

# Guidance

☒ Interpretation

☐ Approach

☒ Information

☐ Decision



**Effective Date:** TBD

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## Preventing and Detecting Mortgage Fraud

### Purpose

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

It also informs industry about the [Checklist for Detecting and Preventing Mortgage Fraud](#). Licensees can use the Checklist to limit mortgage fraud in the sector.

### Scope

This Guidance applies to the following FSRA licensees:

- mortgage agents
- mortgage brokers
- mortgage brokerages
- mortgage administrators

## Rationale and context

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

- borrowers paying higher fees or inflated interest rates, or obtaining a mortgage they cannot afford
- lenders losing money if borrowers cannot repay a mortgage which was obtained based on inaccurate or fraudulent information given to the lender

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

- “Fraud for shelter” occurs when a borrower/lender/agent/broker provides false or misleading employment, income, or other documentation to qualify the borrower for a mortgage to purchase a home. In these cases, ownership of the property is the ultimate objective.
- “Fraud for profit” occurs when a person falsifies information to profit from the mortgage transaction — for example, when a mortgage agent or broker withholds or changes information submitted to a lender to ensure that the mortgage is granted so they can earn a commission.

The requirements of the MBLAA and its regulations are intended to prevent mortgage fraud by protecting borrowers and lenders.

Section 43 of the MBLAA prohibits licensees from engaging in certain practices which amount to mortgage fraud. These practices include giving, assisting, inducing or counselling another person or entity to give or assist in giving any false or deceptive information when carrying on the business of dealing, trading, lending or administering mortgages in Ontario.

In addition, there are three Standards of Practice Regulations under the MBLAA that include key requirements to prevent 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

The [Checklist for Detecting and Preventing Mortgage Fraud](#) captures key obligations of licensees under the MBLAA and its regulations aimed at combating mortgage fraud.

The Mortgage Broker Regulators' Council of Canada (MBRCC) [Code of Conduct](#) for the Mortgage Brokering Sector also sets out principles that help licensees comply with the MBLAA and its regulations and prevent and detect mortgage fraud.

## FSRA Mandate

In supervising and regulating the mortgage brokering sector, FSRA is guided by its statutory objects. Relevant statutory objects to this guidance include:

- 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
- 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

## Principles

FSRA uses a general supervision approach to achieve its statutory objects:

- *Proactive, Risk-based Approach* – FSRA focuses its supervision on high-risk licensees and their activities.
- *Focus on Governance* – FSRA expects mortgage brokerages and mortgage administrators to have effective internal controls and supervision to promote a strong compliance culture and mindset among licensees to identify and manage risks arising from their dealings with consumers.
- *Proportionate Approach to Discipline* – FSRA uses a range of compliance and enforcement tools to influence marketplace behaviour. The tools used depend on, for example, the nature and extent of risks to consumers, mitigating actions taken by licensees, and past supervisory findings.

# Interpretation

Licensees must comply with the Standards of Practice (O. Reg. 187/08, O. Reg. 188/08 and O. Reg. 189/08) prescribed for their licence(s) in accordance with subsections 7(4), 8(4), 9(4) and 10(4) of the MBLAA. Below is FSRA's interpretation of key requirements in these regulations with respect to preventing mortgage fraud.

- Licensees must not, either by act or omission, facilitate fraud, dishonesty, crime, or illegal conduct.
  - [O. Reg. 187/08 section 3.1](#)
  - [O. Reg. 188/08 section 14.2](#)
  - [O. Reg. 189/08 section 10.1](#)
- Licensees must not include any false, misleading, or deceptive information. This includes, but is not limited to, their public relations materials.
  - [O. Reg. 187/08 section 9](#)
  - [O. Reg. 188/08 section 7](#)
  - [O. Reg. 189/08 section 6](#)
- Mortgage brokerages cannot act as a representative of a borrower, lender, or investor if they have reason to doubt that the mortgage, its renewal, or the investment in it is unlawful.
  - [O. Reg. 188/08 section 12](#)
- Mortgage administrators cannot administer a mortgage if they have reason to believe that the mortgage, its renewal, or the investment in it is unlawful.
  - [O. Reg. 189/08 section 10](#)
- Mortgage brokerages must take reasonable steps to verify a borrower's legal authority to mortgage a property. See the Checklist 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](#)

- Mortgage 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 submitted 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](#)

- Mortgage brokerage written policies and procedures must include measures for fraud prevention.

- [O. Reg. 188/08 subsection 40\(3\)8](#)

## Compliance

When mortgage fraud is identified, FSRA will assess whether any actions by the agent/broker and brokerage could have reasonably prevented the fraud. This applies to licensees even if they did not participate in the fraud.

This determination could result in FSRA highlighting non-compliance in its supervisory findings. It may also affect the continued suitability of the licensee.

Failure to comply with requirements of the MBLAA and its regulations, as they relate to preventing mortgage fraud, may result in compliance or enforcement action, including letters of caution, the imposition of licence conditions, suspension, revocation of licence, and enforcement proceedings seeking administrative monetary penalties.

FSRA also considers adherence to the Code of Conduct, where it aligns with the requirements under the MBLAA or its regulations, as a factor in its assessment of whether an individual or entity is suitable for licensing.

# Information

The [Checklist for Detecting and Preventing Mortgage Fraud](#) is a tool that licensees can use to help prevent and detect mortgage fraud.

In its supervisory reviews, FSRA will highlight non-compliance with all aspects of the Checklist and may enforce against those that align with requirements in the MBLAA.

## Effective date and future review

This Guidance is effective [date].

Once effective, this Guidance replaces Bulletin [No. M-01/16 / MB0007ORG](#) - Your responsibilities to prevent mortgage fraud and [MB0016ORG - FAQs on FSCO's Checklist on Detecting and Preventing Mortgage Fraud](#). The Checklist replaces [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](#). The Interpretation section sets out FSRA's views of requirements under its legislative mandate (i.e., legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action. The Information content describes FSRA's views on certain topics without creating new compliance obligations for regulated persons.

## Appendices and reference

### Helpful Resources

For Industry:



- FSRA's [Checklist for Detecting and Preventing Fraud](#)
- MBRCC's [Anti-Fraud Resources for Industry](#)

For Consumers:

- FSRA's [Mortgage Fraud: What to Watch for](#)
- MBRCC's [Anti-Fraud Resources for Consumers](#)