

Protecting Consumers and Strengthening the Mortgage Industry with Modern Practices in Ontario

A consultation for the 2023 legislative review of the *Mortgages Brokers, Lenders and Administrators Act, 2006* (MBLAA) by the Ministry of Finance.

May 2024

Message from the Parliamentary Assistant

The *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA) is the legislation that governs the participants in the mortgage broker sector: mortgage brokers, mortgage brokerages, mortgage administrators and mortgage agents. The MBLAA, enacted in 2008, requires a review of the Act every five years and as the Ontario Minister of Finance's appointee, I am pleased to be leading this effort.

The mortgage broker sector plays an important role in our economy, with licensees brokering about 341,000 mortgages worth more than \$193 billion in Ontario in 2022.¹ Through this consultation, we are reaching out to Ontario's mortgage brokerages, brokers, agents and administrators, as well as other interested parties, to ensure that Ontario's mortgage broker legislation reflects the needs and expectations of the sector and those who rely on the products and services it provides. Your input is critical to this process, to ensure that the legislative framework continues to enable the sector to continue to grow and meet the changing needs of its members.

Thank you for your input into this very important process. Together, we will ensure that the legislative framework is modern, supports businesses, protects consumers and bolsters a prospering economy in Ontario.

Stephen Crawford

Parliamentary Assistant
Ministry of Finance

¹ Data from FSRA 2022 annual information returns collected from licensed brokerages.

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Executive Summary

We invite Ontario businesses and individuals to share their feedback on how to strengthen the mortgage brokering sector in the province and enhance consumer protection.

About the Consultation

Periodic reviews of legislation and regulations are an opportunity to keep legislation up-to-date and to make improvements where necessary. Regular legislative reviews address technological advances, national and international trends, and an evolving economy and marketplace. This legislative review also provides an opportunity to seek new ways to reduce regulatory burden within the sector.

Structure of the Consultation

The policy questions we are seeking to address fall under three pillars:

1. [Reinforcing Professionalism in the Sector](#)
2. [Reducing Red Tape](#)
3. [Strengthening Consumer Protection](#)

Within each pillar, our consultation is guided by a distinct purpose and specific questions. This structured approach allows for a well-rounded examination of the key areas under consideration.

In addition to the specific questions, we welcome all other input related to the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA).

How to Participate

All input is welcome and appreciated. Providing the reasons behind your views will help provide a better understanding of your perspectives. All comments received may be used during the review to inform proposals for potential revisions to the Act and its regulations. This will involve disclosing some or all comments or materials, or summaries of them, to other interested parties during and after the consultation. The collection, use and disclosure of the information is subject to the *Freedom of Information and Protection of Privacy Act*.

Interested parties are invited to make written submissions by June 24, 2024.
You may send comments by email to mblaa.consultation@ontario.ca.

Introduction

Mortgage brokers, agents, and administrators act as intermediaries between prospective borrowers and lenders/investors. The *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA) sets out the licensing and regulatory requirements for participants in the mortgage broker sector. The MBLAA requires that, every five years, the Minister of Finance appoint one or more persons to review the Act and the regulations. The review is consistent with the government's commitment to continuously update and adapt Ontario's financial regulation to maintain a sound and stable system for investors and consumers.

The Financial Services Regulatory Authority of Ontario (FSRA), the province's financial regulator, licenses and oversees the conduct of mortgage brokerages, brokers, agents, and administrators. As of September 2023, FSRA regulates 1,244 mortgage brokerages, 3,133 mortgage brokers, 15,907 mortgage agents (6222 Level 1, and 9685 Level 2), and 260 mortgage administrators in the province. In 2022, there were approximately \$380 billion in Ontario residential mortgage originations, of which 41% were originated through the mortgage broker channel².

On October 20, 2023, Stephen Crawford, Parliamentary Assistant to the Minister of Finance, was appointed to conduct the legislative review of the MBLAA. As part of the review, the government will consult with the public and stakeholders on finding ways to enhance investor and consumer protection, as well as finding efficiencies to reduce unnecessary regulatory burden, so that mortgage brokerages and administrators can better focus on helping their clients.

The MBLAA has been in force since 2008 and it continues to meet the objectives of enhancing consumer protection, streamlining regulation, and promoting harmonization.

Ontario's mortgage broker legislation is kept up to date through regular reviews. The outcomes of this review will ensure that Ontario continues to have effective and efficient mortgage brokerage regulation across the province.

² Source: Teranet – 2022 Private Lending Reports & Preliminary 2022 AIR data

Pillar 1: Reinforcing Professionalism in the Sector

In recent years, mortgage professionals have witnessed a transformation in the industry. The sector landscape is now marked with increased reliance on technology, higher instances of fraud reported in the media³, and more uncertain market conditions.

To ensure the protection of borrowers and lenders/investors in this changing sector, FSRA issues guidance, such as [Guidance on Detecting and Preventing Mortgage Fraud](#). As an example, this Guidance outlines sector requirements to conduct business in a manner that prevents dishonesty, fraud, or any other illegal conduct. The Guidance highlights the role of the principal broker in detecting and preventing fraud, as well as policies and procedures that mortgage brokerages and administrators should have in place.

In addition, the role of mortgage administrators has evolved from primarily focusing on collecting and remitting mortgage payments for investors. In the past few years, a mortgage administrator's role has extended to activities that can directly impact investors, such as advising investors on how to handle a mortgage that has fallen into arrears. This has been noted more systemically during periods of market disruption such as the COVID-19 pandemic leading FSRA to publish, in May 2020, Guidance regarding Mortgage Administrators – Responses to Market Disruptions.

Given the evolution of the mortgage sector landscape, the complexities of mortgage transactions, and the long-term financial implications for borrowers and investors/lenders, an enhanced level of sector professionalism is crucial to fostering confidence and reliability.

Questions

- 1a. **Principal brokers** have an obligation to ensure that their brokerage and its brokers and agents comply with MBLAA. They also have a key role in supervising brokers and agents and ensuring the brokerage has the policies and procedures to detect and prevent fraud.

³ Source: [Fraud in auto, credit card and mortgage sectors has risen amid interest rate hikes: study - The Globe and Mail](#)

- How can principal brokers enhance their effectiveness in ensuring their brokerage and its brokers and agents comply with MBLAA?
- Do brokerages need to provide more independence, authority, and resources to support principal brokers?
- Is there a need to strengthen how brokerages and administrators manage conflicts of interest (e.g., cannot administer a mortgage for an investor while being the borrower of the mortgage)?

1b. **Mortgage administrators'** roles have evolved and become more complex. Is there a need to enhance the obligations under O. Reg. 189/08 Mortgage Administrators: Standards of Practice? If so, how? Some potential examples include requiring administrators to designate a principal administrator, principal administrators to complete prescribed education, administrators to report investment balances/performance to investors/lenders as well as introduce requirements to ensure the financial health of the administrator.

1c. Currently, **a licensee** who had their licence revoked or refused can re-apply for a license after one year. Should this waiting period be revised?

1d. Is there a need to expand the list of reporting requirements for **licensees**? Some potential examples include criminal charges, bankruptcy, lawsuit, initiation of enforcement and/or licensing proceedings by another regulator or requisite judgement issues against them.

1e. Please share any suggestions to promote a culture of good conduct and professionalism in the sector.

Pillar 2: Reducing Red Tape

The government is committed to helping Ontario businesses grow to provide better services and to save people time. A key element of that work is the elimination of unnecessary regulatory burden. To this end, as the government works to modernize Ontario's legislative framework for the mortgage brokering sector, it will be important to ensure that outdated or duplicative regulatory requirements are updated or eliminated.

Questions

- 2a. Is there a need for suitability assessments in cases where the client is financially sophisticated (e.g. Permitted Clients, as defined in O. Reg. 188/08)?
- 2b. Currently, all licensees governed by MBLAA must renew their licenses by April 1 of each year.
- Should the licensing renewal dates be staggered? If so, should the renewal be based on the anniversary date of issuance or by brokerage?
 - Should there be an option to renew licenses beyond one year? What period would be appropriate?
- 2c. Should provisions for deemed delivery of orders and notices include other business practices, such as electronic delivery?
- 2d. Please share any other opportunities that you can identify to minimize regulatory burden.
- 2e. Please share any potential unnecessary and/or duplicative legislative or regulatory requirements that could be streamlined.

Pillar 3: Strengthening Consumer Protection

In recent years, the mortgage brokering sector has undergone changes that can impact consumers. This includes an increased reliance on technology in the mortgage brokering processes, higher interest rates and inflation affecting the real estate market, and an increase in private mortgage lending.

Consumers may receive “digital advice”, with or without the intervention of a live human representative. As we move beyond the COVID pandemic, consumers continue to increasingly access products and services online. While the MBLAA is largely viewed by stakeholders as being technology neutral as it applies to both ‘traditional’ and ‘digital’ services, it is important to continue to monitor the use of technology to ensure that consumers are protected.

Since 2021, the Bank of Canada has increased interest rates, at the same time, Canada’s bank regulator, the Office of the Superintendent of Financial Institutions (OSFI), has tightened up mortgage lending standards for the financial institutions it regulates. These factors have contributed to the growing private mortgage lending market, as some consumers who no longer qualified for mortgages with traditional lenders turned to alternative lenders to fund their mortgages.⁴

As the market continues to evolve and the use of digital technologies becomes more prevalent, consumer protection measures must also evolve to ensure consumers with varying levels of financial knowledge are treated fairly.

Questions

3a. How can brokerages better ensure the suitability of private lending transactions?

- Do brokerages that transact in private mortgage products provide appropriate oversight over private mortgage transactions?

⁴ Source: Teranet – 2022 Private Lending Reports & Preliminary 2022 AIR data

- What policies and procedures should brokerages that transact in private mortgage products have in place specific to ensuring private mortgage transactions have appropriate oversight?
 - Should brokerages provide the borrower with the lender's payment schedule, including monetary fees and potential penalties that may be applied by the private lender? Please explain why or why not.
- 3b. Are the current private mortgage education activities from FSRA sufficient?
- If so, what should be included? Some potential examples could include the potential outcomes and financial costs of not having an adequate exit strategy when taking on a private mortgage.
- 3c. For the most part, real estate prices have increased, and mortgage products and transactions can now be more complex. What should the minimum insurance amounts required by brokerages and administrators be to ensure there is adequate coverage to protect consumers?
- 3d. Currently, unlicensed dealing and trading mortgages are only restricted where individuals/entities are remunerated or where an existing licensing exemption does not apply. Is there a need to prohibit unlicensed mortgage brokering activity regardless of whether the individual/entity is being remunerated?
- 3e. Do you support requiring the use of multi-factor authentication (MFA) by mortgage brokerages, brokers and agents? Please explain why or why not.
- 3f. Please share any key trends that raise consumer protection concerns for you? Please share any suggestions on how to reduce risks to consumers.

Conclusion

Thank you for taking the time to read this consultation paper and consider the materials. Comments can be submitted to the Ministry of Finance via email to mblaa.consultation@ontario.ca by June 24, 2024.

Once the feedback has been reviewed, recommendations will be made by Parliamentary Assistant Stephen Crawford to the Minister regarding any recommended changes to the Act and regulations. The Minister will make the recommendations available to the public.

Privacy Statement

Please note that unless agreed otherwise by the Ministry of Finance, all submissions received from organizations in response to this consultation will be considered public information and may be used, disclosed, and published by the ministry to help the ministry in evaluating and developing proposals. This may involve disclosing any response received to other interested parties. An individual who provides a response and indicates an affiliation with an organization will be considered to have submitted the response on behalf of that organization.

Responses received from individuals who do not indicate an affiliation with an organization will not be public information. Responses from individuals may be used and disclosed by the ministry to help evaluate and develop proposals. The ministry may also publish responses received from individuals. However, should the ministry use, disclose, or publish individual responses, any personal information such as an individual's name and contact details will not be disclosed by the ministry without the individual's prior consent unless required by law. Contact information you provide may also be used to follow up with you to clarify your response.

If you have any questions about the collection of this information, please contact mblaa.consultation@ontario.ca.