FSRA is actively reviewing all FSCO regulatory direction, including but not limited to forms, guidelines and FAQs.

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

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Checklists for Non-Qualified Syndicated Mortgage Forms effective July 1, 2018

What's on this page:

The Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA) sets out the requirements that must be met by those wishing to conduct mortgage brokering activities in Ontario. It is important for licensees to understand and comply with the MBLAA and its regulations, including the requirement to use forms approved by the Superintendent for the collection, documentation and disclosure of information required by the 'letter and spirit' of the MBLAA.

Effective July 1, 2018, amendments to Mortgage Brokerages: Standards of Practice (Ontario Regulation [O. Reg.] 188/08) place expanded obligations on mortgage brokerages relating to transactions in non-qualified syndicated mortgage investments. Pursuant to O. Reg. 188/08 s. 24(1)1, **three new Superintendent forms** have been developed to support the implementation of these amendments.

The Financial Services Commission of Ontario (FSCO) developed these checklists to assist mortgage brokerages in completing the three new forms.

FSCO assesses mortgage brokerages' compliance with these important regulatory requirements as part of its mandate to ensure compliance and promote consumer protection. FSCO will continue to closely monitor mortgage brokerages' compliance in these areas and take appropriate regulatory action.

Form 3.0* – Investor/Lender Information for Investor/Lender in a Non-qualified Syndicated Mortgage

Mortgage Brokerage Licence Application - Instructions for completing the application

FAQs on Non-qualified Syndicated Mortgage Transactions

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* Having trouble downloading this form? See **Downloading and viewing dynamic forms**.

Adequate collection and documentation is critical to ensuring that a mortgage brokerage is meeting its obligations. **A mortgage brokerage must:**

- ☐ Complete Form 3.0 – Investor/Lender Information with the information supplied by the prospective investor/lender prior to the completion of Form 3.1 – Suitability Assessment and prior to the presentation of Form 3.2 – Disclosure Statement to the investor/lender
- ☐ Collect information from the prospective investor/lender, including personal and employment data, financial data, investment profile, and entity information (if applicable)
- ☐ Take reasonable steps to ensure accuracy and completeness of the information provided by the investor/lender, including but not limited to collecting the required documents to support the information
- ☐ Have the investor/lender sign the completed Form 3.0 – Investor/Lender Information to confirm its accuracy and completeness
- ☐ Provide the investor/lender with a copy of the completed and signed Form 3.0 – Investor/Lender Information pursuant to O. Reg. 188/08 s. 24.1(1)(c)
- ☐ Maintain and preserve a copy of Form 3.0 – Investor/Lender Information and all documents relating to it pursuant to O. Reg. 188/08 s. 46(1)4 and s. 48

Mortgage brokerages are required to establish and implement policies and procedures with respect to the verification of an investor/lender's identity and eligibility to invest/lend in respect of a non-qualified syndicated mortgage. These policies and procedures should ensure that adequate training is provided to brokers and agents so that this form is properly completed, reviewed, signed and dated. An up-to-date Form 3.0 must be available whenever an assessment of the suitability of a non-qualified syndicated mortgage investment/loan for the investor/lender is required. Mortgage brokerages must conduct a suitability assessment for each proposed non-qualified syndicated mortgage investment.

Form 3.1* – Suitability Assessment for Investor/Lender in a Non-qualified Syndicated Mortgage

* Having trouble downloading this form? See **Downloading and viewing dynamic forms**.

Assessing suitability is more than a mechanical fact-finding or "tick the box" exercise. **A mortgage brokerage must:**

- ☐ Complete Form 3.1 – Suitability Assessment only after completing Form 3.0 – Investor/Lender Information and Form 3.2 – Disclosure Statement
- ☐ Take reasonable steps and make all necessary inquiries to the investor/lender
- ☐ Engage in meaningful dialogue with the prospective investor/lender to obtain a detailed

more details.

understanding of the investor/lender's financial circumstances, investment needs and objectives, risk tolerance, level of financial knowledge, investment experience, relationship with the mortgage brokerage (if any), and any other relevant factors

☐ Once sufficient information to "know the client" is obtained, assess whether the proposed non-qualified syndicated mortgage investment is "suitable" for the investor/lender (See below for factors to consider with respect to a non-qualified syndicated mortgage investment)

☐ Document the outcome of the suitability assessment, including the basis for it

☐ Present only suitable mortgage investments to an investor/lender

☐ Review the form thoroughly with the investor/lender before both parties sign/initial the form

☐ Provide the investor/lender a copy of the completed and signed Form 3.1 – Suitability Assessment pursuant to O. Reg. 188/08 s. 24.1(1)(d)

☐ Maintain and preserve a copy of Form 3.1 – Suitability Assessment and all documents relating to it pursuant to O. Reg. 188/08 s. 46(1)4 and s. 48

The **suitability assessment** should involve, at a minimum, a consideration of the following factors with respect to a non-qualified syndicated mortgage investment:

☐ The proportion or degree of concentration of the potential investment in a non-qualified syndicated mortgage investment, relative to the investor/lender's total net financial assets (i.e., diversification)

☐ If the investor/lender has borrowed (or will borrow) money to invest/lend in a non-qualified syndicated mortgage investment

☐ If the investor/lender has withdrawn (or will withdraw) funds from a registered account to invest/lend in a non-qualified syndicated mortgage (some investments can take place within a registered plan, without requiring investors/lenders to withdraw the funds)

☐ The degree of risk in the investor/lender's investment portfolio (before and after the syndicated mortgage investment)

☐ The extent of the investor/lender's financial knowledge and investment experience

☐ The investor/lender's level of understanding of the risks involved in syndicated mortgage investments generally and the specific syndicated mortgage investment recommended by the mortgage brokerage

☐ The degree of dependence of the investor/lender in any future income streams associated with the syndicated mortgage investment (e.g., interest)

☐ The investor/lender's ability to quickly divest the non-qualified syndicated mortgage investment if the investor/lender suddenly needed capital or the return of principal

☐ The investor/lender's ability to comfortably withstand a delay in the time projected to access the principal amount or capital associated with the non-qualified syndicated mortgage investment, given the investor/lender's current financial circumstances (tolerance for delay)

☐ The investor/lender's willingness to accept the material risks identified

☐ The investor/lender's ability to accept risk or financial loss, given the investor/lender's financial circumstances

This is not an exhaustive list. If there are any other factors that could be relevant to the investor/lender in relation to a non-qualified syndicated mortgage investment, they must also be considered by the mortgage brokerage.

Note: FSCO expects mortgage brokerages to take extra care in complying with their suitability obligations when dealing with prospective investors/lenders who are seniors, retirees, individuals living on a fixed income, or individuals who otherwise may be in a position of vulnerability. A loss from a mortgage brokerage's failure to comply with these obligations may have particularly devastating consequences for these vulnerable groups.

Form 3.2* – Disclosure Statement for Investor/Lender in a Non-qualified Syndicated Mortgage

* Having trouble downloading this form? See **Downloading and viewing dynamic forms**.

Mortgage brokerages must complete Form 3.2 – Disclosure Statement for each transaction in a non-qualified syndicated mortgage. Borrowers/developers may raise funds through non-qualified syndicated mortgages in phases or stages. If this is the case, each phase/stage is considered a separate syndicated mortgage transaction that requires completion of a new or separate Form 3.2 – Disclosure Statement.

If, however, a borrower/developer raises the total amount of funds required in a single syndicated mortgage, but the funds are held in trust by a mortgage administrator and are advanced to the borrower/developer only as the borrower/developer meets prescribed milestones/requirements, such advances would not be considered separate syndicated mortgages and would not require completion of a new or separate Form 3.2 – Disclosure Statement.

A mortgage brokerage must:

☐ Complete Form 3.2 – Disclosure Statement for each transaction in a non-qualified syndicated mortgage

☐ Provide the investor/lender with a copy of the completed and signed Form 3.2 – Disclosure Statement and obtain a written acknowledgement of receipt from the investor/lender pursuant to O. Reg. 188/08 s. 31.1(1)1

☐ Maintain and preserve a copy of Form 3.2 – Disclosure Statement and all documents relating to it pursuant to O. Reg. 188/08 s. 46(1)4 and s. 48

The **disclosure statement** should, at a minimum:

☐ Disclose whether the mortgage brokerage is acting for the investor/lender, the borrower, or both the borrower and investor/lender

☐ Disclose to the investor/lender if the mortgage brokerage cannot verify the identity of another party to the transaction

☐ Disclose to the investor/lender the mortgage brokerage's relationship with each party to the transaction

☐ Disclose the fees or other remuneration the mortgage brokerage is receiving/paying in relation to the non-qualified syndicated mortgage transaction, as well as disclose the relationship with that person or entity

☐ Disclose material risks about the transaction that the investor/lender should consider

☐ Disclose actual or potential conflicts of interest that may arise from this transaction

☐ Disclose whether the administrator may receive, or may pay, any fees or other remuneration in connection with the administration of the mortgage, the basis for calculating the fees, and the payor's identity

☐ Disclose information about the property/security to be mortgaged (e.g., appraisal, purchase price, current zoning)

☐ Disclose information about the mortgage particulars (e.g., purpose of the non-qualified syndicated mortgage, nature of the investment/loan, terms, loan-to-value, subordination and rank of the mortgage)

☐ Disclose information about the borrower and/or developer (e.g., past projects/development experience)

The **two-day waiting period** for the disclosures in Form 3.2 – Disclosure Statement to an investor/lender transacting in a non-qualified syndicated mortgage cannot be **waived**. The waiting period enables the investor/lender to thoroughly review the proposed non-qualified syndicated mortgage and the disclosure statement, and allows time for the investor/lender to obtain independent legal advice.