

Your responsibilities to prevent mortgage fraud

Bulletin

No. M-01/16

Mortgage Brokering

To all mortgage brokerages and administrators in Ontario

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The Financial Services Commission of Ontario (FSCO) is issuing this bulletin to remind you of the amended regulations under the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA) which came into force on January 1, 2016, which increased your responsibilities for preventing and detecting mortgage fraud. You have a critical and proactive role to play, and FSCO expects greater diligence in order to protect consumers at every stage of a mortgage transaction. Below is a summary and reminder of your obligations.

Proactive fraud identification

The MBLAA prohibits mortgage brokerages, administrators, brokers and agents from giving or assisting in giving false and/or deceptive information or documents when dealing, trading or administering mortgages. Additionally, as of January 1, 2016, the regulations prohibit mortgage brokerages, administrators, brokers and agents from acting, or doing anything, or failing to do anything, **in circumstances where they ought to know** they are being used to facilitate dishonesty, fraud, crime or illegal conduct.

Brokerages and administrators have a duty to act proactively to prevent and detect fraud, which includes the legal obligation to take reasonable steps to verify the identity of each borrower or lender/investor. Brokerages and administrators also have a duty to ensure that public relations

materials do not contain false, misleading or deceptive information, as this may be perceived as a fraudulent practice.

Verification of income/employment documentation

There has been an increase in media coverage about the falsification of income/employment documents supporting mortgage applications. In addition, marketplace information appears to indicate a prevalence of misstated employment income information in mortgage applications. The current situation highlights the importance of ensuring that due diligence is undertaken to mitigate the risk of false employment income information.

Mortgage brokerages have a duty to inform lenders promptly if they have reason to doubt the accuracy of information in a borrower's application, including income/ employment documentation. These duties continue even after the borrower enters into a mortgage agreement.

Brokerages are also required to establish and implement written policies and procedures relating to fraud prevention and compliance with the MBLAA and regulations. It is FSCO's expectation that these policies and procedures will clearly outline the diligence required of brokerages, brokers and agents when it comes to ensuring the accuracy and validity of documentation and information received from borrowers or investors/lenders and that mortgage fraud is prevented.

FSCO expects that a brokerage will take steps to verify employment/income information, and document the steps taken in situations where it knows or ought to know that income information likely is incorrect, including but not limited to situations where the borrower's income information is not consistent with the person's Notice of Assessment from the Canada Revenue Agency.

The steps to verify a borrower's employment income information may include, but are not limited to:

- Asking the borrower for additional documents such as a business card or employer-issued building access card to demonstrate employment with the stated employer.
- Verifying that the borrower's stated employer or place of employment exists.
- Calling the borrower's stated employer to verify the content provided in the employment letter and pay stub.

Brokerages should adopt a process to verify employment income information that complies with applicable privacy legislation, including the Personal Information Protection and Electronic Documents Act, for example, by obtaining consent from a prospective borrower to verify such information with the stated employer.

Further, it is FSCO's expectation that principal brokers have a system in place that is reasonably designed to monitor compliance by brokerages, brokers and agents with the requirements of the MBLAA and brokerages' policies and procedures. Principal brokers are also required to ensure that brokers and agents are adequately supervised to support fraud prevention and detection measures.

Failure to comply with the MBLAA's fraud prevention requirements may expose you to

enforcement action, including licence suspension or revocation and administrative monetary penalties. If you are unsure of your responsibilities or have any questions, please contact FSCO.

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