FSRA
Financial Services Regulatory Authority of Ontario

Guidance

☒ Interpretation | ☐ Approach | ☒ Information | ☐ Decision

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Proposed Guidance: Detecting and Preventing Mortgage Fraud

Table of Contents

Ontario

Purpose

This Interpretation Guidance ("Guidance") provides the Financial Services Regulatory Authority of Ontario's ("FSRA's") interpretation of certain provisions of the *Mortgage Brokerages, Lenders and Administrators Act*, 2006 ("MBLAA") and the following regulations, as they apply to mortgage fraud:

- Ontario Regulation 187/08 (O. Reg. 187/08) – Mortgage Brokers and Agents: Standards of Practice
- Ontario Regulation 188/08 (O. Reg. 188/08) – Mortgage Brokerages: Standards of Practice
- Ontario Regulation 189/08 (O. Reg. 189/08) – Mortgage Administrators: Standards of Practice
- Ontario Regulation 410/07 (O. Reg. 410/07) – Principal Brokers: Eligibility, Powers, and Duties

Appendix 1 of this Guidance provides mortgage brokerages, brokers, agents and administrators ("licensees") with a non-exhaustive list of Key Steps for Detecting and Preventing Mortgage Fraud ("Key Steps"), which can help licensees limit fraud in the mortgage brokering sector.

Scope

This Guidance applies to the following FSRA licensees:

- mortgage agents
- mortgage brokers, including principal brokers
- mortgage brokerages
- mortgage administrators

Rationale and context

FSRA Mandate

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

- regulate and generally supervise the mortgage brokering sector
- contribute to public confidence in the mortgage brokering sector
- cooperate and collaborate with other regulators where appropriate
- promote transparency and disclosure of information by the mortgage brokering sector
- deter deceptive or fraudulent conduct, practices and activities by the mortgage brokering sector
- promote high standards of business conduct
- protect the rights and interests of consumers

This Guidance requires the sector to conduct business in a manner that does not facilitate dishonesty, fraud, crime or illegal conduct.

Forms of mortgage fraud

Mortgage fraud takes many forms. It may include the intentional misstatement, misrepresentation, or omission of information to obtain a mortgage. It can result in:

- borrowers paying higher fees, inflated interest rates, or obtaining an unaffordable mortgage (which may lead to defaulting on mortgage payments).
- lenders losing money if borrowers cannot repay a mortgage that was obtained based on inaccurate or fraudulent information given to the lender.
- lenders facing added costs of collections management, tax arrears or legal costs related to power of sale or foreclosure proceedings, etc. Private lenders who are individuals may be less likely to manage these costs if they are administering the mortgage themselves (e.g., they may not have the infrastructure).

Motivators for mortgage fraud

In general, there are two broad motivators of mortgage fraud:

- “Fraud for shelter” occurs when a borrower, broker or agent provides false, exaggerated or misleading employment, income, source of down payment or other documentation to qualify the borrower for a mortgage. In these cases, obtaining and keeping ownership of the property is the goal.
- “Fraud for profit” occurs when a person(s) falsifies information to benefit financially from the mortgage transaction — for example, when a mortgage agent or broker withholds information from a lender or gives altered/falsified information to a lender to ensure that the mortgage is granted so they can earn a fee or commission. In these cases, maximizing profit for oneself or a related person/entity is the goal. Another example is when a person’s identity is stolen and used to obtain a mortgage, including for the purposes of purchasing or refinancing a home or keeping the mortgage funds.

Key steps for detecting and preventing mortgage fraud

MBLAA and its regulations impose significant requirements on licensees. These requirements help protect borrowers, lenders and investors from mortgage fraud.

The Key Steps in Appendix 1 capture key obligations and standards of practice under the MBLAA and its regulations, as well as common industry practices, aimed at combating mortgage fraud. These include obligations imposed on principal brokers, brokerages and administrators to establish and implement policies and procedures ("P&P") that ensure licensees and staff comply with the MBLAA.[1] Principal brokers are also obligated to ensure that the brokerage and licensees are complying with the MBLAA and that the brokerage deals with contraventions, should they arise.[2]

Mortgage Broker Regulators' Council of Canada Code of Conduct for the Mortgage Brokering Sector

The Mortgage Broker Regulators' Council of Canada ("MBRCC") Code of Conduct for the Mortgage Brokering Sector ("Code of Conduct") also sets out principles that help licensees follow the MBLAA and its regulations, and supports the detection and prevention of mortgage fraud.

Interpretation

Mortgage Brokerage and Mortgage Administrator Policies and Procedures

Section 43(1) of the MBLAA prohibits brokerages and administrators from giving, assisting in giving, inducing or counselling others to give or assist in giving false or deceptive information or documents when dealing or trading in mortgages, acting as a mortgage lender or administering mortgages. Brokerages and administrators are also specifically prohibited from facilitating dishonesty, fraud, crime or illegal conduct. [3]

Section 43(2) of the MBLAA prohibits brokers and agents from giving, assisting in giving, inducing or counselling anyone to give or assist in giving false or deceptive information or documents when conducting their mortgage business activities. Brokers and agents are also prohibited from causing their brokerage to give, assist in giving or induce or counsel anyone to give or assist in giving false or deceptive information or documents when conducting their business activities.[4]

According to section 40 of O. Reg. 188/08, brokerages must establish and implement P&P that are reasonably designed to ensure that the brokerage, and every broker and agent who is authorized to deal or trade in mortgages on its behalf, complies with the MBLAA.[5] Similarly, section 25 of O. Reg. 189/08 requires that administrators establish and implement P&P that are reasonably designed to ensure that the administrator, and every person acting on its behalf in the business of mortgage administration, complies with the requirements established under MBLAA.[6]

FSRA interprets section 40 of O. Reg. 188/08 and section 25 of O. Reg. 189/08 as requiring that brokerages' and administrators' internal P&P address the prohibitions against providing false or deceptive information set out in section 43 of the MBLAA.

As per section 43 of the MBLAA, it is a contravention for a licensee to knowingly or unknowingly give or assist in providing false or deceptive information when conducting mortgage business. FSRA interprets this section as requiring licensees to take reasonable steps to detect and prevent mortgage fraud. The steps licensees must take to detect and prevent mortgage fraud must be addressed through a brokerage's or administrator's P&P.

For P&P to be reasonably designed to ensure compliance with the MBLAA, including the prohibitions against providing false or deceptive information, they must, at a minimum, include (i) fraud detection and prevention[7] and (ii) the duty to conduct identity verification.[8]

To address fraud detection and prevention, the P&P must include, at minimum, the following:

- the brokerage's duty not to proceed with acting for any party in a mortgage transaction if there is reason to doubt that the mortgage, renewal or investment is lawful[9];
- the steps a brokerage or administrator, and their brokers, agents and staff, must take to ensure they do not facilitate dishonest, fraudulent, criminal or illegal conduct. These steps should also address when a brokerage or administrator, and their brokers, agents and staff, must not act/participate in order to ensure they do not facilitate mortgage fraud. [10]

To address the duty to conduct identity verification[11], a key element of fraud detection and prevention, the P&P must include, at minimum, the following:

- for a brokerage, the steps the brokerage and their licensees must take to verify the identity of borrowers, lenders, investors and other parties. [12] With respect to lenders and investors, this should include the ultimate source and beneficial ownership of the funds being invested.

- for an administrator, the steps the administrator and its staff must take to verify the identities of lenders or investors. [13] These steps would be the same as those indicated above for mortgage brokerages.

FSRA does not regulate anti-money laundering ("AML"). However, the above steps will also be important for brokerages and administrators to combat being used to facilitate money laundering. Breaches of AML laws may indicate that brokerages and administrators may not have had adequate P&P in place to detect and prevent fraud. Involvement by a brokerage, broker, agent or administrator in money laundering may indicate that the licensee is not suitable to hold a licence under the MBLAA.

Mortgage transaction documentation

Mortgage brokerages, administrators, brokers and agents are prohibited from:

- doing anything they know, or should know, will facilitate fraud, dishonesty crime or illegal conduct; [14]

- not acting when they know, or should know, will facilitate fraud, dishonesty, crime or illegal conduct; [15] or

- including false, misleading or deceptive information in their public relations materials. [16]

FSRA interprets the above prohibitions as requiring licensees to ensure the accuracy and truthfulness of documents in a mortgage, renewal or investment transaction. Brokerages (and their staff), brokers, agents and administrators (and their staff), at minimum, must:

- take reasonable and legitimate steps to verify the documents provided by borrowers and lenders/investors and other parties to a transaction; reasonable and legitimate steps may include using an arm's-length third party to the transaction to conduct document verification

- follow up on actual and potential falsified documents (e.g., ask the client additional questions or try to validate the authenticity of the information received in an additional manner for enhanced due diligence)

- immediately report any falsified documents to the designated individual at the brokerage (e.g., principal broker or designated compliance person), administrator (e.g., principal representative), or lender

FSRA interprets the above prohibitions as requiring licensees and administrator staff to take the following steps, at minimum, to identify potential falsification of documents and help prevent fraud:

- confirm that information presented by the parties is consistent across different reliable forms and documents provided to support the transaction

- review original documents, source documents, or certified copies of documents

- use multiple sources of valid government issued ID to conduct identity confirmation (one piece must be government-issued photo ID)

- contact employers directly to confirm employment. This point applies to brokerages and their licensees.

Brokers and agents should report suspected misrepresentation or falsification of documents relating to a mortgage application or prospective application to the designated individual at the brokerage. Similarly, staff at administrators should report such suspicions about mortgages under administration to the designated individual at the administrator. Brokerages and administrators should designate someone in management (e.g., the PB or principal representative at an administrator) to address such issues.

Red flags for fraud

As stated earlier, FSRA interprets s. 43 of MBLAA as requiring licensees to take steps to prevent mortgage fraud, which must be addressed through a brokerage's and administrator's P&P. At a minimum, such steps, at minimum, must include addressing or obtaining the satisfactory resolution of red flags for fraud.

Accordingly, FSRA considers the failure to address or obtain the satisfactory resolution of red flags for fraud as:

- a reason to doubt the effectiveness of a brokerage's or administrator's governance
- a reason to doubt that the prospective mortgage is lawful
- a breach of the MBRCC's Code of Conduct
- a reason to doubt the suitability to hold a licence under the MBLAA

Red flags for fraud include, but are not limited to:

- inconsistencies in deductions on payroll or tax slips (e.g., deductions not consistent with income)
- a lack of clarity as to the ultimate source of capital being used to fund the mortgage
- a lack of clarity about the source of down payment
- lack of watermarks or letterheads on official documents
- basic information is missing or misspelled, such as address or phone number, or tax numbers on invoices
- missing signatures
- signatures that are exact replicas (on documents that are not digitally signed)

- dates that are outside of the timeline or continuity
- employer and borrower have the same address when the borrower is not self-employed
- referenced company or business does not exist, is newly established or is a shared paid temporary business office
- original documents cannot be provided upon request
- unusual delays in supplying information
- inconsistencies between information in documents provided by the borrower and credit reports (e.g., name, birthdate, phone number, address and employment history do not match)

Role of principal broker in detecting and preventing mortgage fraud

Principal brokers must:

- ensure the brokerage’s P&P address fraud detection and prevention, and the requirements set out in this Guidance
- supervise mortgage brokers and agents to ensure compliance with the brokerage’s P&P and the MBLAA

They should also, at minimum:

- keep informed about mortgage fraud trends, update the brokerage’s P&P as appropriate, and share knowledge with mortgage brokers and agents.
- keep track of issues noted concerning mortgage brokers and agents (e.g., unusually low funding ratio or unusually high application rejection rate by lenders due to inconsistencies) relative to their experience and peers, and provide training or close supervision as appropriate

- Performing the above and referencing the Key Steps should help ensure all licensees are actively detecting and preventing fraud.

As a reminder, licensees must follow the MBLAA requirements listed below:

- brokerages must take reasonable steps to verify a borrower's legal authority to mortgage a property. See the Key Steps for sample steps. If the brokerage has reason to doubt the borrower's legal authority, the brokerage must advise each prospective lender at the earliest opportunity. The duty to advise the lender continues even after the borrower enters into the mortgage or renewal agreement or signs the mortgage instrument.
  - O. Reg. 188/08 section 13
  - O. Reg. 188/08 section 14.1
- brokerages must advise each prospective lender if they have reason to doubt the accuracy of information that may be contained in a borrower's application, or in a document given in support of an application. The duty to advise the lender continues even after the borrower enters into the mortgage agreement or renewal agreement or signs the mortgage instrument.
  - O. Reg. 188/08 section 14
  - O. Reg. 188/08 section 14.1

In addition, FSRA expects brokerages, principal brokers and administrators to educate and train their licensees and staff on the established P&P and to make them easily accessible for reference.

Informing FSRA of potential mortgage fraud

Persons and entities that act in good faith in informing and providing documents to FSRA about potential mortgage fraud may be protected from reprisals, as per the whistle-blower provisions under the *Financial Services Regulatory Authority of Ontario Act*, 2016.[17] See FSRA's Whistle-Blower program.

Compliance and enforcement

When FSRA receives credible information regarding potential fraud or non-compliance with the MBLAA, its regulations, FSRA rules and/or FSRA interpretation guidance, FSRA reviews the information and takes enforcement action, as appropriate.

FSRA's review includes an assessment of whether the brokerage, principal broker or administrator (as appropriate) has established and effectively implemented reasonable P&P which reflect relevant regulatory requirements and, when complied with, would reduce the risk of fraud.

Where appropriate, FSRA may impose a range of enforcement actions including letters of warning, license conditions, license 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 the *Ontario Provincial Offences Act*.

FSRA works with other law enforcement agencies such as police services and regulators. FSRA assists authorities with potential fraud issues to the extent possible, and refers suspected cases of fraud to law enforcement, as appropriate.

FSRA communicates enforcement action publicly, as detailed in the Transparent Communication of FSRA Enforcement Action guidance.

Effective Date and Future Review

This Guidance is effective **[TBD]**.

Once effective, this Guidance replaces:

- Bulletin No. M-01/16 / MB0007ORG - Your responsibilities to prevent mortgage fraud
- MB0016ORG - FAQs on FSCO's Checklist on Detecting and Preventing Mortgage Fraud
- MB0010ORG – Checklist on Detecting and Preventing Mortgage Fraud.

The latest possible date for FSRA to initiate a review of this Guidance is [three years following effective date].

About this Guidance

This document is consistent with FSRA's Guidance Framework.

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

Effective Date: [TBD]

Appendices and Reference

Appendix 1

Key steps for Detecting and Preventing Mortgage Fraud

This list of Key Steps for Detecting and Preventing Mortgage Fraud ("Key Steps") was developed in consultation with the mortgage brokering sector to assist mortgage brokerages, brokers, agents and administrators ("licensees") in detecting and preventing mortgage fraud. [18], [19] It includes regulatory requirements and best practices that apply to licensees' day-to-day business. The list of Key Steps is non-exhaustive. Licensees should apply the Key Steps as appropriate to their business.

Practices you should always follow

- Read your mortgage brokerage's or mortgage administrator's policies and procedures (P&P) on detecting and preventing mortgage fraud. Keep up to date on those P&P and follow them at all times.

- Review any other information that provides tips on detecting and preventing mortgage fraud. This may include brochures or fact sheets from mortgage insurers, mortgage broker industry associations and other industry experts.

- Be proactive in looking for possible signs of mortgage fraud. Do not ignore any red flags and do not allow yourself to be used to facilitate mortgage fraud.
- Keep detailed records of interactions with clients and information collected that are important to the mortgage file.
- Report any suspicions of mortgage fraud to the designated individual at the brokerage or administrator (e.g., Principal Broker or designated compliance person at a brokerage, and

When taking and reviewing an application for a mortgage

- Do not proceed with a mortgage transaction if you suspect dishonesty, fraud, crime or illegal conduct. Immediately report your suspicions to the designated individual at your brokerage (e.g., Principal Broker or designated compliance person). Make sure to follow your mortgage brokerage's P&P on detecting and preventing fraud.
- Verify the borrower's legal authority to mortgage the property. If you have reason to doubt the borrower's legal authority, advise each prospective lender in writing as soon as possible.
    - Verify current ownership/title and confirm listed owners match the borrower(s) and their identification (ID).
    - Validate any Powers of Attorney and include the validation information on the borrower's application and investor/lender disclosure form.
    - Requalify the borrowers, if at refinancing someone is added or taken off the property's title.
- Verify information that is on the borrower's application. If you have reason to doubt the accuracy of information on the borrower's application or supporting documentation, advise each prospective lender in writing as soon as possible.

- Establish a link between the borrower and supporting documents by asking the borrower to sign the supporting documents.

- Compare the borrower's signature and information across documents to confirm consistency.

Verify identification

- Verify identification through multiple reliable sources (e.g., request more than one piece of identification, consider multi-factor authentication (MFA)). [20], [21]

  - The minimum requirement is one piece of valid government-issued photo identification and one piece of secondary identification

- Compare legal names on ID to other documents that connect the borrower to the property, such as property tax and/or utility bills.

- Ensure the correct form of identification is used. Do not accept Ontario health cards or Social Insurance Number (SIN) cards.

- Check if the identification is valid. If the identification is expired or is being used by someone other than the person whose name is on it, it is not valid. If it is not valid, ask for valid identification.

- Verify Ontario driver's licences on the Ministry of Transportation's Driver's Licence Check website.

Confirm other information

- Verify employment and income (including non-employment income) listed on the borrower's application through multiple sources. For example, contact employer, check paystubs, tax returns and bank statements for direct deposits.

- Cross check information provided in the mortgage application against the credit report (if available) or other supporting documentation and address any inconsistencies (e.g., employer, occupation, birthdate, phone number, address).

- Check the borrower's marital status, including whether spousal support is being paid or received.

- Check if the borrower has dependents, including whether parental support is being paid or received.

- Verify the source of funds being used for the down payment. Check financial statements and gift letters (if all or part of the down payment is a gift) to ensure the borrower has the required funds for the down payment.

- Check rental agreements and verify rental income, If applicable.

- Verify the purpose of the mortgage (e.g., purchase, refinancing the borrower's existing property – including the intended use of any additional funds, such as for debt consolidation or another reason). Determine if the property will be owner-occupied or an

Disclosure

When you are disclosing the material risks of a mortgage to a client (borrower and/or, investor/lender), describe the measures you have taken to detect mortgage fraud.

- When disclosing an actual or potential conflict of interest to a client, explain what measures you have taken to minimize the risk of fraud that could arise from the actual or potential conflict of interest.

- Ensure the client understands the risks of the mortgage, including the risk of mortgage fraud.

FSRA will not consider a client's signature on disclosure documents, on its own, as sufficient proof the client was adequately informed about the mortgage and its risks.

- Keep records of all disclosure information you provide your clients — this includes details of client discussions.

Private investing and lending

Brokers and agents transacting in private mortgage investments or lending transactions should:

- Review the Investor/Lender Disclosure Statement for Brokered Transactions (Form 1) and, if applicable, the Investor/Lender Disclosure Statement for Brokered Transactions: Addendum for Construction and Development Loans (Form 1.1). For a construction loan, you should document your due diligence in researching the developers and property to reduce the risk of mortgage fraud.

- If the investor/lender has waived the two business-day waiting period, review the waiver and rationale for the waiver. This period provides investors/lenders time to thoroughly review Form 1 and/or obtain independent legal advice. If the investors/lenders choose to reduce the waiting period, they must sign the Investor/Lender Disclosure Statement for Brokered Transactions: Waiver for Reducing the Waiting Period (Form 1.2).

- Review documentary evidence of the borrower's ability to meet the mortgage payments or a viable plan to repay the mortgage/exit strategy.

- Make inquiries and confirm the lender's/investor's source of funds.

Note: Forms 1 and 1.1 must be signed by a licensed mortgage broker.

Appraisals

Brokers and agents should ensure:

- The appraisal was prepared and signed by an appraiser with a CRA (Canadian Residential Appraiser), AACI (Accredited Appraiser Canadian Institute), DAR (Designated Appraiser Residential), or DAC (Designated Appraiser Commercial) designation. If not, explain why.

- The appraisal is not older than 12 months if the features of a property, the project or investment have not materially changed.

- The appraisal is not older than 3-6 months if the features of a property, project or investment have materially changed or during periods of real estate market volatility.

- For investments in a construction loan, they can explain / understand the property's "as is" value compared to the projected value on completion.

- If there is no appraisal for the property, that they can explain why there is no appraisal.

After a mortgage closes

After a mortgage closes, brokers and agents:

- Should continue to be on the lookout for mortgage fraud (e.g., for a brokerage, at the time of renewal, extension, refinancing, etc.; and for an administrator when monitoring the performance of a mortgage under administration, at the time of extension, etc.).

- Must inform the lender in writing if they have reason to doubt the mortgage is lawful, the borrower's legal authority to mortgage the property, or the accuracy of information on the borrower's application.

FSRA does not regulate anti-money laundering. However, the above steps will also be important for brokerages and administrators to combat being used to facilitate money laundering. Breaches of AML laws may indicate that brokerages and administrators may not have had adequate P&P in place to detect and prevent fraud. Involvement by a brokerage, broker, agent or administrator in money laundering may indicate that the licensee is not suitable to hold a licence under the MBLAA.

Reference - Helpful resources

For Industry:

- MBRCC's Anti-Fraud Resources for Industry

- FINTRAC[22] - Verifying the identity of a client: Credit file method

- FINTRAC - Guidance on methods to verify the identity of persons and entities

For Consumers:

- FSRA's Mortgage Fraud: What to Watch for
- MBRCC's Anti-Fraud Resources for Consumers

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[1] O. Reg. 188/08, s. 40, and O. Reg. 189/08, s. 25.

[2] O. Reg. 410/07, s. 2 and 3

[3] O. Reg. 189/08, section 10.1; O. Reg. 188/08, s. 14.2

[4] O. Reg. 187/08, s.3

[5] O. Reg. 188/08, s. 40(1).

[6] O. Reg. 189/08, s 25(1).

[7] O. Reg. 188/08, s. 40(3), clause 8

[8] O. Reg. 188/08, s. 10-11; O. Reg. 189/08, s.9; O. Reg. 189/08, s. 25(3)

[9] O. Reg. 188/08, s.12

[10] O. Reg. 188/08, s. 14.2; O. Reg. 189/08, s.10.1

[11] See Key Steps for steps to conduct identity verification.

[12] O. Reg. 188/08, s.10 and 11

[13] O. Reg. 189/08, s. 9; O. Reg. 189/08, s. 25(3), clause 1

[14] O. Reg. 187/08, s.3.1; O. Reg. 188/08, s. 14.2; O. Reg. 189/08, s. 10.1

[15] O. Reg. 187/08, s.3.1; O. Reg. 188/08, s. 14.2; O. Reg. 189/08, s. 10.1

[16] O. Reg. 187/08, s.9; O. Reg. 188/08, s.7; O. Reg. 189/08, s.6

[17] Sections 20.5-20.8 of the Financial Services Regulatory Authority of Ontario Act, 2016.

[18] The term 'mortgage fraud' is used broadly in the Key Steps and includes the intentional misstatement, misrepresentation, or omission of information that a lender or investor relies on to determine whether a mortgage/investment in a mortgage should be provided.

[19] The Key Steps replace the checklist developed by the Financial Services Commission of Ontario (FSCO) in 2016 -- MB0010ORG – Checklist on Detecting and Preventing Mortgage Fraud.

[20] FINTRAC provides useful guidance on identification verification and can also be a resource to licensees. See Methods to Verify the Identity of Persons and Entities.

[21] MFA is a method of identity verification that uses multiple categories of information (e.g., what the individual knows (e.g., passwords), possess (e.g., debit/credit cards), and who the individual is (e.g., fingerprints/facial recognition). MFA may be done inhouse by a brokerage/administrator or by utilizing third-party solutions.

[22] Although mortgage licensees are not considered reporting entities under *the Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), these Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) resources provide helpful steps for identity verification.