreement to receive money from the private investor;
- (c) the mortgage brokerage receiving money from the private investor; and
- (d) money being advanced to the borrower pursuant to the mortgage loan.

(3) A mortgage brokerage that is required to act in the best interests of a private investor shall:

- (a) advise the private investor at the earliest opportunity if the mortgage brokerage:
 - (i) has reason to doubt the borrower's legal authority to mortgage the property; or
 - (ii) has reason to doubt the accuracy of information contained in the borrower's mortgage application or in a document submitted in support of an application; and
- (b) promptly after completion of the investment transaction, ensure that the private investor is provided with a copy of:

- (i) the registered mortgage;
- (ii) a copy of the title in the land titles registry pertaining to the property affected by the mortgage, showing the registration of the mortgage;
- (iii) the solicitor's report, if any, with respect to the registration of the mortgage and the effect of the transaction; and
- (iv) any written disclosure provided to the borrower pursuant to cost of credit disclosure legislation.

Duties owed to private investor re- mortgage renewal

21(1) A mortgage brokerage is not required to act in the best interests of the borrower and must act in the best interests of a private investor if:

(a) the mortgage brokerage:

- (i) solicits the private investor to renew an investment in a mortgage;
- (ii) negotiates or arranges a renewal of an investment in a mortgage by the private investor; or
- (iii) provides advice to the private investor with respect to the appropriateness of renewing a particular investment in a mortgage; and

(b) the private investor is not represented by another mortgage brokerage with respect to the renewal.

(2) A mortgage brokerage that is required to act in the best interests of a private investor pursuant to subsection (1) must immediately advise the borrower, in writing, that:

- (a) it is acting on behalf of a private investor; and
- (b) it is obligated to act in the private investor's best interests, which may be in conflict with the borrower's best interests.

Investor disclosure - mortgage renewal

22(1) Every mortgage brokerage required to act in the best interests of a private investor with respect to a renewal of an investment in a mortgage shall provide the private investor with the following information and documentation:

- (a) a completed investor renewal disclosure form;
- (b) a written statement indicating the material risks of the investment;
- (c) if an appraisal of the applicable property has been done in the preceding 12 months and is available to the mortgage brokerage, a copy of the appraisal;

- (d) if an appraisal of the applicable property is not available as described in clause (c), documentary evidence of the value of the property, other than an agreement for purchase and sale;
 - (e) if an agreement of purchase and sale with respect to the property has been entered into in the preceding 12 months and is available to the mortgage brokerage, a copy of the agreement of purchase and sale;
 - (f) a copy of the application for the mortgage renewal and of any document submitted in support of the application;
 - (g) a copy of any agreement that the private investor may be asked to enter into with the mortgage brokerage;
 - (h) a certificate of insurance or other documentary evidence confirming the insurance coverage with respect to the property;
 - (i) all other information, in writing, that an investor of ordinary prudence would consider to be material to a decision about whether to renew the investment in the mortgage.
- (2) If a mortgage brokerage provides a completed investor renewal disclosure form to a private investor pursuant to clause (1)(a), the mortgage brokerage shall obtain the private investor's written acknowledgments as indicated on the form.
- (3) The information and documentation mentioned in subsection (1) must be provided to the private investor, and the written acknowledgments required pursuant to subsection (2) must be obtained from the private investor at the earliest opportunity, and in any case, at least two business days before the private investor commits himself or herself to renew the investment in the mortgage.
- (4) A mortgage brokerage that is required to act in the best interests of a private investor shall:
- (a) advise the private investor at the earliest opportunity if the mortgage brokerage has reason to doubt the accuracy of information contained in the borrower's mortgage renewal application or in a document submitted in support of an application; and
 - (b) promptly after completion of the renewal transaction, ensure that the private investor is provided with a copy of any written disclosure provided to the borrower pursuant to cost of credit disclosure legislation.

Duties owed to private investor re- purchase of existing mortgage

23(1) A mortgage brokerage must act in the best interests of a private investor if:

- (a) the mortgage brokerage:
 - (i) solicits the private investor to purchase an existing mortgage;
 - (ii) negotiates or arranges the purchase of an existing mortgage by the private

investor; or

(iii) provides advice to the private investor with respect to the appropriateness of purchasing a particular existing mortgage; and

(b) the private investor is not represented by another mortgage brokerage with respect to the purchase of the mortgage.

(2) A mortgage brokerage that is required to act in the best interests of a private investor pursuant to subsection (1) must immediately advise the vendor of the existing mortgage, in writing, that:

(a) it is acting on behalf of a private investor; and

(b) it is obligated to act in the private investor's best interests, which may be in conflict with the vendor's best interests.

Investor disclosure - purchase of existing mortgage

24(1) Every mortgage brokerage required to act in the best interests of a private investor with respect to the purchase of an existing mortgage shall provide the private investor with the following information and documentation:

(a) a completed investor disclosure form;

(b) a written statement indicating the steps that the mortgage brokerage took to confirm the identity of the borrower and whether the mortgage brokerage was able to obtain that confirmation;

(c) a written statement indicating the material risks of the investment;

(d) if an appraisal of the applicable property has been done in the preceding 12 months and is available to the mortgage brokerage, a copy of the appraisal;

(e) if an appraisal of the applicable property is not available as described in clause (d), documentary evidence of the value of the property, other than an agreement for purchase and sale;

(f) if an agreement of purchase and sale with respect to the property has been entered into in the preceding 12 months and is available to the mortgage brokerage, a copy of the agreement of purchase and sale;

(g) documentary evidence of the borrower's ability to meet the mortgage payments;

(h) a copy of the application for the mortgage and of any document submitted in support of the application;

(i) documentary evidence of any down payment made by the borrower for the purchase of the property;

(j) a copy of any agreement that the private investor may be asked to enter into with the mortgage brokerage;

(k) a certificate of insurance or other documentary evidence confirming the insurance coverage with respect to the property;

(l) all other information, in writing, that an investor of ordinary prudence would consider to be material to a decision about whether to make the investment in the mortgage.

(2) If a mortgage brokerage provides a completed investor disclosure form to a private investor pursuant to clause (1)(a), the mortgage brokerage shall obtain the private investor's written acknowledgments as indicated on the form.

(3) The information and documentation mentioned in subsection (1) must be provided to the private investor and the written acknowledgments required pursuant to subsection (2) must be obtained from the private investor at the earliest opportunity, and in any case, at least two business days before the earliest of:

(a) the private investor committing himself or herself to make the investment in the mortgage;

(b) the mortgage brokerage entering into an agreement to receive money from the private investor;

(c) the mortgage brokerage receiving money from the private investor; and

(d) the money or other consideration for the purchase of the mortgage being provided to the vendor.

(4) A mortgage brokerage that is required to act in the best interests of a private investor with respect to the purchase of an existing mortgage shall:

(a) advise the private investor at the earliest opportunity if the mortgage brokerage:

(i) has reason to doubt the borrower's legal authority to mortgage the property; or

(ii) has reason to doubt the accuracy of information contained in the borrower's mortgage application or in a document submitted in support of an application; and

(b) promptly after completion of the investment transaction, ensure that the private investor is provided with a copy of:

(i) the registered mortgage;

(ii) a copy of the title in the land titles registry pertaining to the property affected by the mortgage, showing the registration of the mortgage;

(iii) the interest register, showing the private investor's acquisition of the mortgage

interest; and

(iv) the solicitor's report, if any, with respect to the registration of the transfer of the mortgage interest to the private investor and the effect of the transaction.

DIVISION 4

General

Disclosure requirements

25 Any written disclosure, consent or acknowledgment required pursuant to this Part must be:

- (a) expressed in plain language that is clear and concise; and
- (b) presented in a manner that is logical and that is likely to bring to the attention of the borrower or private investor, as the case may be, the information that is required to be conveyed.

Estimates or assumptions

26(1) The information to be disclosed to a private investor pursuant to this Part may be an estimate or may be based on an assumption if, at the time that the disclosure is made, it is not possible for the mortgage brokerage to obtain the actual information and the estimate or assumption is reasonable.

(2) If the information to be disclosed to a private investor is an estimate or is based on an assumption, the mortgage brokerage shall indicate the basis for the disclosed information to the private investor in writing.

PART IV

Mortgage Administrators

Written agreement

27(1) The agreement entered into between a mortgage administrator and a private investor pursuant to section 31 of the Act must include terms and conditions that require the mortgage administrator to:

- (a) promptly remit to the private investor all payments due and owing to the private investor under the mortgage loan that is the subject of the agreement;
- (b) immediately notify the private investor on becoming aware of any of the following changes with respect to the property that is the subject of the agreement:
 - (i) any subsequent encumbrance on the property;
 - (ii) any change in the use of the property;

- (iii) any change in the amount or nature of insurance coverage on the property;
 - (iv) any other significant change in circumstances affecting the property;
 - (c) provide to the private investor an annual statement of payments made by the borrower that indicates:
 - (i) the total amount of payments received from the borrower during the statement period;
 - (ii) the amount of the payments applied to principal and to interest;
 - (iii) the outstanding principal balance of the mortgage loan at the end of the statement period; and
 - (iv) the total amount of fees or other remuneration received by the mortgage administrator for administering the mortgage during the statement period;
 - (d) immediately notify the private investor on becoming aware of any default under the mortgage.
- (2) The agreement mentioned in subsection (1) must also contain:
- (a) the name or names in which the mortgage is or will be registered in the land titles registry or registered pursuant to the laws of another jurisdiction, as the case may be;
 - (b) a list of all fees or other remuneration that the mortgage administrator is to receive for the administration of the mortgage, including how the fees or other remuneration will be calculated and the method of payment;
 - (c) any other expenses or costs related to the mortgage that will be charged to the private investor;
 - (d) the extent of the responsibilities of the mortgage administrator and the private investor for decisions respecting:
 - (i) the collection of money under the mortgage;
 - (ii) the prepayment of principal under the mortgage;
 - (iii) discharges and partial discharges of the mortgage; and
 - (iv) the commencement or continuation of enforcement proceedings under the mortgage;
 - (e) the responsibility of the mortgage administrator to inform himself or herself as to the matters in clause (1)(b);
 - (f) the disposition to be made of all payments made under the mortgage by the borrower,

including any penalties and bonuses; and

(g) any conditions and restrictions with respect to the right of the private investor to terminate the agreement or assign his or her interest in the agreement.

(3) No mortgage administrator shall fail to comply with a written agreement entered into pursuant to **section 31 of the Act**.

Disclosure to private investor

28(1) For the purposes of this section:

(a) a person is related to another person if they share any relationship other than an arm's length business relationship, and with respect to a mortgage administrator would include a shareholder, director, officer, employee or other representative of the mortgage administrator; and

(b) a person has or may have an interest in a mortgage administration transaction if the person will or may receive a benefit or advantage, whether directly or indirectly, if the mortgage administration transaction proceeds as proposed, including any benefit or advantage resulting from a transaction ancillary to the mortgage administration transaction, but not including any remuneration to be received by the mortgage administrator or related person directly from the private investor with respect to the mortgage administration services provided with respect to the proposed mortgage administration transaction and which have otherwise been disclosed to the private investor.

(2) The statement provided by a mortgage administrator to a private investor pursuant to subsection 33(1) of the Act must disclose:

(a) whether the mortgage administrator or any related person has or may have an interest in the proposed mortgage administration transaction; and

(b) if the mortgage administrator or any related person has or may have an interest mentioned in clause (a), the nature of that interest.

(3) The statement mentioned in subsection (2) must be provided:

(a) in writing;

(b) in plain language that is clear and concise;

(c) in a manner that is logical and that is likely to bring to the attention of the private investor the information mentioned in clauses (2)(a) and (b); and

(d) to the private investor at the mortgage administrator's earliest opportunity and, in any event, at least two business days before the mortgage administrator and the private investor enter into an agreement pursuant to section 31 of the Act.

(4) For the purposes of subsection 33(2) of the Act, any additional statement must be provided

within seven days after the mortgage administrator becomes aware of any change to the information.

PART V

Regulation of Mortgage Brokerages, Brokers, Associates and Mortgage Administrators

Reverse mortgage loans

29(1) For the purposes of this section, a mortgage loan is a reverse mortgage loan if:

- (a) the money that is advanced under the mortgage loan does not have to be repaid until the occurrence of one or more of the following events:
 - (i) the borrower's death or, if there is more than one borrower, the death of the last surviving borrower;
 - (ii) the acquisition by the borrower or the last surviving borrower, as the case may be, of another dwelling to use as his or her principal residence;
 - (iii) the sale of the mortgaged property;
 - (iv) the borrower's or last surviving borrower's vacating the mortgaged property to live elsewhere with no reasonable prospect of returning;
 - (v) an event of default pursuant to the conditions of the mortgage; and
- (b) one or more of the following conditions applies while the borrower or last surviving borrower, as the case may be, continues to occupy the mortgaged property as his or her principal residence and otherwise complies with the terms of the mortgage:
 - (i) no instalment repayments of the principal and no payment of interest on the principal are due or capable of becoming due;
 - (ii) although interest payments may become due, no repayment of all or part of the principal is due or capable of becoming due;
 - (iii) although interest payments and repayment of part of the principal may become due, repayment of all of the principal is not due or capable of becoming due.

(2) No mortgage brokerage shall negotiate or arrange a reverse mortgage loan other than in accordance with this section.

(3) Every mortgage brokerage that negotiates or arranges a reverse mortgage loan shall provide to the borrower written documentation that illustrates the annual accumulation of interest under the proposed reverse mortgage loan and the corresponding effect on the equity of the borrower in the mortgaged property, for the period from the advancing of funds until all of the equity of the borrower in the property is exhausted, with respect to all of the following fact scenarios:

- (a) the interest rate remains the same over the period set out in the illustration and the

value of the property increases by 1% per year;

(b) the interest rate and the value of the property remain the same over the period set out in the illustration;

(c) if the interest rate is capable of increasing under the loan, the interest rate increases by 2% per annum after the second year and remains the same for the remaining period set out in the illustration, and the value of the property increases by 1% per year;

(d) if the interest rate is capable of increasing under the loan, the interest rate increases by 2% per annum after the second year and remains the same for the remaining period set out in the illustration, and the value of the property remains the same over the period set out in the illustration.

(4) In preparing the written documentation required pursuant to subsection (3), the mortgage brokerage shall assume that the borrower makes no payments under the loan during the period set out in the illustration other than those payments required to be paid pursuant to the loan agreement.

(5) Every mortgage brokerage shall ensure that it receives from the borrower a written statement signed by a lawyer stating that the lawyer has given the borrower independent legal advice about the proposed reverse mortgage loan.

(6) Subject to (7), the principal broker of the mortgage brokerage or another broker designated by the principal broker shall:

(a) discuss with the borrower:

(i) the written documentation provided to the borrower pursuant to subsection (3); and

(ii) any other potential means by which the borrower could obtain the funds; and

(b) prepare a written document in which the principal broker or the broker designated by the principal broker:

(i) confirms that he or she has discussed the information mentioned in subclauses (a)(i) and (ii) with the borrower;

(ii) lists the other potential sources of funds that the principal broker or the broker designated by the principal broker discussed with the borrower; and

(iii) obtains the written acknowledgment of the borrower to the matters mentioned in subclauses (i) and (ii).

(7) The broker that satisfies the requirements in (6) must be a different broker than the broker negotiating or arranging the reverse mortgage.

(8) The mortgage brokerage shall satisfy the requirements set out in subsections (3), (5) and (6)

at the earliest opportunity, and in any case, at least two business days before either:

- (a) the borrower commits himself or herself to enter into the reverse mortgage loan; or
- (b) the borrower makes any payment or commits himself or herself to make any payment in connection with the reverse mortgage loan, other than remuneration paid to the mortgage brokerage for its mortgage brokerage services.

Referral requirements

30 A mortgage brokerage or mortgage administrator that refers a borrower, private investor or prospective private investor to another person in return for remuneration shall provide all of the following information in writing to the person being referred, either before making the referral or at the time that the referral is made:

- (a) a description of the nature of the relationship between the mortgage brokerage or mortgage administrator and the other person;
- (b) a statement indicating whether the mortgage brokerage or mortgage administrator has received or will or may receive a fee or other remuneration, directly or indirectly, for making the referral;
- (c) the amount of the fee or other remuneration mentioned in (b), or if the amount of the fee or other remuneration is not ascertainable at that time, a reasonable estimate of the fee or other remuneration.

Advance fees

31(1) Subject to subsections (2) and (3), no mortgage brokerage shall charge or accept from a borrower a fee or other remuneration for mortgage brokerage services until an investor has provided a written confirmation to fund a mortgage loan to the borrower and a mortgage agreement has been entered into.

(2) Subsection (1) does not apply if the mortgage loan sought by the borrower is a loan to which *The Cost of Credit Disclosure Act, 2002* does not apply.

(3) A mortgage brokerage may charge or accept a fee or other remuneration from a borrower for mortgage brokerage services before an investor has provided a written confirmation to fund a mortgage loan to the borrower and a mortgage agreement has been entered into if::

- (a) the borrower agreed to pay the fee or other remuneration pursuant to a written agreement between the mortgage brokerage and the borrower in the event that the borrower terminated the agreement with the mortgage brokerage before the borrower received the loan funds;
- (b) the borrower acknowledged in writing the term of the agreement set out in (a) requiring the payment of the fee or other remuneration; and
- (c) the fee or other remuneration mentioned in subclause (a) has become payable in

accordance with the agreement between the mortgage brokerage and the borrower.

Complaints process - mortgage brokerages

32(1) A mortgage brokerage shall establish a process for resolving complaints from the public with respect to the brokering of mortgages by the mortgage brokerage or any broker or associate authorized to broker mortgages on behalf of the mortgage brokerage, as the case may be.

(2) As part of the process established pursuant to subsection (1), the mortgage brokerage shall designate one or more individuals to receive and attempt to resolve complaints from the public, and each designated individual must be an employee of the mortgage brokerage or someone who is otherwise authorized to act on behalf of the mortgage brokerage.

(3) If a person makes a complaint to a mortgage brokerage in writing with respect to the brokering of mortgages by the mortgage brokerage or of any broker or associate authorized to broker mortgages on behalf of the mortgage brokerage, the mortgage brokerage shall provide to the person a written response to the complaint setting out the mortgage brokerage's proposed resolution of the complaint.

(4) The written response provided pursuant to subsection (3) must also state that if the person is not satisfied with the proposed resolution and believes that the complaint relates to a contravention of the Act or these regulations, the person may refer the complaint to the superintendent.

Complaints process - mortgage administrators

33(1) A mortgage administrator shall establish a process for resolving complaints from the public with respect to the administration of mortgages by the mortgage administrator.

(2) As part of the process established pursuant to subsection (1), the mortgage administrator shall designate one or more individuals to receive and attempt to resolve complaints from the public, and each designated individual must be an employee of the mortgage administrator or someone who is otherwise authorized to act on behalf of the mortgage administrator.

(3) If a person makes a complaint to a mortgage administrator in writing with respect to the administration of mortgages by the mortgage administrator, the mortgage administrator shall provide to the person a written response to the complaint setting out the mortgage administrator's proposed resolution of the complaint.

(4) The written response provided pursuant to subsection (3) must also state that if the person is not satisfied with the proposed resolution and believes that the complaint relates to a contravention of the Act or these regulations, the person may refer the complaint to the superintendent.

Additional records

34(1) In addition to the records required pursuant to section 35 of the Act, every mortgage brokerage and mortgage administrator shall keep complete and accurate records of all documents, correspondence and any other written information, whether in electronic form or otherwise, that

the mortgage brokerage or mortgage administrator provided to or received from another person with respect to a mortgage transaction.

(2) To the extent that the following information is not contained in records required to be kept pursuant to the Act or these regulations, every mortgage brokerage shall ensure that a record is kept showing, with respect to each mortgage loan that it brokers:

- (a) the date and nature of the transaction;
- (b) a description of the real property that is sufficient to identify the real property;
- (c) the names of all of the parties to the mortgage loan;
- (d) the repayment terms;
- (e) the fees, expenses, costs or other charges required to be borne by the borrower; and
- (f) the fees or other remuneration received by the mortgage brokerage for brokering the mortgage and the identity of the persons paying the fees or other remuneration.

(3) Every month, every mortgage administrator that receives payments made by a borrower or otherwise monitors the performance of a borrower with respect to his or her payment obligations under a mortgage loan shall prepare a record that:

- (a) reconciles the total of outstanding principal balances due from borrowers with respect to mortgages being administered and the total amount of principal balances owing to investors under those mortgages, as the balances appear in the records of the mortgage administrator;
- (b) sets out the difference, if any, between the balances as of the last day of the month and describes the reasons for the difference; and
- (c) is signed and dated by an officer of the mortgage administrator to indicate that he or she has reviewed the record and certifies that it is accurate.

Record retention

35 Every mortgage brokerage and mortgage administrator shall retain the records mentioned in section 35 of the Act and section 34 for at least six years after the expiry of the mortgage loan or mortgage loan renewal to which the records relate.

PART VI Trust Property

DIVISION 1 Records

Records

36(1) Every mortgage brokerage that receives or holds trust money and every mortgage administrator shall keep records showing:

- (a) all trust money received and all transactions relating to the funds; and
- (b) the unexpended balance of trust money held by the mortgage brokerage or mortgage administrator in total and also separately for each person for whom that money is held.

(2) The records mentioned in subsection (1) must include:

(a) a separate trust ledger for each person on whose behalf the mortgage brokerage or mortgage administrator holds trust money showing, in chronological order:

(i) all receipts of trust money and all disbursements made out of trust money with respect to that person;

(ii) with respect to each receipt:

(A) from whom the money was received;

(B) the form or manner in which the money was received; and

(C) the purpose for which the money was received, including particulars of the mortgage to which the money relates;

(iii) with respect to each disbursement:

(A) to whom the money was disbursed;

(B) the number of the cheque by which the money was disbursed; and

(C) the purpose for the disbursement, including particulars of the mortgage to which the disbursement relates; and

(iv) the unexpended balance held on behalf of the person immediately after each receipt and disbursement; and

(b) copies of:

(i) deposit slips for each deposit to the trust account;

(ii) all cheques with respect to the account, including cancelled cheques;

(iii) bank statements or passbooks for the trust account; and

(iv) any other documentary evidence of deposits and withdrawals with respect to the trust account.

Monthly reconciliation

37(1) Every mortgage brokerage that receives or holds trust money and every mortgage administrator shall, every month, prepare a trust account reconciliation record in a form satisfactory to the superintendent.

(2) The reconciliation record mentioned in subsection (1) must be:

- (a) if prepared by a mortgage brokerage, reviewed by the principal broker in accordance with clause 16(d);
- (b) if prepared by a mortgage administrator, reviewed by an officer of the mortgage administrator who shall certify that it is accurate by signing and dating the reconciliation;
- (c) prepared and reviewed by different individuals; and
- (d) prepared, reviewed and certified no later than:
 - (i) if the mortgage brokerage or mortgage administrator receives a monthly account statement from the financial institution where the account is maintained, 30 days after the monthly statement is received; or
 - (ii) in any other case, 30 days after the end of the month.

Records of mortgage administrator

38(1) Every mortgage administrator shall keep records showing:

- (a) all mortgages received or held in trust by the mortgage administrator, and the original amount of each mortgage;
- (b) separately for each mortgage, any receipt or disbursement of funds and any liabilities, income and expenses with respect to the mortgage; and
- (c) with respect to each mortgage held in trust, the fractional interest or percentage owned by any person.

(2) The records mentioned in subsection (1) must include a trust ledger for each mortgage held in trust showing, in chronological order:

- (a) the amount of money received from each person having an interest in the mortgage, the form or manner in which the money was received and the date the money was received;
- (b) the amount of money advanced on the mortgage or the purchase price of the mortgage, as the case may be, the form or manner in which that money was advanced or paid and the date that money was advanced or paid;
- (c) the dates and amounts of any repayments received on the mortgage and the name of the person from whom the money was received;

- (d) the dates and amounts of any disbursements of money received under the mortgage and the name of the person to whom it was disbursed;
- (e) any other liabilities, income and expenses relating to the mortgage;
- (f) the receipt or disbursement of any funds whatsoever in connection with the mortgage; and
- (g) the outstanding balance of the mortgage in total and separately for each person having an interest in the mortgage.

DIVISION 2

Requirements re Trust Property

Trust agreements

39(1) The written trust agreement mentioned in clauses 43(2)(b) and 43(3)(b) of the Act with respect to the receiving or holding of trust money must contain:

- (a) an express acknowledgment of the trust;
- (b) the terms on which the trust money is to be received, held and disbursed; and
- (c) a term that requires that all withdrawals of money from the trust account to pay remuneration payable to a mortgage brokerage or mortgage administrator, as the case may be, be done by way of cheque payable to the general account of the mortgage brokerage or mortgage administrator.

(2) The written trust agreement mentioned in subclause 43(4)(b)(i) of the Act with respect to holding a mortgage in trust must:

- (a) include a description of the interest in the mortgage that is the subject of the trust, including, if the interest represents less than the entire mortgage, the percentage of the mortgage that the interest represents;
- (b) set out the terms of the trust; and
- (c) have appended to it a copy of the mortgage agreement that creates the interest that is the subject of the trust.

(3) No mortgage brokerage or mortgage administrator shall fail to comply with a trust agreement entered into pursuant to section 43 of the Act.

If mortgage is held in trust

40 Every mortgage administrator that receives a mortgage in trust shall, on receiving the mortgage in trust, ensure that the interests of the beneficiaries in the mortgage are registered in

the land titles registry against the mortgage administrator's interest in the mortgage.

Requirements re trust money

41(1) Every mortgage brokerage receiving trust money shall:

- (a) provide a receipt to the person from whom the money was received, showing:
 - (i) the amount of money received;
 - (ii) the form or manner in which the money was received;
 - (iii) the date on which the mortgage brokerage received the money;
 - (iv) the name of the person from whom the money was received and, if the money was received on behalf of another person, the name of that person;
 - (v) the purpose for which the money was received, including particulars of the mortgage, if any, to which the money relates;
 - (vi) the name of the broker or associate who received the money on behalf of the mortgage brokerage; and
- (b) ensure that a duplicate deposit receipt or other documentary evidence of the deposit is prepared showing or having appended to it sufficient particulars to permit the separate identification of the payment into the account of each person from whom the trust money was received.

(2) Every withdrawal of money by a mortgage brokerage or mortgage administrator from a trust account must be done by way of a cheque that:

- (a) is numbered and includes on its face words identifying it as being drawn against a trust account; and
- (b) includes a reference to the transaction to which it relates that is sufficient to permit the cheque to be identified with the corresponding disbursement recorded in the records of the mortgage brokerage or mortgage administrator.

(3) Every mortgage brokerage that receives or holds trust money shall keep all trust money received or held with respect to transactions relating to syndicated mortgages separate and apart from trust money received with respect to other mortgage transactions.

Deposit of trust money

42 For the purposes of clause 45(a) of the Act, every licensee receiving trust money shall, within two business days of receipt, deposit the money into a trust account that is held with one of the following:

- (a) a bank authorized to accept deposits pursuant to the *Bank Act* (Canada);

(b) a credit union incorporated, continued or registered pursuant to *The Credit Union Act, 1998*;

(c) a corporation authorized to accept deposits pursuant to *The Trust and Loan Corporations Act, 1997*.

PART VII

Annual Filing Requirements

Annual return

43(1) The annual return mentioned in section 48 of the Act must contain, with respect to the one year period ending on June 1 of each year:

(a) any changes in the information that has been provided to the superintendent in the licence application form submitted by the licensee or in the previous annual return submitted by the licensee, as the case may be, and for which notice has not already been provided to the superintendent;

(b) a confirmation that all of the other information that has been provided to the superintendent in the licence application form submitted by the licensee or in the previous annual return submitted by the licensee, as the case may be, is accurate;

(c) a confirmation that the licensee has complied with the Act in the period since it was issued a licence or since it provided the previous annual return to the superintendent, as the case may be; and

(d) any other information required by the superintendent.

(2) For the purposes of section 48 of the Act, the licensee shall provide the annual return to the superintendent on or before June 30 of each year.

Statutory declaration

44 A statutory declaration provided pursuant to section 49 of the Act must be delivered to the superintendent no later than 90 days after the end of the fiscal year to which it relates, and must contain:

(a) the name of the mortgage brokerage;

(b) the fiscal year to which the statutory declaration relates;

(c) the name of the person or persons swearing under oath or affirming the statutory declaration and the relationship of that person or those persons with the mortgage brokerage; and

(d) a confirmation that the mortgage brokerage did not receive or handle trust property

during the fiscal year to which the statutory declaration relates.

Annual financial statement

45(1) In this section, “**accountant**” means a member in good standing of a recognized accounting profession that is regulated by an Act.

(2) The financial statement provided to the superintendent pursuant to section 50 of the Act must include:

(a) a written certification as to the accuracy of the financial statement made by two directors of the mortgage brokerage or mortgage administrator;

(b) a report prepared by an auditor that is satisfactory to the superintendent; and

(c) a report prepared by an accountant, pursuant to an engagement letter between the accountant and the mortgage brokerage or mortgage administrator, in a form and containing the information required by the superintendent.

(3) The financial statement mentioned in subsection (1) must be delivered to the superintendent no later than the earliest of:

(a) 90 days after the end of the fiscal year to which it relates;

(b) if the financial statement relates to the fiscal year in which the mortgage brokerage or mortgage administrator was issued its licence, 15 months after the date on which the licence was issued; and

(c) if the financial statement relates to any other fiscal year, 15 months after the date on which the previous financial statement was delivered to the superintendent.

(4) If a mortgage brokerage or mortgage administrator provides a financial statement to the superintendent in accordance with clause (3)(b) or (c) before the completion of the fiscal year to which the financial statement relates, the mortgage brokerage or mortgage administrator must deliver to the superintendent a financial statement with respect to the period from the date on which the previous financial statement was delivered to the superintendent to the end of the fiscal year no later than 90 days after the end of the fiscal year.

PART VIII

Advertising and Communications

Advertising requirements

46(1) In addition to the requirements set out in the Act, an advertisement of a mortgage brokerage or mortgage administrator that advertises the business or any products or services offered by that business must contain:

- (a) the licence number of the mortgage brokerage or mortgage administrator; and
 - (b) in the case of an advertisement for a mortgage brokerage that includes a reference to a particular broker or associate authorized to broker mortgages on behalf of the mortgage brokerage, the name of the broker or associate as set out in the licence issued to the broker or associate.
- (2) In addition to the requirements set out in the Act, an advertisement of a broker or associate advertising any product or service offered by the broker or associate must contain:
- (a) the licence number of the mortgage brokerage for which the broker or associate is authorized to act; and
 - (b) the name of the broker or associate as set out on the licence issued to the broker or associate.

Correspondence requirements

47 Every licensee shall disclose the following information in all correspondence and other written material prepared or used in the course of the business:

- (a) the licence number of the mortgage brokerage or mortgage administrator;
- (b) the name of the mortgage brokerage or mortgage administrator, as set out on the licence issued to the mortgage brokerage or mortgage administrator;
- (c) if it includes a reference to a particular broker or associate authorized to broker mortgages on behalf of the mortgage brokerage, the name of the broker or associate as set out on the licence issued to the broker or associate; and
- (d) if it is signed by or issued under the name of a broker or associate:
 - (i) the licence number of the broker or associate; and
 - (ii) the name of the broker or associate as set out in the licence issued to the broker or associate.

PART IX Transitional

Transitional - education and experience requirements

48(1) In this section and section 49, “**former Act**” means *The Mortgage Brokers Act*, as that Act existed on the day before the coming into force of *The Mortgage Brokerages and Mortgage Administrators Act*.

- (2) An applicant for a broker’s licence or an associate’s licence is exempt from the education requirement mentioned in clause 4(2)(d) or 4(3)(d), as the case may be, if, for at least 24 of the last 36 months preceding the date of application, the applicant was:

- (a) licensed as a mortgage broker pursuant to the former Act; or
 - (b) employed by a mortgage broker licensed pursuant to the former Act to broker mortgages on its behalf.
- (3) An applicant for a broker's licence or an associate's licence who does not meet the requirements of subsection (2) is exempt from the education requirement mentioned in clause 4(2)(d) or 4(3)(d), as the case may be, if:
- (a) at some time during the 36-month period preceding the date of application, the applicant was:
 - (i) licensed as a mortgage broker pursuant to the former Act; or
 - (ii) employed by a mortgage broker licensed pursuant to the former Act to broker mortgages on its behalf; and
 - (b) the applicant undertakes, as a condition of the applicant's licence, to successfully complete an approved education program, or any other program that, in the opinion of the superintendent, will satisfy the education requirement, within two years after the date of issue of the applicant's licence.
- (4) An applicant for a broker's licence is exempt from the experience requirement mentioned in clause 4(2)(e) if, for at least 24 of the last 36 months preceding the date of application, the applicant was:
- (a) licensed as a mortgage broker pursuant to the former Act; or
 - (b) employed by a mortgage broker licensed pursuant to the former Act to broker mortgages on its behalf.

Calculation of time

49 For the purposes of clause 4(2)(e), if an applicant for a broker's licence was licensed as a mortgage broker pursuant to the former Act in the 36 months preceding the date of application, the time during which the applicant was licensed as a mortgage broker pursuant to that Act is to be included in determining the period during which the applicant was licensed as an associate.

PART X**Coming into force****Coming into force**

50(1) Subject to subsection (2), these regulations come into force on the day on which section 1 of *The Mortgage Brokerages and Mortgage Administrators Act* comes into force.

(2) If section 1 of *The Mortgage Brokerages and Mortgage Administrators Act* comes into force before the day on which these regulations are filed with the Registrar of Regulations, these regulations come into force on the day on which they are filed with the Registrar of Regulations.