

March 6, 2020

BRIEFING NOTE

Mortgage Brokers Act Consultation:

Personal Service Mortgage Broker Corporations

On behalf of the Canadian Mortgage Brokers Association - BC (CMBA-BC), I thank you for the opportunity to make submissions in response to the consultation by the Ministry of Finance on proposed amendments to the Mortgage Brokers Act (the “MBA”).

In this brief, we are reviewing the concept of personal service mortgage broker¹ corporations.

Current Status

The MBA does not directly enable individual submortgage brokers to collect broker earnings through a corporation in order to split income for tax purposes or defer the payment of taxes. Personal service corporations are permitted for most licensed professionals in Canada, including lawyers, doctors, dentists and realtors.

Amendments to the *Real Estate Services Act* (see Part 10 of *the Real Estate Services Act Regulations*) were introduced in 2009, which permit licensed real estate professionals to incorporate personal real estate corporations. Remuneration paid to a real estate professional may be paid directly to his or her personal corporation, and then payment of fees or dividends may be paid from the personal corporation to the professional. The personal real estate corporation may only provide real estate services by the licensed professional and cannot avoid regulatory liability. In addition, under the Regulations, voting shares may only be issued to a licensed professional.

¹ References to “mortgage broker” in the phrase “personal service mortgage broker corporation” refers to the submortgage broker registration class, who are commonly referred to as mortgage brokers. It is not intended to refer to the registration class of “mortgage brokers”, which are commonly referred to as mortgage brokerages.

The benefit to professional licensees who are able to incorporate professional service corporations is that they can take advantage of income splitting and tax deferral options. The professional can then defer the payment of corporate dividends to shareholders to maximize personal tax benefits. In addition, income splitting is a clear advantage for professional corporations as it can pay dividends to shareholders, such as spouses, children or affiliated corporations, who are at a lower tax rate than the professional. However, the incorporation of a professional corporation is only possible if it is provided for in the professions' governing legislation.

Challenges with the Current Status

In the absence of provisions within the MBA to permit personal service mortgage broker corporations, submortgage broker registrants utilize franchising and co-brokering strategies to incorporate while also maintaining ties to a larger, well known mortgage broker. Under this arrangement, the submortgage broker must incorporate a franchisee type entity, set up a separate office, enter into a franchise arrangement and a co-brokering relationship with the franchisor entity and then register the new entity as a mortgage broker. The challenge for franchisees which operate as co-brokers with their franchisors is that the public may be confused about which mortgage broker entity they are dealing with, as the two mortgage broker entities may share part of the franchisor name and management operations, in addition to operating in close proximity to one another.

This creates a cloudy and muddled landscape, which is a significant departure from the original goal of the MBA to create simple relationships between an employer mortgage broker and its employee submortgage broker. In an era where accountability and transparency are of paramount importance in order to combat money laundering and enhance consumer protection, personal service mortgage broker corporations provide an easy solution which benefit both the public and submortgage brokers.

Recommended Changes

The MBA should be amended to enable submortgage brokers to incorporate personal service mortgage broker corporations which are capable of collecting and retaining broker fees and commissions owing to a submortgage broker from their mortgage broker. This provision would:

- modernize the legislation and put submortgage brokers on the same footing as other professionals, such as realtors, lawyers and dentists;
- harmonize incorporation rules between mortgage broker and real estate licensees, which will both be regulated by the BC Financial Services Authority once the Real Estate Council is dismantled; and
- provide a simpler and more transparent mechanism for mortgage brokers to utilize corporations for tax savings strategies than co-brokering strategies which create confusion for the public.

The net benefit of permitting personal service mortgage broker corporations is therefore twofold: enhanced consumer protection by creating organizational transparency and the removal of economic barriers and tax fairness for mortgage brokers.

Yours truly,



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