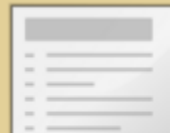




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PRINT

Requirements for Promoting Syndicated Mortgage Investments



Bulletin

No. M-01/15
Mortgage
Brokering

To all mortgage brokerages who are dealing in syndicated mortgages

The Financial Services Commission of Ontario (FSCO) has noted that a number of mortgage brokerages have entered into arrangements with developers and promoters that want to attract investors for syndicated mortgage investments.

FSCO is cautioning mortgage brokerages that have such arrangements with unlicensed businesses that they may be exposing their brokerages to contraventions of the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA).

Soliciting or Providing Information

Under section 2 of the MBLAA, businesses that solicit investors or provide information about syndicated mortgage investments must be licensed as mortgage brokerages. This requirement applies even if the unlicensed business that is promoting a syndicated mortgage investment refers investors to a licensed mortgage brokerage to close the transaction.

Soliciting or providing information includes:

- having websites;
- presenting at informational seminars;
- promotional booths at investor trade shows; or

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These bulletins may include forms that are no longer up-to-date or accurate. Readers should visit the [forms](#) section of the

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Until FSRA issues new regulatory direction, all existing regulatory direction remains in force.

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A business that provides information about syndicated mortgage investments must be licensed as a mortgage brokerage. Mortgage agents and brokers cannot operate an unlicensed business in order to provide information about syndicated mortgage investments, nor can they operate outside of their licensed mortgage brokerage's oversight.

It should be noted that the appearance of a mortgage brokerage's name on websites or promotional materials that are controlled and distributed by an unlicensed business may expose the brokerage to non-compliance with the MBLAA.

FSCO has taken action against licensed mortgage agents and brokers that own and/or operate unlicensed businesses providing information about syndicated mortgage investments. FSCO will continue to take such action and potentially against the mortgage brokerages that were required to supervise them.

Fees or Payments

O. Reg. 188/08, s. 44(1) and (2)

A mortgage brokerage may only pay another brokerage for dealing in mortgages. In other words, paying fees to any unlicensed business that is dealing in mortgages (e.g., an unlicensed business that has solicited syndicated mortgage investments) contravenes the regulation prohibiting the payment of fees to unlicensed businesses.

A mortgage brokerage that receives payment for referring an investor to another brokerage must disclose to the investor: O. Reg. 188/08, s. 23.

- that the mortgage brokerage will receive a payment for the referral; and
- the nature of the mortgage brokerage's relationship with the other brokerage.

The brokerage must disclose this information before the referral is made or when making the referral.

Suitability of the Investment

O. Reg. 188/08, s. 24 (1). , O. Reg. 188/08, s. 25 (1). and O. Reg. 188/08, s. 27 (1).

The MBLAA requires mortgage brokerages to take reasonable steps to ensure that the mortgage investment they recommend is suitable based on the client's needs and circumstances.

The MBLAA also requires brokerages to advise a client of the material risks of the investment and disclose information about potential conflicts of interest and evidence of the borrower's ability to meet the mortgage payments.

Mortgage brokerages must ensure that investors in syndicated mortgage investments understand potential risks, such as:

- Early withdrawals. It may be difficult for investors to withdraw money early from a syndicated mortgage investment. The investor may need to find another investor to take over the syndicated mortgage investment.
- The additional risks of construction loans. If a syndicated mortgage is for a construction loan, investors need to understand the current value of an undeveloped property and the projected value of the project upon completion.
- Unforeseen circumstances. Investors need to understand what would happen if the project cost more than expected and the developer runs out of money and cannot complete the project.
- The position of the mortgage. Investors need to know whether the syndicated mortgage investment is a first, second or subsequent mortgage. Investors should also be aware if the position of this mortgage may change in the future.
- Requirements to invest more money. Investors need to understand situations where they may be required to put in more money. For example, if the borrower defaults on the mortgage, investors may incur additional costs to take legal action against the borrower.

Proof of Investor Disclosure

O. Reg. 188/08, s. 46

FSCO will not consider evidence of the investor's signature on relevant documentation, on its own, as sufficient proof that the client was adequately informed about the investment and its risks.

Mortgage brokerages must keep appropriate documentation on file. This includes records that detail their discussions with clients.

Advertising

O. Reg. 188/08, s. 7 and O. Reg. 188/08, s. 16

FSCO is also cautioning that it is misleading to advertise syndicated mortgage investments if the advertisement fails to reflect the information that must be provided on the Investor/Lender Disclosure Statement. For example, it is misleading to advertise syndicated mortgage investments that promote the projected value of a completed construction project without also providing the project's current value.

The MBLAA also prohibits a brokerage from guaranteeing a mortgage investment. This includes using the word "guarantee" and other words that may suggest to an investor that the investment is risk-free.

Brian Mills
Chief Executive Officer and Superintendent of Financial Services

June 30, 2015

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