



Information Bulletin

Bulletin Number: MB 11-007

Topic: FORM 11 – LENDER CONFLICT OF INTEREST DISCLOSURE STATEMENT

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To assist brokers to provide conflict of interest disclosure to mortgage lenders, the Registrar of Mortgage Brokers has approved a Form 11 Conflict of Interest Disclosure Statement.

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 lenders in a Form11 Conflict of Interest Disclosure Statement.

Section 17.4 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 lender. 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.

Subsection 17.4(2)(c) states that the Form 11 must be dated and signed by the mortgage broker. The *Mortgage Brokers Act Regulations* require that the Form 11 be given to the lender prior to the lender's funds being released from trust on the direction of the lender, if the funds are held in trust, and if they are not held in trust, prior to the advancement of the funds by the lender.

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

The Form 11 requires the mortgage broker to provide disclosure of the following specific interests.

1. 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 a syndicate mortgage partner in a syndicated mortgage with other mortgage investors in the same transaction;
- are or will be the registered or beneficial borrower in the mortgage transaction;
- are or will be a guarantor of the borrower's obligation under the mortgage;
- are or will be a shareholder in or director of a corporate borrower; or
- will subsequently acquire the whole or part of the mortgage interest from the lender, investor or a syndicate mortgage lender.

2. Other Mortgage Brokers Acting in the Transaction

If there is more than one mortgage broker registrant acting in a mortgage transaction, then state the name of the mortgage broker, the mortgage broker's relationship to other mortgage broker(s), the lender and the borrower, and its role in the transaction. For instance, if there are two mortgage brokers originating the mortgage for the borrower in a co-brokered transaction, state the name of the co-broker, whether the co-broker represents the borrower and that the broker has co-brokered the transaction.

3. Compensation to the Mortgage Broker

Mortgage brokers are required to provide disclosure to lenders 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 lender, disclosure of this compensation is not required in a Form 11. All other sources and methods of mortgage broker compensation relating to the mortgage transaction must be disclosed to the lender in the Form 11. For example, if the mortgage broker is or will be compensated by the borrower in the transaction, this fact must be disclosed to the lender.

4. 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.

5. Any Other Conflicts

The mortgage broker must state any other facts which may result in a conflict of interest with the borrower. For instance, if the mortgage broker or its related parties or associates, acts in any other

capacity in the transaction or a related transaction, such as by providing real estate, insurance, or appraisal or notarial services, this must be disclosed on the Form 11.

Any questions about completing or delivering the Form 11 can be addressed to the Registrar's Staff.

* Section 13 (1) of the Regulations to the Act provides that for the purposes of section 17.4:

"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 Form 11 using the following link:

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

Form 11 was created to enhance brokers' ability to provide required disclosure to *lenders*, and an enhanced Form 10 was created to provide the same to *borrowers*. Both forms are derived from the prescribed Form 10 which is a general form to provide conflict of interest disclosure to both lenders and borrowers.

The Form 11 and enhanced Form 10 are variations permitted by the Registrar to the prescribed Form 10, which can be found in the Act Regulations:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/100_73.

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.