



Information Bulletin

Bulletin Number: MB 11-003

Topic: FORM 10 – BORROWER CONFLICT OF INTEREST DISCLOSURE STATEMENT

Issue Date: JUNE 2011 (updated December 2014)

To assist brokers to provide conflict of interest disclosure, the Registrar of Mortgage Brokers has approved an enhanced Form 10 Conflict of Interest Disclosure Statement for disclosing conflicts of interest to *borrowers*.

A conflict of interest exists when mortgage brokers or submortgage brokers have competing interests between themselves and other parties in a transaction. Competing interests will have the potential to influence the objective performance of a broker's duties for a client. It may not always be possible for mortgage brokers to avoid conflicts, and the existence of a conflict may not necessarily mean that the broker has engaged in any wrong doing. However, all mortgage broker registrants have an obligation to disclose conflicts of interest to borrowers in a Form 10 Conflict of Interest Disclosure Statement.

Section 17.3 of the *Mortgage Brokers Act* 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 party.

The enhanced Form 10 makes it easier for mortgage brokers to provide disclosure of the following specific interests.

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

Mortgage brokers have a duty of undivided loyalty to persons they represent. However, if they represent more than one party to the transaction, they will have divided loyalties which may affect their judgment or their sense of duty to act in the best interests of a party. Mortgage brokers must therefore disclose to the borrower by indicating on a Form 10 whether they represent or act for the borrower, the lender, syndicate mortgage lenders, persons or entities who may acquire the mortgage from the lender, or any other party to the transaction.

It should be noted that even if a mortgage broker does not represent a borrower, he or she will still have a duty of care and fair dealing to the borrower. For instance, in relation to the borrower which it does not

represent, the broker must still provide all the required disclosures, be honest in its representations to the borrower and exercise reasonable care and skill in its dealings on behalf of the borrower. This includes, but is not limited to, explaining the various lenders' mortgage options, providing complete documentation for submission to the lender, reporting on the progress of the transaction and communicating any information received from the lender.

2. Mortgage Broker's Interest in the Transaction

Mortgage brokers must disclose whether they, their associates or related parties have any interest in a 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 subsequently acquire the whole or part of the mortgage interest from the lender, investor or a syndicate mortgage lender.

3. Other Mortgage Brokers Acting in the Transaction

If there is more than one registered mortgage broker acting in a mortgage transaction, the mortgage broker must provide the name of the other mortgage broker, the other mortgage broker's relationship to both the mortgage broker and to the borrower, and the other mortgage broker's role in the transaction. As an example, if there are two mortgage brokers involved in originating a mortgage for the borrower in a co-brokered transaction, state the name of the other broker, whether the other broker represents the borrower and that the other broker is co-brokering the transaction. As another example, if the other mortgage broker involved in the transaction is the lender, state the name of the other broker (who is the lender), that the other broker (lender) does not represent the borrower, and that the other broker acts as the lender in the transaction.

4. Compensation to the Mortgage Broker

Mortgage brokers are required to provide disclosure to borrowers of how they will be compensated in a mortgage transaction. However, where the mortgage broker's sole compensation in the transaction is directly from the borrower, disclosure of this compensation is not required. All other sources and methods of mortgage broker compensation relating to the mortgage transaction must be disclosed to the borrower in the Form 10. Mortgage brokers must disclose whether they will receive any kind of compensation or benefit from a lender, from another mortgage broker (such as might occur in a co-brokered transaction) or from any other party to the transaction, including a syndicated mortgage lender.

It should be noted that “compensation” includes cash, volume bonuses, points, rewards, part or all of the sale proceeds of a property, an interest in property, or any other type of direct or indirect benefit, advantage, or remuneration.

Mortgage brokers must disclose instances where they receive additional commissions, income or points that are based on the mortgage broker’s or a related co-broker’s volume of business or funding efficiency with the lender. A mortgage broker’s recommendation to a borrower to choose a particular lender may be affected if the broker or co-broker receives a benefit from the lender which is dependent on its volume of business or efficiency ratio of successful mortgages funded by the lender.

In addition, if a mortgage broker receives additional compensation from a lender since the borrower is paying a higher interest rate than would otherwise be available to the borrower from the lender in transaction, this must be disclosed in the Form 10. Borrowers must be aware of situations where the mortgage broker has received a benefit at the borrower’s expense. However, mortgage brokers do not need to disclose that in some limited circumstances, the lender will provide a rate to a borrower that is less than the lender’s prevailing rate.

5. Referrals to Mortgage Brokers

If the mortgage broker has paid or will pay a referral fee to any party in relation to the transaction, the broker must disclose the amount of the referral fee and the name of the party to whom it was or will be paid.

6. Any Other Conflicts

The mortgage broker must state any other facts which may result in a conflict of interest with the borrower. Examples include the following:

- the mortgage broker or its related parties or associates, acts in another capacity in the transaction or a related transaction, such as by providing real estate, insurance, appraisal or notarial services; or
- A mortgage broker banks points from a deal with Borrower “A” which are then used to lower or buy down the interest rate on a deal with Borrower “B”.

When Must the Form 10 be Delivered to the Borrower

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.

Retention of Form 10

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

Any questions relating to the completion or delivery of the Form 10 should be addressed to the Registrar's Staff.

*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
 - (d) 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

Please visit our website to access the enhanced Form 10 using the following link:

http://www.fic.gov.bc.ca/index.aspx?p=mortgage_brokers/MBRegistrationForms.

The Registrar has permitted the above variation from the prescribed Form 10, which can be found in the Act Regulations: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/100_73 enhanced form.

At the office of 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.