

Interpretation



Effective date: November 27, 2023

Identifier: No. MB0052INT

Mortgage Administrators' Financial Filing Requirements

Purpose

This guidance (the “Guidance”) provides the Financial Services Regulatory Authority of Ontario’s (“FSRA”) interpretation of the financial filing requirements for mortgage administrators under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (“MBLAA”) as per section 3 of O. Reg. 193/08: Reporting Requirements for Licensees.

Scope

The Guidance affects the following entities:

- mortgage administrators regulated by FSRA
- auditors engaged by licensed mortgage administrators on the required filings

Rationale and background

FSRA Mandate

In supervising and regulating the mortgage brokering sector, FSRA is guided by its statutory objects. With respect to the Guidance, FSRA's relevant statutory objects include FSRA's duties to:

- regulate and generally supervise the mortgage brokering sector
- contribute to public confidence in the mortgage brokering sector
- promote transparency and disclosure of information by the mortgage brokering sector
- promote high standards of business conduct
- protect the rights and interests of consumers

Under the MBLAA and its regulations, mortgage administrators are granted the legal authority to receive mortgage payments from borrowers on behalf of lenders and to take steps to enforce a payment by a borrower, under the terms of an administration agreement.^[1] Mortgage administrators are required to, among other things, maintain and manage trust accounts^[2] and maintain a financial guarantee^[3] to minimize the risk of the loss of the mortgage payments.

Mortgage administrators are required to hire a licensed public accountant to independently review their financial statements and operations on an annual basis and must file the financial statements and auditors' findings with FSRA.

These MBLAA requirements help protect the consumer by reducing the risk of funds being misplaced, stolen, or otherwise treated improperly.

¹ O. Reg. 189/08, s. 18

² O. Reg. 189/08, s. 33-39

³ O. Reg. 189/08, s. 28; FSRA is reviewing various aspects of the financial guarantee requirement.

Interpretation

Section 3 of O. Reg. 193/08 prescribes the financial information to be filed by administrators each year with FSRA.

O. Reg. 193/08

S. 3(1)(a) provides that within 90 days after the end of every fiscal year, every mortgage administrator shall give FSRA a copy of its audited financial statements for the year.

Re: Financial statements

FSRA^[4] interprets "audited financial statements" to include the financial statement notes and the independent auditor's report on the financial statements. Consequently, these two items must be included when an administrator provides FSRA with a copy of its audited financial statements.

S. 3(1)(b) provides that within 90 days after the end of every fiscal year, every mortgage administrator shall give FSRA a copy of a report by the auditor about the books, records and accounts of the mortgage administrator for the year, in a form approved by FSRA.

Re: Internal controls regarding financial reporting

FSRA considers an auditor's report to be "in a form approved by FSRA" if:

- It documents all deficiencies in internal controls that the auditor has identified in an audit of the mortgage administrator's financial statements and has communicated in writing or orally to those

⁴ Both the Chief Executive Officer (CEO) of FSRA and FSRA may exercise regulatory authority under the MBLAA. However, for the purposes of this Guidance, reference will only be made to FSRA, as the CEO may delegate authority to FSRA staff as permitted by s. 10(2.3) of the *Financial Services Regulatory Authority of Ontario Act, 2016*.

O. Reg. 193/08

charged with governance and management as required under Canadian Auditing Standards (CAS) 265.

- Where the auditor has not identified any deficiencies in the internal controls, the auditor's communication, or a confirmation from the administrator, must state that no deficiencies in the administrator's internal controls were noted.

S. 3(1)(c) provides that within 90 days after the end of every fiscal year, every mortgage administrator shall give FSRA a copy of a report by the auditor about the administrator's trust account and the assets and liabilities under administration for the year, in a form approved by FSRA.

Re: Compliance with trust account and assets and liabilities under administration requirements – Reasonable assurance report

FSRA considers a reasonable assurance report to be "in a form approved by FSRA" if it:

- Is issued for the fiscal year ending on or before December 31, 2024, it provides the auditor's reasonable assurance⁵ on the administrator's compliance with sections 33, 34, 35, 36, 37, 38 and 39 of O. Reg. 189/08.

⁵ This may be referred to as the 'reasonable assurance report.'

O. Reg. 193/08

- Is issued for the fiscal year ending after December 31, 2024, it provides the auditor's reasonable assurance on the administrator's compliance with sections 23, 24, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 of O. Reg. 189/08.^[6]
- Covers the administrator's compliance with the above-stated sections of O. Reg. 189/08 over the entire fiscal year (not only as at the year-end date).
- Is prepared in accordance with the CPA Canadian Standard on Assurance Engagements ("CSAE") 3000^[i] and CSAE 3530, where:
 - The management of the administrator provides the auditor with an explicit statement about the administrator's

ⁱ Previously "3001." A typo has been corrected.

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s. 23 Payments to lender, investor s. 24 Payment on redemption of mortgage, s. 28 Duty to have financial guarantee s. 29 Required records s. 30 Security of records s. 31 Retention of records s. 32 Monthly reconciliation, certain financial matters	s. 33 Deemed trust funds s. 34 Authorized trust account s. 35 Administration of trust account s. 36 Record of trust account transactions s. 37 Monthly reconciliation statement for trust account s. 38 Duty to report shortfall in trust account s. 39 Annual reconciliation statement for trust account
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O. Reg. 193/08

S. 3(2) provides that the financial statements must be prepared in accordance with generally accepted accounting principles, as set out in the Handbook of the Canadian Institute of Chartered Accountants^[7] and must be audited by a licensed public accountant.

compliance with the above-stated sections of O. Reg. 189/08.

- Following the auditor's evaluation of the administrator's compliance, the auditor opines on whether management's statement of compliance is fairly stated.
- FSRA interprets "licensed public accountant" to mean a Chartered Professional Accountant ("CPA") who is in good standing and has an active licence to practice Public Accounting in the appropriate provincial jurisdiction.
- FSRA expects an auditor to have knowledge of the applicable requirements for mortgage administrators under the MBLAA, its regulations and FSRA rules, in relation to the reports required to be given to FSRA pursuant to ss. 3(1)(b) and 3(1)(c) of O. Reg. 193/08.

⁷ This is now known as the Handbook of Chartered Professional Accountants Canada.

O. Reg. 193/08

- The CPA who audits the financial statements must also prepare the required reports.^[8]

Enforcement

Where appropriate, FSRA may impose a range of enforcement actions, including letters of warning, licence conditions, licence revocation or suspension, and administrative monetary penalties of up to \$100,000 for individuals and \$500,000 for entities, per contravention. Further, FSRA has the authority to lay quasi-criminal charges under the MBLAA which are prosecuted in the Ontario Court of Justice under Ontario's *Provincial Offences Act*.

Without limitation to any other sanctions that may be available, FSRA may impose a summary administrative monetary penalty when a mortgage administrator is not compliant with the reporting requirements as outlined in this Guidance.

Failure to pay any penalty imposed by FSRA is grounds for revocation of a licence.

Effective date and future review

This Guidance is effective on November 27, 2023, other than the provision setting out the acceptable form of a reasonable assurance report as it relates to the period after December 31, 2024, which will become effective on that date. This Guidance will be reviewed no later than November 27, 2026.

⁸ Regulation 193/08, s. 3(3)

Once effective, this Guidance replaces MB0035ORG – [Reporting Requirements for Mortgage Administrators](#).

About this Guidance

This document is consistent with [FSRA's Guidance Framework](#).

As Interpretation Guidance, it describes FSRA's view of requirements under its legislative mandate (i.e., legislation, regulations, and rules) so that non-compliance can lead to enforcement or supervisory action.

Effective date: November 27, 2023

Last updated: January 30, 2024