



**Registrar of Mortgage Brokers**

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**INFORMATION  
BULLETIN**

**BULLETIN NUMBER: MB 08-004**

**TITLE: FORM 10 – BORROWER CONFLICT OF INTEREST DISCLOSURE STATEMENT**

**LEGISLATION: MORTGAGE BROKERS ACT**

**DATE: October 7, 2008**

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The prescribed Form 10 Conflict Interest Disclosure Statement, which must be provided to borrowers, will be replaced by the attached Form 10 Borrower Conflict of Interest Disclosure Statement on January 1, 2009.

All mortgage broker registrants have an obligation to provide disclosure of their interests to borrowers. Form 10 will be the Conflict of Interest Disclosure Statement prescribed pursuant to section 17.3 of the *Mortgage Brokers Act* as of January 1, 2009. Section 17.3 requires that every mortgage broker, who acts in a mortgage transaction in which the mortgage broker, or any **associate** or **related party** of the mortgage broker, has or may acquire a direct or indirect interest, to disclose that interest to the borrower. Associates and related parties include spouses and submortgage brokers of mortgage brokers and related corporate entities. \*See below for definitions of associate and related parties.

A disclosable interest exists where a mortgage broker or an associate of the mortgage broker has a personal or business interest in a mortgage transaction. The Form 10 requires the mortgage broker to provide disclosure of the following specific interests.

**1. Other Parties to the Transaction Represented by the Mortgage Broker**

Mortgage brokers who deal with or represent more than one party in a transaction should disclose who those other parties are to the borrower. It may be impossible for mortgage brokers or their associates to completely avoid conflicts between multiple parties in a transaction, and being in a conflict of interest does not necessarily mean that the mortgage broker has engaged in any wrong doing. However, conflicts between multiple parties may affect the broker's judgment or his or her sense of duty to act in the best interests of the client. Mortgage brokers must therefore disclose to the borrower whether they also represent or act for the lender, syndicate mortgage lenders, persons or entities who may acquire the mortgage from the lender, or any other party to the transaction.

## 2. Mortgage Broker's Interest in the Transaction

Mortgage brokers must disclose whether they, their associates or related parties have any interest in the mortgage transaction. Mortgage brokers will have a disclosable interest in a transaction if they, their associates or related parties:

- are or will be the lender in the mortgage transaction;
- are or will be a syndicate mortgage partner in a syndicated mortgage with other mortgage investors in the same transaction; or
- will acquire the whole or part of the mortgage interest from the lender, investor or a syndicate mortgage lender.

## 3. Compensation to the Mortgage Broker

Mortgage brokers do not need to provide disclosure of how they will be compensated in a mortgage transaction to the borrower if they are compensated directly by that borrower. However, all other methods of compensation should be disclosed in the Form 10. For instance, mortgage brokers should disclose whether they will receive any kind of compensation or benefit from a lender or any other party to the transaction, such as a syndicated mortgage lender. Compensation includes cash, volume bonuses, points, rewards, part or all of the sale proceeds of a property, or any other kind of benefit, advantage, or remuneration.

## 4. Referrals to Mortgage Brokers

If the mortgage broker has paid a referral fee to a party, they should disclose the name of the party and the amount of the fee.

Subsection 17.3 (2)(c) states that the Form 10 must be dated and signed by the mortgage broker. The *Mortgage Brokers Act Regulations* require that the Form 10 be given to a borrower at the earliest opportune time, and in any event, before the borrower signs the mortgage or any ancillary agreement with the broker or lender, including an agency agreement with the broker that commits the borrower to the mortgage transaction.

Mortgage brokers must retain a copy of every Conflict of Interest Disclosure Statement for a period of at least seven years.

Any questions about completing or delivering the Form 10 can be addressed to the Registrar's Staff.

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\* Definitions:

"**associate**" means, if used to indicate a relationship with any person:

- (a) a submortgage broker employed by that person;

- (b) a partner of that person;
- (c) a trust or estate in which that person has a substantial beneficial interest or for which that person serves as trustee or in a similar capacity;
- (d) a corporation in respect of which that person beneficially owns or controls, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all outstanding voting securities of the corporation;
- (e) a relative, including a spouse, of that person; or
- (f) a relative of that person's spouse, if the relative has the same home as that person.

**"related party"** means, in respect of a person, any other person that is

- (a) related to the person under subsection (2) to (4), or
  - (b) deemed to be a related party under subsection (5).
- (2) Each of 2 persons is related to the other if:
- (a) either influences the other,
  - (b) both influence the same third person, or
  - (c) both are influenced by the same third person.
- (3) For the purposes of subsection (2), a person influences another person if, through the beneficial ownership of or exercise of control or direction over, or through a combination of such ownership of or control or direction over:
- (a) voting securities of that other person,
  - (b) securities currently convertible or exchangeable into voting securities of that other person, or
  - (c) securities carrying a currently exercisable right to acquire voting securities of that other person or to acquire convertible or exchangeable securities referred to in paragraph (b), whether directly or indirectly and whether alone or in combination with one or more persons, the person exercises a controlling influence over the management and policies of that other person.
- (4) For the purposes of subsection (2) and without limiting the generality of subsection (3), a person, in the absence of evidence to the contrary, is deemed to influence another person if the first person:
- (a) beneficially owns or exercises control or direction over securities that constitute in the aggregate more than 20% of the outstanding securities of any class or series of voting securities of that other person, or
  - (b) would, upon conversion, exchange or exercise of any security or right referred to in subsection (3) (b) or (c), beneficially own or exercise control or direction over securities that would constitute in the aggregate more than 20% of the outstanding securities of any class or series of voting securities of that other person, whether directly or indirectly and whether alone or in combination with one or more other person.

- (5) If any 2 persons are related parties of the same other person, the 2 persons are deemed to be related parties of each other.

At the Registrar of Mortgage Brokers, we issue information bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Mortgage Brokers Act, Business Practices and Consumer Protection Act* and Regulations. While the comments in a particular part of an information bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an information bulletin generally applies as of the date on which it was published, unless otherwise specified.



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Number: \_\_\_\_\_

### BORROWER CONFLICT OF INTEREST DISCLOSURE STATEMENT FORM 10 – Section 17.3

This information statement has not been filed with the Registrar of Mortgage Brokers. There has been no determination made by the Registrar as to whether the disclosed information complies with the *Mortgage Brokers Act*.

*Please write or print clearly. If additional information is required, reference and attach a schedule to this form.*

\_\_\_\_\_  
*Name of Borrower:*

\_\_\_\_\_  
*Name of Lender:*

\_\_\_\_\_  
*Name of Mortgage Broker:*

\_\_\_\_\_  
*Telephone:*

\_\_\_\_\_  
*Name of Submortgage Broker:*

\_\_\_\_\_  
*Civic address of property to be mortgaged:*

\_\_\_\_\_  
*Legal description of property to be mortgaged:*

\_\_\_\_\_  
*Date of transaction:*

#### Other Parties to the Transaction Represented by the Mortgage Broker

- The Mortgage Broker **does not** represent other parties to the transaction described above.
- The Mortgage Broker **does** represent other parties to the transaction described above, who are:

The lender: \_\_\_\_\_

*Name*

Syndicate mortgage lenders:

*(attach list if more space required)*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Name*

A person or entity which will acquire the mortgage from the investor/lender:

\_\_\_\_\_  
*Name*

Other – please describe: \_\_\_\_\_

Initials: \_\_\_\_\_

Date: \_\_\_\_\_

**Mortgage Broker's Interest in the Transaction**

- The Mortgage Broker and/or its associates or related parties **will not** acquire a direct or indirect interest in the transaction described above.
- The Mortgage Broker and/or its associates or related parties **will** acquire a direct or indirect interest in the transaction described above. In particular, \_\_\_\_\_, (State the Name of Party), who is \_\_\_\_\_ will: (State Relationship with Mortgage Broker)
  - be the lender in the transaction;
  - be a syndicate mortgage lender with the lender/investors; or
  - acquire the mortgage from the lender or investor.

**Compensation to the Mortgage Broker**

The mortgage broker has been or will be compensated in this transaction by:

- receiving a fee from the lender, and/or
- \_\_\_\_\_ (Please explain compensation)

**Referrals to the Mortgage Broker**

The Mortgage Broker, its associates or related parties have paid or will pay a fee in the amount of \$ \_\_\_\_\_ to \_\_\_\_\_ (Name) for receiving a referral or recommendation relating to the transaction.

**CERTIFICATION**

I certify that I am the mortgage broker or an authorized representative of the mortgage broker and based on my knowledge, belief and information provided by third parties, this Disclosure Statement contains no untrue statement and does not omit to state a fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in circumstances in which it was made.

Full name of Mortgage Broker \_\_\_\_\_ Address (Including Postal Code) \_\_\_\_\_

Signature of Mortgage Broker or Authorized Representative \_\_\_\_\_ Date Signed (YYYY,MM,DD) \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT**

Signature \_\_\_\_\_ Name (Please Print) \_\_\_\_\_ Date Signed (YYYY,MM,DD) \_\_\_\_\_