

# Interpretation



**Effective Date:** TBD

**Identifier:** No. MB0052INT

## Proposed Guidance: 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; and
- 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<sup>[1]</sup>. Mortgage administrators are required to, among other things, maintain and manage trust accounts<sup>[2]</sup> and maintain a financial guarantee<sup>[3]</sup> 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 various MBLAA requirements help protect the consumer by reducing the risk of funds being misplaced, stolen, or otherwise treated improperly.

# Interpretation

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

Section 3 of O. Reg. 193/06	Financial Information
<p><b>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.</b></p>	<p>Re: Financial Statements</p> <p>FSRA<sup>[4]</sup> 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.</p>
<p><b>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.</b></p>	<p>Re: Internal Controls</p> <p>FSRA considers an auditor's report to be "in a form approved by FSRA" if:</p> <ul style="list-style-type: none"> <li>• it documents all deficiencies in internal controls that the auditor has identified in an audit of the mortgage administrator's financial statements whether those deficiencies were communicated by the auditor to those charged with governance and management in writing or orally, as required under Canadian Auditing Standard (CAS) 265</li> <li>• the auditor's communication covers deficiencies in the administrator's internal controls that would</li> </ul>

**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.**

prevent or detect and correct misstatements in the administrator's financial statements

- the internal controls assessed must include those relating to the administrator's financial reporting system, trust account system, and related lender/investor recordkeeping system
- where the auditor has not identified any deficiencies in the internal controls, the auditor's communication must state that no deficiencies in the administrator's internal controls were noted

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:

- provides the auditor's reasonable assurance on the administrator's compliance<sup>[5]</sup> with sections 23, 24, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 of O. Reg. 189/08<sup>[6]</sup>
- 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)

**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<sup>[7]</sup> and must be audited by a licensed public accountant.**

- is prepared in accordance with the CPA Canadian Standard on Assurance Engagements (“CSAE”) 3001 and CSAE 3530, where:
  - the management of the administrator provides the auditor with an explicit statement about the administrator’s compliance with the above-stated sections of O. Reg. 189/08; and
  - 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”) with an active Public Accounting licence from Chartered Professional Accountants Canada; and
  - CPA who is listed on the CPA public registry as being in good standing

- FSRA expects an auditor to have knowledge of the applicable requirements for mortgage administrators under 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
- The CPA who audits the financial statements must also prepare the required reports<sup>[8]</sup>

## Enforcement

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*.

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 including 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 **[TBD]** and will be reviewed no later than **[TBD]**.

Mortgage administrators must ensure compliance with this Guidance for the reporting periods beginning **[TBD]**.

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:** [TBD]

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<sup>[1]</sup> O. Reg. 189/08, s. 18

<sup>[2]</sup> O. Reg. 189/08, s. 33-39

<sup>[3]</sup> O. Reg. 189/08, s. 28

<sup>[4]</sup> 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*.

<sup>[5]</sup> May be referred to as the 'reasonable assurance report'.

<sup>[6]</sup>

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

<sup>[7]</sup> Note that this is now known as the Handbook of Chartered Professional Accountants Canada.

<sup>[8]</sup> Regulation 193/08, s. 3(3)