

# CAP response to Private Residential Mortgage Lending in Ontario Report 2023

The "Private Residential Mortgage Lending in Ontario Report 2023" examines the evolving landscape of private mortgage lending in Ontario against a backdrop of declining mortgage originations overall. This decline reflects broader market conditions, including rising interest rates, high home prices, and tighter underwriting criteria by traditional lenders, such as banks and credit unions. Consequently, private mortgage lenders have gained an increased market share, with a notable rise in activity among non-individual private lenders, such as corporations and mortgage investment entities (MIEs) which can result in devastating consequences for vulnerable consumers.

Considering these findings, CAP recommends that FSRA enhance its oversight and consumer protection efforts in the private mortgage sector:

## 1. Enhanced Consumer Education and Outreach

- **Expand Educational Campaigns:** Building on existing initiatives, FSRA should broaden its outreach to ensure consumers understand the implications of private mortgages, including costs, terms, and the importance of exit strategies. This could involve targeted multi-lingual educational materials, workshops, questions consumers should ask, and partnerships with community organizations.
- **Digital Tools and Resources:** Develop interactive digital tools, such as online calculators and decision aids, to help consumers evaluate the cost and risk of private mortgages relative to traditional options.

## 2. Strengthening Regulatory Oversight

- **Intensify Supervision and Enforcement:** FSRA should continue to prioritize private mortgage brokering in its supervisory activities. This includes conducting more frequent examinations of mortgage brokerages, particularly those with significant private mortgage activity, to ensure compliance with regulatory requirements.
- **Data-Driven Supervision:** Utilize data from Teranet's LendView™ platform and other sources to identify trends, potential risks, and areas requiring more intensive oversight. FSRA should consider developing predictive analytics to proactively identify emerging risks in the private mortgage market.

### 3. Refinement of Licensing and Education Requirements

- **Review and Update Licensing Standards:** Regularly review the enhanced licensing requirements for brokers and agents dealing with private mortgages to ensure they remain relevant and effective. This may include additional training modules focused on the complexities of private lending, risk assessment, and consumer protection.
- **Ongoing Professional Development:** Introduce mandatory continuous education requirements for licensed brokers and agents on private mortgage trends, best practices, and evolving regulatory standards.

### 4. Enhanced Product Suitability and Consumer Protection Measures

- **Expand Product Suitability Assessments:** Work with industry stakeholders to refine and enforce the principles of mortgage product suitability assessments.
- **Guidance on Exit Strategies:** Develop specific guidance for brokers to ensure that borrowers are adequately advised on exit strategies, especially for those using private mortgages as a bridge to traditional financing.

### 5. Collaboration and Stakeholder Engagement

- **Engage with Industry and Consumer Groups:** Strengthen collaboration with industry associations, consumer advocacy groups, and other regulators to share insights, address emerging issues, and develop coordinated approaches to market supervision and consumer education.
- **Feedback Loops:** Establish formal mechanisms for ongoing feedback from stakeholders, including consumers, brokers, and lenders, to continually refine FSRA's regulatory approach and identify areas for improvement.

### 6. Monitoring and Reporting

- **Annual Reporting and Transparency:** FSRA should continue to publish annual reports on private mortgage lending trends, providing transparency on market developments and FSRA's regulatory response. These reports should include metrics on the effectiveness of FSRA's interventions and any shifts in consumer outcomes.
- **Enhanced Risk Reporting:** Introduce regular risk assessments or bulletins that highlight key risks and FSRA's priorities for the private mortgage market, enabling stakeholders to stay informed and adjust practices accordingly.

## 7. Exploring Legislative and Regulatory Enhancements

- **Enhanced Disclosure Requirements**

**Standardized Disclosure Forms:** Mandate the use of standardized plain language disclosure forms that clearly outline all costs, terms, fees, and risks associated with private mortgages. This should include a detailed explanation of interest rates, prepayment penalties, additional fees, and any other conditions that may affect the borrower.

**Clear Risk Warnings:** Require that private mortgage disclosures include explicit risk warnings, particularly around high-interest rates, potential for foreclosure, and the implications of failing to have a robust exit strategy.

- **Strengthening Suitability and Affordability Assessments**

**Mandatory Suitability Assessments:** Introduce and enforce stricter requirements for brokers to conduct comprehensive suitability assessments before recommending private mortgages. This includes verifying the borrower's ability to afford the mortgage under various scenarios, such as interest rate increases.

**Affordability Checks:** Introduce mandatory affordability checks that go beyond current requirements, ensuring that borrowers are not burdened by high-cost private mortgages that they should not have taken on. This could involve setting affordability thresholds or guidelines that brokers must follow.

- **Tightening Regulatory Oversight of Private Lenders**

**Licensing for Private Lenders:** Consider introducing direct licensing or registration requirements for private mortgage lenders who are not already regulated. This would bring these lenders under FSRA's direct oversight, allowing for better monitoring of their practices.

**Minimum Standards for Underwriting:** Develop and enforce minimum underwriting standards for private mortgage lenders, including the need for adequate borrower assessments and risk management protocols.

- **Enhanced Monitoring and Reporting Obligations**

**Regular Reporting to FSRA:** Require private lenders and mortgage brokers to submit regular reports to FSRA detailing their lending activities, including the number of mortgages issued, terms, borrower profiles, and delinquency rates. This data would help FSRA identify trends and potential risks in real time.

Public Reporting of Lender Performance: Explore the feasibility of public reporting or grading of private mortgage lenders based on their performance, compliance record, and consumer feedback. This would provide consumers with valuable information when choosing lenders.

- **Introduce Consumer Protection Funds or Safeguards**

Private Mortgage Insurance Requirements: Consider mandating that private mortgages include some form of mortgage insurance or protection to safeguard against defaults. This would provide an additional layer of security for both borrowers and investors.

Establish a Consumer Compensation Fund: Explore the establishment of a compensation fund for consumers harmed by private mortgage transactions due to broker or lender misconduct. This fund could be financed through industry levies or fines collected from non-compliant entities.

- **Regulatory Sandbox for Testing New Rules**

Pilot Programs for New Regulations: Implement a regulatory sandbox specifically for private mortgage products, allowing FSRA to evaluate new rules and approaches in a controlled environment. This would enable FSRA to gather data and refine regulations before full implementation.

Innovation-Friendly Regulation: Encourage responsible innovation in the private mortgage sector by providing clear regulatory guidance and pathways for new, consumer-friendly products that meet FSRA's standards.

- **Stricter Penalties for Non-Compliance**

Enhanced Penalties for Misconduct: Increase penalties for brokers and lenders who fail to comply with FSRA's regulations, particularly in areas related to disclosure, suitability, and consumer protection. This could include higher fines, suspension, or revocation of licenses for severe breaches.

Whistleblower Protections and Incentives: Strengthen protections for whistleblowers within the mortgage brokering industry who report non-compliance or misconduct. Consider implementing incentives for reporting, like those seen in other regulated sectors.

- **Improve Industry Accountability**

Code of Conduct for Private Lenders: Develop a code of conduct for private mortgage lenders, setting out expectations for ethical behavior, transparency, and consumer-centric practices. This could be tied to licensing or registration requirements.

Third-Party Audits: Require periodic third-party audits of private mortgage lenders and brokers to ensure compliance with FSRA's regulatory standards and identify areas for improvement.

- **Greater Collaboration with Other Regulators**

Joint Regulatory Initiatives: Collaborate with other regulatory bodies, such as the Ontario Securities Commission (OSC) and the Office of the Superintendent of Financial Institutions (OSFI), to ensure a coordinated approach to private mortgage regulation, particularly where there are overlaps with investment products.

Cross-Jurisdictional Coordination: Work with regulators in other provinces to harmonize standards and share /leverage best practices for regulating private mortgage markets, fostering a more consistent regulatory environment across Canada.

- **Enhanced Consumer Complaint Mechanisms**

Dedicated Consumer Complaint Portal: Establish a dedicated portal for consumers to lodge complaints about private mortgage lenders and brokers. FSRA should ensure timely investigation and resolution of complaints and use the data to identify systemic issues.

Transparency in Complaint Outcomes: Publish anonymized summaries of complaint outcomes, highlighting common issues and FSRA's actions in response. This transparency can deter bad practices and inform the public.

By implementing these actions, FSRA can strengthen its oversight of the private mortgage market, enhance consumer protection, and ensure that both borrowers and investors are better informed and protected against the unique risks associated with private mortgages.

Sincerely,

Consumer Advisory Panel (CAP) Financial Services Regulatory Authority of Ontario