

March 21, 2019

Expert Panel on Money Laundering

Via email

Attn: Expert Panel Members:

Submissions from the Canadian Mortgage Brokers Association- BC

Thank you for meeting with representatives from the Canadian Mortgage Brokers Association – BC to discuss measures which could be undertaken by the government of BC to help combat money laundering and abuses in the housing sector and mortgage transaction process.

Please know we are committed to a transparent real estate market and to ensuring the public can continue to have full confidence in the mortgage lending and brokering industry. Illegal funds have no place in BC's real estate market. We are supportive of the government's investigations into money laundering and real estate, including Peter German's review and the Expert Panel on Money Laundering.

I understand the mandate of the Expert Panel, which has been commissioned by the BC Minister of Finance, is to look at ways of improving the BC regulatory system to prevent money laundering and market abuse related to the real estate industry. In furtherance of this goal, we can make the following recommendations for potential actions for your consideration. The recommendations focus on the Mortgage Brokers Act ("MBA"), which is the statute which creates a licensing or registration regime for mortgage brokers and private mortgage lenders. I attach a brief note on the MBA to give you some background on the statute.

Mandatory Anti-Money Laundering Education

The Registrar currently requires registrants to complete courses to qualify to obtain their renewal of registration; registration must be renewed every two years. We recommend the introduction of mandatory anti-money laundering education for all registrants under the MBA at the time of registration renewal. This will ensure MBA registrants are better trained to recognize and report suspicious transactions.

Amendments to the MBA to create a “Designated Individual” Registration Category

Currently the MBA has no licensing or registration category for designated individuals, submortgage brokers who are responsible to manage a mortgage brokerage. The management responsibilities include overseeing the brokerage’s and its team members’ compliance with regulatory and legal requirements.

Most modern licensing statutes create a managing broker or designated individual licensing category. Having a person designated with compliance responsibility enables regulators to create standards and policy specifically geared for the position’s unique brokerage management functions. As a band-aid solution to this legislative gap in the MBA, the Registrar of Mortgage Brokers has created a simple “DI” policy; our view is that the policy is not supported by legislation and is therefore not enforceable. A designated individual licensing category would also enable the Registrar to require designated individuals to undertake specific, higher level courses which address market abuses and money laundering issues.

Amendments to the MBA to resolve licensing/registration gaps

There are discrepancies between substantive sections of the MBA and its enforcement provisions. Section 1 of the MBA defines mortgage brokers to include a person who in any one year receives \$1,000 or more for arranging mortgages for other persons; such a person is required to obtain registration. However, section 21(1)(a) makes it an offence to “carry on business as a mortgage broker or submortgage broker” without registration. The BC Supreme Court in *AZTA Management v. Croft Agencies Ltd.* BCSC 1462 declined to find that a person who arranged a mortgage for \$6 million was needing registration under the MBA. The Court, in applying the enforcement provision, said the person was not carrying on business as a mortgage broker as, among other things, the subject transaction was an isolated incident. The Court accordingly said that the person was not required to be registered and awarded the person a fee of \$90,000.

The MBA is a public protection statute; the public is at risk if its enforcement provisions do not properly support the registration requirements. The absurd inconsistency in the MBA needs to be addressed by amending its enforcement sections.

Amendments to the MBA to plug loopholes for bank brokers

Bank employees who broker third party mortgages come within the scope of the MBA. They act as intermediaries between borrowers and third party lenders (other than the bank that employs them). We estimate that approximately one half of all brokered mortgages are arranged by brokers employed by banks, who are not licensed under the MBA or any similar mortgage broker licensing statute in another province.

Section 11 of the MBA provides: “(1) The registration provisions of this Act do not apply to any of the following while acting as mortgage brokers or submortgage brokers under

their proper names: (b) savings institutions . . .” It further states that the “The registration provisions of this Act do not apply to any of the following: (a) an employee, or director, of a person exempted from registration under subsection (1) (a) or (b) . . .”

In a nutshell, the MBA only exempts bank brokers from having to register as a mortgage broker or submortgage broker. It does not exempt them from any other provisions of the MBA.

The result is that there are critical provisions of the MBA with which bank brokers in B.C. are required to comply, such as providing conflict of interest disclosure, private lender disclosure, and cost of credit disclosure. It is improper to expose the public to undue risk by not enforcing these and other protections provided in the MBA, which include public discipline by an independent government regulator for engaging in prejudicial conduct, undertaking continuing education, and submitting required periodic filings. However, bank brokers without consequence do not appear to comply with any provisions of the MBA or any comparative protections in the federal regulatory regime.

This gap poses significant risk to members of the public. In addition, it enables unscrupulous borrowers trying to push fraudulent mortgages through the system to shop mortgage applications through the softer, less strict bank broker system after experiencing rejection from the mortgage broker channel. We therefore urge the Panel to plug this loophole and ensure that bank brokers obtain registration under the MBA.

We want to thank you for the opportunity to speak to members of the Expert Panel and provide this written submission in follow up. Please know we are available to provide further information or clarification, if needed or desired.

Yours truly,



Samantha Gale
CEO, Canadian Mortgage Brokers Association-BC