

Information Bulletin

Bulletin Number: MB 09-005

Topic: NEW POWERS OF THE REGISTRAR OF MORTGAGE BROKERS – AMENDMENTS TO THE MORTGAGE BROKER ACT

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Amendments to the *Mortgage Brokers Act* (the “Act”) which broaden the enforcement powers of the Registrar took effect on October 29, 2009. In particular, under the new amendments, the Registrar will have the power to:

- Order a registered person to cease an activity or carry out specified remedial actions – this enables the Registrar to provide more flexible and effective enforcement options when dealing with current registrants;
- Order a formerly registered person to carry out specified remedial actions or pay an administrative penalty – this enables the Registrar to take enforcement measures against a person or entity that terminates their registration in order to avoid discipline;
- Suspend or cancel a person's registration, or order a person to cease an activity or carry out specified remedial actions if the person has been convicted of an offence or contravened laws in respect of mortgage brokerage, real estate, insurance or securities – this enables the Registrar to take enforcement action against a registrant who has been disciplined in another jurisdiction by a regulatory authority;
- Order a person who should be or should have been registered, but is or was not, to cease an activity, carry out specified remedial actions or pay an administrative penalty – this enables the Registrar to issue cease and desist orders against an unregistered person or entity that is engaging in unregistered activity; and
- Make certain orders without a hearing if the registrar considers the time it would take for a hearing would be prejudicial to the public interest.

The amendments to the Act are set out below.

Mortgage Brokers Act

12 Section 8 of the Mortgage Brokers Act, R.S.B.C. 1996, c. 313, is amended

(a) by repealing subsection (1) and substituting the following:

(1) After giving a person registered under this Act an opportunity to be heard, the registrar may do one or more of the following:

- (a) suspend the person's registration;
- (b) cancel the person's registration;
- (c) order the person to cease a specified activity;
- (d) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;

if, in the opinion of the registrar, any of the following paragraphs apply:

- (e) the person would be disentitled to registration if the person were an applicant under section 4;
- (f) the person is in breach of this Act, the regulations or a condition of registration;
- (g) the person is a party to a mortgage transaction that is harsh and unconscionable or otherwise inequitable;
- (h) the person has made a statement in a record filed or provided under this Act that, at the time and in the light of the circumstances under which the statement was made, was false or misleading with respect to a material fact or that omitted to state a material fact, the omission of which made the statement false or misleading;
- (i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
- (j) the person is in breach of a provision of Part 2 or 5 of the *Business Practices and Consumer Protection Act* prescribed under section 9.1 (2). ,

(b) in subsection (1.1) by striking out "paragraphs (b) to (e)" and substituting "paragraphs (f) to (i)",

(c) by adding the following subsections:

(1.2) After giving a person who was formerly registered under this Act an opportunity to be heard, the registrar may do one or both of the following:

(a) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;

(b) order the person to pay an administrative penalty of not more than \$50 000;

if, in the opinion of the registrar, any of paragraphs (f) to (i) of subsection (1) applied to the person while the person was registered.

(1.3) After giving a person registered under this Act an opportunity to be heard, the registrar may do one or more of the following:

(a) suspend the person's registration;

(b) cancel the person's registration;

(c) order the person to cease a specified activity;

(d) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;

if the person

(e) has been convicted of an offence in Canada or another jurisdiction arising from business, a transaction or a course of conduct related to mortgages, mortgage brokerage, real estate, insurance or securities, or

(f) has been found by a regulator or court in Canada or another jurisdiction to have contravened the laws of the jurisdiction respecting mortgages, mortgage brokerage, real estate, insurance or securities.

(1.4) After giving a person an opportunity to be heard, the registrar may do one or more of the following:

(a) order the person to cease a specified activity;

(b) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;

(c) order the person to pay an administrative penalty of not more than \$50 000;

if, in the opinion of the registrar, the person was or is carrying on business as a mortgage broker or submortgage broker without being registered as required by this Act. , **and**

(d) by repealing subsections (2) and (3) and substituting the following:

(2) If the length of time that would be required to give a person an opportunity to be heard under subsection (1), (1.2), (1.3) or (1.4) would, in the registrar's opinion, be prejudicial to the public interest, the registrar may, without giving the person an opportunity to be heard,

suspend a registration under subsection (1) (a) or (1.3) (a) or make an order under subsection (1) (c) or (d), (1.2) (a), (1.3) (c) or (d) or (1.4) (a) or (b).

(3) If under subsection (2) the registrar suspends registration or makes an order without giving a person an opportunity to be heard, the registrar must promptly send written notification of the suspension or order to the person and to the tribunal.

13 Section 8.1 is amended

(a) in subsection (1) by striking out "an order under section 8 (1), imposing an administrative penalty," and substituting "an order under section 8", and

(b) by repealing subsection (2) and substituting the following:

(2) An order of the registrar filed under subsection (1) has the same force and effect, and all proceedings may be taken on the order, as if it were an order of the Supreme Court.

14 Section 9 (3) is amended by adding "or an order" after "suspension of registration".

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