

April 27, 2020

BRIEFING NOTE

Mortgage Brokers Act Consultation: License Types

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 scope of activities permitted under the MBA and the licensing categories contained within it.

Current Status – Licensing Categories

Currently the MBA is exceptionally simple and only has two licensing categories:

- 1) “mortgage broker”, which is the equivalent to a mortgage brokerage, mortgage lender entity or a mortgage administration entity;
- 2) “submortgage broker”, who engages in regulated activity on behalf of a mortgage broker.

In addition, the Registrar has adopted policy to require a

- 3) “Designated Individual” who must be a submortgage broker and act as the managing broker or supervising broker for the mortgage broker.

Under the Registrar’s policy, the Designated Individual must have been brokering for a two-year period and be a director of the mortgage brokerage.

Current Status – Scope of Regulated Activities

Mortgage brokers and their submortgage brokers are entitled to engage in the following activities under a single mortgage broker license:

- Mortgage brokering

- Mortgage administration;
- Mortgage lending; and
- Mortgage trading.

Challenges with the Current Status

A clear deficiency in the current regulatory regime is that the Designated Individual requirement is not contained in the MBA itself, and there is therefore no separate, higher level education program approved for qualification purposes, or additional statutory standards or requirements. Other jurisdictions in Canada with statutory mortgage broker licensing regimes have more onerous licensing requirements and qualification standards specifically geared for managing brokers.

The MBA does not differentiate between the different permitted mortgage activities, which include brokering, lending, trading and administration – all mortgage activities are lumped together as mortgage brokering, as set out in the definition of “mortgage broker”. Mortgage lenders who do not engage in any brokering activities are therefore licensed as and referred to as “mortgage brokers”. This creates confusion amongst the public as well as industry members. Mortgage lenders see themselves as fundamentally different in purpose and function to mortgage brokers, and never refer to themselves as mortgage brokers, even though they are statutorily defined as mortgage brokers.

The consultation document contemplates creating separate competencies and practice standards for various mortgage activities conducted by the mortgage industry. However, in order to do this in a logical and clear way, the activities need to be separately identified and delineated. Creating separate license types which encompass different mortgage activities provides an opportunity to target license names, competencies, practice standards, disclosure and other compliance requirements to specific activity. This would make more business sense and ensure a higher level of consumer protection through focused, specific compliance requirements and duties.

However, a multi-license regime, while seemingly logical, would be unduly burdensome and complex to administer. Multiple licenses would result in a person or entity having a confounding array of license commencement and expiry dates, which would then trigger separate renewal obligations and suitability reviews. Requiring a mortgage broker, who currently only requires one license to engage in four separate regulated activities to now obtain four separate licenses to engage in the same four activities would create a challenging and unnecessary level of red tape to navigate through. One solution which balances simplicity with the ability to carve out competencies and standards relating to regulated activities can be modeled on the Australian credit licensing regime.

Under the Australian system, entities or persons obtain a single credit license and under that license are “authorized” to engage in one or more regulated credit activities. When credit license applicants make an application, they choose the activities for which they seek authorization. They are then assessed for competence and granted one or more authorizations accordingly. Credit licensees can apply to vary their authorization should their business activities diverge throughout the course of their license term.

British Columbia could replicate the Australian model by creating a “mortgage license”, wherein the licensee is authorized to engage in one or more of the following regulated activities:

1. Mortgage brokering, arranging or trading;
2. Mortgage lending; and
3. Mortgage administration.

Recommended Changes

We recommend that:

- 1) A licensing category for the manager, which is currently known as a Designated Individual be created. The manager would be needed for mortgage entities which may engage in brokering, lending and administration. We therefore further recommend that the Designated individual or manager be termed “Principle Representative”, which can readily apply to all types of

mortgage activities. The Principle Representative would be responsible for supervising entities authorized to perform arranging, trading, lending and/or administration activities.

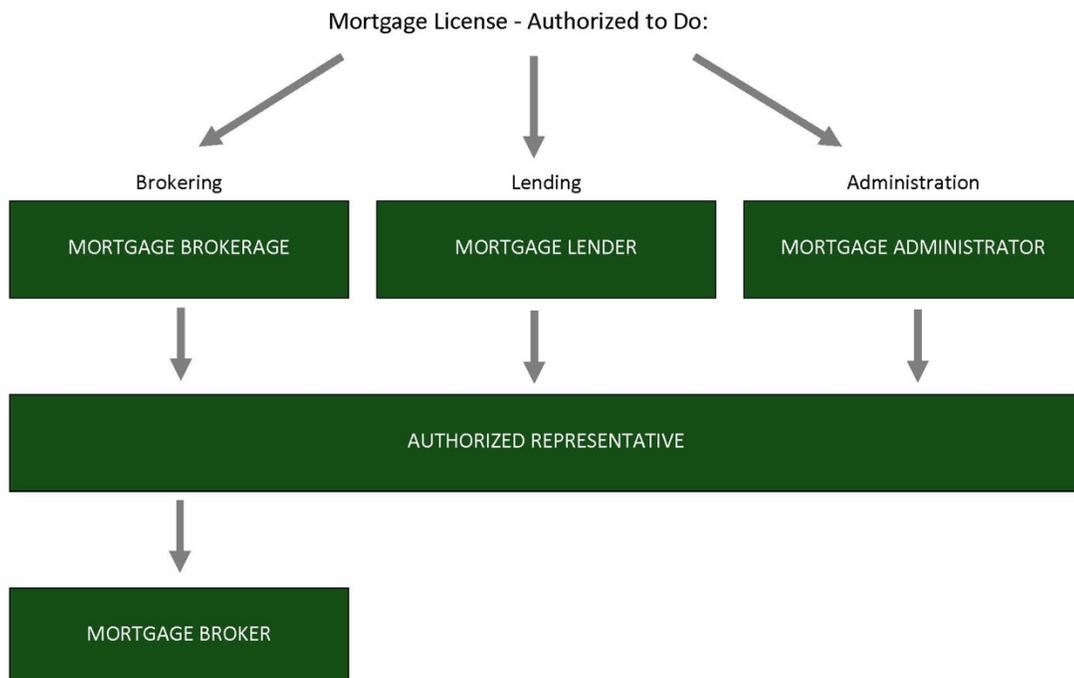
- 2) The Mortgage Broker licensing category should not be divided into additional licences, such as mortgage brokerage or mortgage administrator (as set out in the consultation document). Instead the current single “mortgage broker” registration category should be converted into a single “Mortgage License”, where the mortgage licensee is authorized/limited to engage in one or more of the following:

- i. Mortgage brokering, arranging or trading;
- ii. Mortgage lending; and
- iii. Mortgage administration.

Entities or persons who hold a mortgage license may then identify themselves to the public as a brokerage, lender or administrator, as appropriate. The authorization process enables the regulator to gear specific competencies, practice standards, disclosure obligations, enforcement and other requirements to the activity without the need for multiple licenses.

- 3) The submortgage broker registration category be more appropriately renamed as “Mortgage Broker”, with the Mortgage Broker working underneath entities with a Mortgage License, which are authorized to engage in mortgage brokering and trading activities. The Mortgage Broker would engage in arranging or trading activities on behalf of the entities with a Mortgage License, which are authorized to engage in mortgage brokering or trading activities.

4) The submortgage broker registration category currently required for all persons who engage in lending and administration activities for Mortgage Brokers be eliminated. In other words, entities which hold a Mortgage License and are authorized to engage in mortgage lending or administration activities, would have a Principal Representative but no additional lower level licensees. The rationale for this is that mortgage lenders and administrators employ staff as traditional employees who are directly supervised and monitored in their capacity as dependent employees. This is fundamentally different from entities engaging in brokering activity, which generally hire mortgage brokers as independent contractors to independently engage with mortgage clients in the field and outside the direct purview of the Designated Individual or Principal Representative. In other words, lending and administration activity is centrally controlled with employees, who do not act independently, while mortgage brokering activity is primarily generated by independent actors operating outside of the brokerage premises – this should trigger a mortgage broker licensing requirement for those particular actors.



BC Current	Ontario & Proposed in Consultation	Recommended
Mortgage Broker – permits lending, brokering, trading and administration activities	Mortgage Brokerage – permits lending, brokering and trading activities	Mortgage License – a holder is authorized to engage in one or more of: <ul style="list-style-type: none"> 1. Mortgage brokering, arranging or trading, (Mortgage Brokerage) 2. Mortgage lending (Mortgage Lender; and 3. Mortgage administration (Mortgage Administrator.
	Mortgage Administrator – permits administration activities	
Designated Individual (policy only) – supervises Mortgage Broker	Mortgage Broker or Managing Mortgage broker – supervises a Mortgage Brokerage	Principal Representative – supervises an entity with a Mortgage License (eg. a Mortgage Brokerage or a Mortgage Lender/Administrator)
Submortgage Broker – operates underneath Mortgage Broker	Mortgage Associate or Mortgage Agent – operates underneath a Mortgage Brokerage	Mortgage Broker – operates underneath a holder of a Mortgage License authorized to do mortgage brokering (eg. a Mortgage Brokerage)

Yours truly,



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