



# Compliance Checklist for Managing the Mortgage Administrator, Keeping Records and Trust Accounts as of January 1, 2009

This Compliance Checklist was developed by the Financial Services Commission of Ontario (FSCO) to assist Mortgage Administrators in complying with the new regulations relating to standards of practice (Ontario Regulation 189/08) and reporting requirements (Ontario Regulation 193/08) under the Mortgage Brokerages, Lenders and Administrators Act, 2006 (the Act). All of these requirements are set out in the law – they are not suggestions.

## Managing the Mortgage Administrator

- Establish and implement policies and procedures to ensure the Mortgage Administrator and every person acting on behalf of the Mortgage Administrator complies with the law.** Include policies and procedures on verifying the identity of lenders and investors, as well as identifying and disclosing potential conflicts of interest that the Administrator or any employee administering a mortgage may have in connection to that mortgage.
- Establish a complaints process for resolving complaints from the public.** Designate an employee or someone authorized to act on behalf of the Administrator to receive and attempt to resolve complaints from the public. Keep a record of all written complaints received from the public and all written responses.
- Maintain errors and omissions insurance.** Each Mortgage Administrator is required to have errors and omissions insurance that includes coverage for fraudulent acts. The insurance must cover a minimum of \$500,000 for any one occurrence and \$1 million for all occurrences during a 365-day period. Notify FSCO if errors and omissions insurance is cancelled or not renewed. Failure to comply with this requirement may result in a \$1,000 penalty.
- Maintain a financial guarantee of \$25,000.** The guarantee may be unimpaired working capital, or another form of financial guarantee that is acceptable to the Superintendent. Immediately notify FSCO if this financial guarantee is cancelled or does not meet the required amount. Failure to notify FSCO may result in a \$1,000 penalty.
- File an *Annual Information Return*** by March 31st each year. Late filings may be subject to a \$1,000 penalty.
- Inform FSCO of your mailing address and e-mail address.** All Mortgage Administrators must maintain a mailing address in Ontario that is suitable for service by registered mail. A valid e-mail address is also required. Failure to comply with this requirement may result in a monetary penalty.
- Notify FSCO within five days of the following changes:**
  - A change in the location of your principal place of business, or the opening or closing of any other office that is open to the public.
  - A change in your mailing address, e-mail address, telephone number or fax number.
  - A change in a Director, Officer or Partner.

A late notification may result in a \$500 penalty.

## Keeping Records

- Ensure the Mortgage Administrator maintains complete and accurate records of:**
  - Financial records for all mortgage administration activities in Ontario. (Financial records must distinguish between deemed trust funds and other assets).
  - Mortgage Administrator agreements on administering mortgages.
  - All documents and written information given to and received from lenders/investors and prospective lenders/investors.





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- Take adequate precautions to guard against falsification of records.**
- Retain all records the Mortgage Administrator is required to maintain for at least six years after expiry of records relating to mortgage administration agreements.**
- Store all records at your main office.** Inform FSCO if you are storing your records in a different location. Electronic records do not need to be stored at your main office as long as they can be quickly retrieved.

## Trust Funds

The following checklist only applies to Mortgage Administrators that receive trust funds.

- Notify FSCO within five days, if you are required to establish a trust account.** Late notifications may result in a \$1,000 penalty.
- Hold deemed trust funds in a trust account.** Money received from borrowers under a mortgage administration agreement needs to be held in a trust account. Funds not deemed to be trust funds are:
  - Funds earned by the Mortgage Administrator for rendered services, and
  - Funds for reimbursing expenses.
- Maintain a trust account in a bank, credit union, or loan and trust company in Ontario.**
- Conduct the following activities when administering the trust account:**
  - Deposit trust funds within two business days.
  - Keep trust funds separate from other funds.
  - Pay any interest earned to the beneficial owner, unless otherwise agreed upon in writing.
  - Disburse trust funds according to the terms under which the funds were received.
- Keep records of transactions related to trust funds.**
  - For deposits – note the amount, date, name of the person/business from whom the money was received and purpose of the deposit (including particulars of the mortgage).
  - For disbursements – note the amount, date, name of the person/business to whom funds were disbursed, as well as the purpose (including particulars of the mortgage).
  - For interest payments – identify the particular deposit of deemed trust funds to which the interest payment relates, the amount of interest associated with the deposit, and the date the interest was paid.
- Prepare a monthly reconciliation statement for the trust account.**
  - The statement should be signed by an Officer of the Mortgage Administrator, certifying it is accurate. This must be done within 30 days of receiving the monthly account statement from your financial institution (if statements are received), or 30 days after the month end.
  - The reconciliation statement must set out any differences between the Mortgage Administrator's records and the financial institution's records. It also needs to report the balance owing to each person/business, as of the date of the monthly account statement (if statements are received), or the last day of the month.
- Notify FSCO immediately if there are any shortfalls in the trust account.**





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- ❑ **Prepare an annual trust account reconciliation within 90 days of fiscal year end.** A Mortgage Administrator that is required to prepare monthly reconciliation statements during the fiscal year must also prepare an annual reconciliation statement for that year. The annual reconciliation statement must summarize the contents of each required monthly reconciliation statement.
  
- ❑ **File the following statements with FSCO within 90 days of fiscal year end:**
  - Audited financial statements for the year prepared in accordance with the Generally Accepted Accounting Principles, as set out in the *Handbook of the Canadian Institute of Chartered Accountants* and audited by a licensed public accountant. Late filings may result in a \$1,000 penalty.
  - The auditor's report on books, records and accounts of the Mortgage Administrator for the year.
  - The auditor's report about the Mortgage Administrator's trust account, as well as assets and liabilities under administration for the year.