

# Information Bulletin

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**Bulletin Number:** MB 04-004

**Topic:** CONFLICT OF INTEREST

**Issue Date:** APRIL 2004

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It has come to the attention of the Registrar of Mortgage Brokers (the “Registrar”) that some lenders now offer “points” or “bonus” plans to submortgage brokers referring deals to them. In some cases, we understand that the lender will permit the submortgage broker to “cash out” the points in the bank and take the equivalent accumulated cash value. Basically, the program works in the following fashion:

- A submortgage broker will receive an application for a mortgage from Borrower A. The submortgage broker will forward the application to the lender who offers the “points program.” The lender will approve the mortgage and provide the submortgage broker with a **range** of interest rates for Borrower A. Typically, there will a range of 60 to 75 basis points in the interest rates. In this case, let’s say the range is between 4.00% and 4.60%.
- The submortgage broker then selects the rate he believes his client, Borrower A, will accept. In this case, let’s say the rate was 4.5%. Borrower A reviews the offer from the lender, i.e. with an interest rate of 4.50%, and accepts. The submortgage broker “banks” (with the lender) the points not used for Borrower A (i.e. 50 basis points) to a maximum dollar amount.
- The submortgage broker then receives an application for a mortgage from Borrower B. The submortgage broker forwards the application to the same lender who offers the “points program.” The lender approves the mortgage and provides the submortgage broker with a range of interest rates for Borrower B. In this case, let’s say the range is between 4.50% and 5.00%.
- The submortgage broker knows that Borrower B cannot or will not accept that rate, so the submortgage broker uses the points banked from Borrower A to buy down the interest rate of Borrower B to a rate lower than 4.50%.

In this scenario, the submortgage broker has used the points from Borrower A to reduce the interest rate of another borrower, namely Borrower B, without Borrower A being aware of the situation. In fact, the submortgage broker may accumulate the points from several borrowers before using them to the benefit of a borrower; or before the submortgage broker takes the cash equivalent for his/her own benefit.

## CONFLICT OF INTEREST

The Registrar considers the banking of points or bonuses to be a conflict of interest that must be disclosed to any borrower to whom the lowest interest rate offered by the lender is not given (i.e. points are accumulated by the submortgage broker) on the Form 10 provided in the *Mortgage Brokers Act Regulations*. In the above-noted scenario, Borrower A would be entitled to the disclosure.

The *Mortgage Brokers Act* states:

*“Conflict of interest — disclosure to borrowers for mortgages on land in B.C.”*

*“17.3 (1) Every mortgage broker who acts in a mortgage transaction in which there is an interest as described in subsection (2) (a) must, within the prescribed time, provide to every person who is a borrower under a mortgage in that transaction a written disclosure statement that meets the requirements of subsection (2).*

*(2) The disclosure statement referred to in subsection (1) must*

*(a) disclose any direct or indirect interest the mortgage broker or any associate or related party of the mortgage broker has or may acquire in the transaction,*

*(b) include the prescribed contents and be accompanied by any documents that are prescribed,*

*(c) be dated and signed by the mortgage broker, and*

*(d) contain disclosure that is true, plain and not misleading of the matters in the prescribed contents referred to in paragraph (b).”*

*“Retention and filing of disclosure statements”*

*“17.5 A mortgage broker required to provide a disclosure statement under section 17.3 or 17.4 must retain a copy of the disclosure statement for a period of at least 7 years.”*

**In any case where a borrower is not offered the lowest interest rate in the range offered by the lender, but is given one from within the range, and the submortgage broker banks the points to use in the future, the submortgage broker is in a conflict of interest and must disclose that conflict to the borrower.**

Therefore, if any mortgage broker permits its submortgage broker employees to participate in a points banking program, the mortgage broker must ensure that the submortgage brokers are providing disclosure, by way of Form 10, to any borrower who **does not** receive the lowest interest rate offered by the lender to that borrower. Further, the mortgage broker must ensure that a copy of the Form 10 is retained for 7 years.

Regulatory action will be taken against any registrant who fails to comply with the disclosure requirements of the *Mortgage Brokers Act*. This includes any registrant that participates in these “points or bonus programs”. Please note it is an offence under section 22(1) of the *Mortgage Brokers Act* not to provide conflict of interest disclosure and not to retain the forms.

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