



## MORTGAGE BROKERAGE – ACTING AS AN INTERMEDIARY

**Summary: The mortgage brokerage and its representatives have an obligation disclose to the borrower the brokerage’s relationship with the borrower, the lender, the range of products offered, how the brokerage will be compensated and any additional compensation. The brokerage may choose as their business model to facilitate a mortgage deal between a borrower and a lender without acting as agent of either party, if the borrower and lender agree. In this service relationship the brokerage acts as an intermediary for the borrower and the lender. [See: *Real Estate Act* Rules s.41(e); s.65(c); Mortgage Broker Relationship Disclosure Document and Mortgage Broker Compensation Disclosure Document]**

The *Real Estate Act* Rules require that all mortgage brokers disclose to borrowers, in writing, the nature of their relationship with the borrower, the nature of their relationship with the lender, the range of lenders whose products it offers, how it will be compensated and the nature of any other benefits. [*Real Estate Act* Rules, s.65(c)(i)(ii)(iii)(iv)(v)]. Additionally, mortgage brokers are responsible for ensuring their role is clearly understood by their clients and third parties [*Real Estate Act* Rules, s.41(e)], whether the client is the lender or the borrower.

Mortgage brokerages have three options with respect to relationships with lenders and borrowers. Brokerages may wish to:

- Have a service relationship with lenders;
- Have a service relationship with borrowers; or,
- Act as an intermediary between lenders and borrowers.

The mortgage brokerage and its representative’s role and obligations to the borrower and the lender will vary depending on the nature of the service relationship between the mortgage brokerage and the lender or borrower. This information bulletin attempts to address a number of issues that a brokerage may consider in determining if its business model will be to facilitate matching the loan needs of a borrower to products offered by a lender while not acting as an agent of either party. It is the broker that determines the brokerage’s relationship between the brokerage, lenders and borrowers.

### Intermediary Relationship

Intermediary is the term used to describe the activities of a mortgage broker when acting as the “matchmaker” between a borrower and a lender with the goal of originating a mortgage loan. Acting as an intermediary means providing services by which the interests of the borrower and the lender are met in an even-handed, objective and impartial manner without providing confidential advice, advocating on behalf of either the borrower or lender, or using discretion or judgment that benefits the borrower or lender to the prejudice of the other.

Black’s Law Dictionary defines an informed intermediary as “a person who is in the chain of distribution from the manufacturer to the consumer and who knows the risk of the product.” Although this definition is not directly applicable to the services provided by a

mortgage broker, there is a parallel between the two roles as intermediaries. The mortgage broker intermediary has special knowledge of lenders' products and has been given permission from the lender to share with potential borrowers this information so that the mortgage broker can provide appropriate options for the borrower's consideration.

The brokerage and its representative(s) will act as intermediaries between the borrower and lender(s), who have authorized the brokerage to offer their mortgage products to borrowers. In this service relationship, the brokerage and its representatives are authorized to offer the mortgage products of one or more lenders to borrowers who are seeking a mortgage. The brokerage's duties to the borrower include the requirements to:

- be honest;
- exercise reasonable care and skill;
- gather the borrower's intended property and financial information to determine the lending options available to the borrower;
- disclose and explain appropriate options for the borrower's consideration;
- complete and submit documentation to the lender; and,
- keep the borrower informed of the progress of the application.

The brokerage's duties to the lender are to:

- be honest;
- exercise reasonable care and skill;
- complete and submit documentation to the lender;
- disclose what steps were taken to verify information and documentation as part of the application process; and,
- keep the lender informed of the progress of the application

In addition to the lists above, lenders may require additional services (such as underwriting) of the brokerage but the brokerage may only provide additional services as long as those services do not require the brokerage to provide confidential advice, advocate on behalf of the lender, or use discretion or judgment that benefits the lender to the prejudice of the borrower.

In addition to disclosure to the borrower of the relationships and the duties, a brokerage must also disclose to the borrower whether the brokerage:

- deals with a single lender or multiple lenders;
- is an affiliate or subsidiary of the lender;
- or its representatives have a direct or indirect interest in the transaction; and,
- must give a lender the first right of refusal to consider the borrower's application prior to any other lenders.

Mortgage brokerages are cautioned that their industry members must only undertake activities that match the type of relationship the brokerage has chosen to have with lenders and/or borrowers. For example, if a mortgage brokerage business model is to act as an intermediary, an advertisement that indicates "we ensure borrowers get the best mortgage rate" may be false and/or misleading, as it could lead a borrower to believe that the mortgage brokerage is working on his or her behalf. Appropriate wording could be "we work with borrowers to provide appropriate options for their consideration."

## Compensation Disclosure

Mortgage brokerages must also disclose to borrowers how the brokerage will be compensated or any other monies or benefits it may receive and any factors that may influence payment of those monies or benefits.

The disclosure requirements for compensation are fairly straightforward with the brokerage indicating they will be paid by way of:

- Commission/income or fee paid by the lender;
- Salary paid by the lender;
- A renewal commission from the lender if the borrower keeps the mortgage loan in force; and/or,
- Commission/income depending on the length of the term or the amount of the mortgage.

Or by:

- charging the borrower a fee.

The second part of the compensation is where the monies or benefits are not readily seen by the borrower but may have an effect on the borrower's mortgage or their decision to apply for a mortgage from a particular lender. The brokerage or its representatives may also receive monies or non-monetary benefits from the lender that include:

- Additional commission/income based on the volume of business with the lender;
- Additional commission/income based on the efficiency with the lender;
- Additional commission/income because the borrower is paying a higher rate than otherwise is available if the benefit was applied to the borrower's mortgage;
- Travel/gifts;
- Attendance at seminars or conferences; and/or,
- Equity shares with the lender.

RECA has developed a Mortgage Borrower Relationship Disclosure Document and a Mortgage Broker Compensation Disclosure Document to assist brokerages in making the relationship and compensation disclosures to borrowers. These forms will also assist borrowers in understanding their relationship with mortgage brokerages and the mortgage broker's relationship with lenders, and how the brokerage will be compensated. When a mortgage broker correctly uses the RECA-developed forms, it meets the disclosure requirements of section 65(c) of the *Real Estate Act Rules*. The forms should be presented in their entirety to provide appropriate disclosure to the borrower. The forms are available through the RECA website at [www.reca.ca](http://www.reca.ca).