Changes to syndicated mortgage rules: New FSCO forms available

Bulletin

No. M-01/18
Mortgage Brokering

To all mortgage brokerages in Ontario who are dealing in syndicated mortgages

The Financial Services Commission of Ontario (FSCO) is issuing this bulletin to remind you of the amended regulation under the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA) effective **July 1, 2018**. The amendments expand your responsibilities to ensure that a non-qualified syndicated mortgage investment/loan is suitable for a client (i.e., investor/lender) based on the needs and circumstances of the client. In addition, mortgage brokerages are also required to provide clients with expanded disclosures, including written disclosure of the material risks of a non-qualified syndicated mortgage.

New Superintendent forms have been developed to support the implementation of these amendments. The three new forms are:

- Form 3.0 – Investor/Lender Information for Investor/Lender in a Non-qualified Syndicated Mortgage (Form 3.0 – Investor/Lender Information)
- Form 3.1 – Suitability Assessment for Investor/Lender in a Non-qualified Syndicated Mortgage (Form 3.1 – Suitability Assessment)
- Form 3.2 – Disclosure Statement for Investor/Lender in a Non-qualified Syndicated Mortgage (Form 3.2 – Disclosure Statement)

NOTE: The bulletins that are posted on this website are provided for historical reference purposes. The information in these bulletins is accurate on the date the information is published, but is subject to change and may be replaced by more recent bulletins.

An order that is made regarding a licence holder reflects a situation at a particular point in time. The status of a licence holder can change. Readers should check the current status of a person's or entity's licence on the **Licensing Link** section of FSCO's website. Readers may also wish to contact the person or entity directly to get additional information or clarification about the events that resulted in the order.

These bulletins may include forms that are no longer up-to-date or accurate. Readers should

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Mortgage brokerages must begin using these forms on **July 1, 2018** for any non-qualified syndicated mortgage transactions. These **new forms are available on FSCO's website**.

visit the **forms** section of the FSCO website, to ensure they are using the most recent version of a FSCO form.

Ontario Regulation (O. Reg.) 188/08 Mortgage Brokerages: Standards of Practice

To strengthen investor protections relating to syndicated mortgages, the Ministry of Finance (MOF) introduced amendments to O. Reg.188/08 Mortgage Brokerages: Standards of Practice effective July 1, 2018.

The amendments place additional responsibilities on mortgage brokerages for transactions dealing with the selling of non-qualified syndicated mortgages to investors/lenders. The amendments achieve this objective by exempting qualified mortgages.

Non-Qualified versus Qualified Syndicated Mortgage

Non-qualified syndicated mortgages are all syndicated mortgages that do not meet the regulatory definition of a qualified syndicated mortgage. As defined under the amended regulation O. Reg. 188/08 s. 1(2) and s. 1(3), a qualified syndicated mortgage is a syndicated mortgage that meets all of the following criteria:

1. It is negotiated or arranged through a mortgage brokerage.
2. It secures a debt obligation on property that,
   i. is used primarily for residential purposes,
   ii. includes no more than a total of four units, and
   iii. if used for both commercial and residential purposes, includes no more than one unit that is used for commercial purposes.
3. At the time the syndicated mortgage is arranged, the amount of the debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90 per cent of the fair market value of the property relating to the mortgage, excluding any value that may be attributed to proposed or pending development of the property.
4. It is limited to one debt obligation whose term is the same as the term of the syndicated mortgage.
5. The rate of interest payable under it is equal to the rate of interest payable under the debt obligation.

A syndicated mortgage that secures a debt obligation incurred for the construction or development of property is not a qualified syndicated mortgage.

New Mortgage Brokering Forms

The amendments now require mortgage brokerages transacting in non-qualified syndicated mortgages to collect and document on Superintendent-approved forms information relating to:

- Knowing the client, including information about the financial circumstances, investment needs and objectives, risk tolerance, level of financial knowledge, investment experience and relationship with the mortgage brokerage (if any) of the prospective investor/lender. (Form 3.0 – Investor/Lender Information)
- Completion of an assessment of whether or not the proposed non-qualified syndicated mortgage is suitable for the prospective investor/lender (Form 3.1 – Suitability Assessment) given the information about the investor/lender in Form 3.0 – Investor/Lender Information and the features and risks of the proposed syndicated mortgage investment described in Form 3.2 – Disclosure Statement
- Expanded disclosures to each prospective investor/lender regarding, for example, property appraisal and, in cases where the borrower is not an individual, the financial statements of the borrower. (Form 3.2 – Disclosure Statement)

Expanded Policies and Procedures

Mortgage brokerages are currently required to establish and implement policies and procedures that are designed to ensure that the mortgage brokerage and its mortgage brokers and agents comply with all the requirements established under the MBLAA.

To be compliant with the amended regulation, these policies and procedures must now include how the mortgage brokerage will verify that an investor/lender is eligible to invest in, or make a loan in respect of, a non-qualified syndicated mortgage.

Complaints

Currently mortgage brokerages must have a process in place for resolving complaints from the public about the mortgage business activities of the mortgage brokerage or of its mortgage brokers or agents. With the new amendments, mortgage brokerages are now required to report complaints related to non-qualified syndicated mortgages to the Superintendent within 10 days of receipt of the complaint.

Mortgage brokerages must update their policies and procedures as well as their complaint resolution process to reflect the new changes to the regulation.

Investor/Lender Investment Limit

Pursuant to O. Reg. 188/08 s. 24.2(1), the amendments place a $60,000 investment limit on non-qualified syndicated mortgages in a 12-month period preceding a proposed syndicated mortgage investment transaction commencing July 1, 2018 for investors/lenders that are not part of a designated class of investors/lenders. Investors/lenders that are part of a designated class, as defined under O. Reg. 188/08 s. 2(1), are not subject to this limit.

Cooling Off Period

Pursuant to O. Reg. 188/08 s. 36(3), the amendments remove the investor/lender option to waive the minimum two-days 'cooling off' or waiting period.

Failure to comply with the MBLAA may expose the mortgage brokerage to enforcement action, including licence suspension or revocation and administrative monetary penalties. If you are unsure of your mortgage brokerage's responsibilities, please seek direction from your principal broker or **contact FSCO**.

Brian Mills
Chief Executive Officer and Superintendent of Financial Services (Interim)
June 28, 2018