

No. 122

1st Session, 15th Legislature, Alberta
12 Elizabeth II

BILL 122

A Bill respecting Mortgage Brokers

HON. MR. MANNING

Explanatory Note

General. This Bill will regulate persons dealing in mortgages other than persons enumerated in section 3, and will require registration of them. The Bill follows in principle The Mortgage Brokers Registration Act passed in 1960 in Ontario, but the provisions regarding bonding, investigations, reviews and appeals are similar to those in The Securities Act, 1955 of Alberta. It will be administered by the Alberta Securities Commission and in particular the Registrar of the Commission. The Bill is primarily for the protection of the public in their dealings with mortgage brokers. In particular it is aimed at eliminating misleading advertising and drawing the public's attention to service charges and bonuses charged by mortgage brokers.

2. Definitions.

3. Application of Act.

BILL

No. 122 of 1964

An Act respecting Mortgage Brokers

(Assented to _____, 1964)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Mortgage Brokers Regulation Act*".

2. In this Act,

- (a) "commission" means the Alberta Securities Commission;
- (b) "mortgage" means a mortgage of real property or any charge on real property for securing the repayment of money or money's worth;
- (c) "mortgage broker" means
 - (i) a person who carries on the business of lending money on the security of land or any interest in land, whether the money is his own or that of another person, or who holds himself out as or who by an advertisement, notice or sign indicates that he is a mortgage broker, or
 - (ii) a person who carries on the business of dealing in mortgages, or
 - (iii) the agent of a person referred to in subclause (i) or (ii);
- (d) "Registrar" means the Registrar of the commission.

3. This Act does not apply to

- (a) a chartered bank,
- (b) a treasury branch,
- (c) a credit union to which *The Credit Union Act* applies,
- (d) a trust company to which *The Trust Companies Act, 1960*, applies,
- (e) an insurer to which *The Alberta Insurance Act* applies,
- (f) an issuer within the meaning of *The Investment Contracts Act*,
- (g) an agent or employee of any person referred to in

4. Powers and duties of Registrar.

5. Registrar.

6. Registration.

7. Expiry of registration.

8. Prohibitions.

9. Financial statements and audits.

- clauses (a) to (f) in his capacity as agent or employee, or
- (h) any person or class of persons exempted by the regulations.

4. The Registrar may exercise the powers and shall discharge the duties conferred or imposed upon him by this Act under the supervision of the commission.

Registration

5. The Registrar shall keep a register to be called the "Mortgage Brokers Register" in which he shall enter the name of every mortgage broker to whom registration is granted, the name under which the business is carried on and the address, or the addresses if more than one, at or from which the business is carried on.

6. The Registrar shall grant registration under this Act to every applicant, except where he is of the opinion, based on facts known to him, that to do so would not be in the public interest.

7. Every registration expires on the thirtieth day of June in each year but may be renewed from year to year.

8. (1) No person shall

- (a) carry on business as a mortgage broker unless he is registered under this Act, or
- (b) carry on business as a mortgage broker otherwise than in his registered name or elsewhere than at or from his registered address.

(2) No mortgage broker shall make or cause to be made any representation in writing that he is registered under this Act.

(3) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction

- (a) for a first offence, to a fine of not more than five hundred dollars, and
- (b) for a second or subsequent offence,
 - (i) in the case of a person other than a corporation, to a fine of not more than one thousand dollars and to imprisonment for a term of not more than three months, or
 - (ii) in the case of a corporation, to a fine not exceeding five thousand dollars.

9. (1) Every registered mortgage broker shall

- (a) keep such books and records as are necessary for the proper recording of his business transactions and financial affairs,

10. Records of registered mortgage broker.

11. Bond.

- (b) file with the commission annually and at such other time or times as the commission may require a financial statement that is satisfactory to the commission as to his financial position, certified by the mortgage broker, or an officer or partner of the mortgage broker, and reported upon by the auditors of the mortgage broker, and
 - (c) file with the commission such other information as the commission may require in such form as it may prescribe.
- (2) Notwithstanding anything in subsection (1), the commission or any person appointed by it to do so may at any time
- (a) make an examination of the financial affairs of any mortgage broker registered under this Act or any person who has applied for registration under this Act, and
 - (b) prepare a balance sheet as of the date of the examination and such other statements and reports as may be required by the commission.
- (3) The commission or any person making an examination under this section shall have free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person whose financial affairs are being examined and no person shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.
- (4) The commission may charge such fees as may be prescribed by the regulations for any examination made under this section.

10. (1) Every registered mortgage broker shall keep and maintain a record showing

- (a) the repayment terms of each mortgage,
- (b) the total amount actually paid or to be paid to the mortgagor of each mortgage,
- (c) the fees, expenses, costs or other charges required to be borne by the mortgagor in respect of each mortgage transaction, and
- (d) the particulars of any related agreement.

(2) Every registered mortgage broker shall deliver to the mortgagor the information required under subsection (1) on a form approved by the Registrar and shall obtain proof of the delivery.

Bonding

11. (1) The Registrar may, and when so directed by the commission shall, require any applicant or any registered mortgage broker within a specified time to deliver a bond

12. (1) Forfeiture of bond.

(2) Notice of cancellation of bond.

(3) Term of bond.

13. Sale of collateral security.

approved by the commission in such form as the regulations prescribe and in such amount as the commission requires.

(2) The Registrar may, and when so directed by the commission shall, require a new bond of the kind mentioned in subsection (1) to be filed within a specified time.

12. (1) Any bond delivered under section 11 is forfeited and the amount thereof becomes due and owing by the person bound thereby as a debt to Her Majesty in right of Alberta

(a) when any person or any officer or partner of that person, in respect of whose conduct the bond is conditioned, has been convicted of

- (i) an offence under this Act or the regulations, or
- (ii) an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the *Criminal Code*,

or

(b) when judgment based on a finding of fraud has been given against any registered mortgage broker or any officer or partner of a registered mortgage broker, in respect of whose conduct the bond is conditioned, or

(c) when proceedings by or in respect of any registered mortgage broker or any officer or partner of a registered mortgage broker, in respect of whose conduct the bond is conditioned, have been taken under the *Bankruptcy Act* (Canada) or by way of winding up and a receiving order under the *Bankruptcy Act* (Canada) or a winding-up order has been made,

and such conviction, judgment or order has become final.

(2) A bond may be cancelled by any person bound thereunder by giving to the Registrar at least three months' notice in writing of intention to cancel and, subject to subsection (3), it shall be deemed to be cancelled on the date stated in the notice, which date shall be not less than three months after the receipt of the notice by the Registrar.

(3) For the purposes of every act and omission occurring during the period of registration or the period prior to cancellation under subsection (2), every bond continues in force and the collateral security, if any, shall remain on deposit for a period of two years after the lapse of cancellation of the registration to which it relates, or the cancellation of the bond, whichever occurs first.

13. Where a bond secured by the deposit of collateral security with the Provincial Treasurer is forfeited under section 12, the Lieutenant Governor in Council may direct the Provincial Treasurer to sell the collateral security at the current market price.

14. Appointment of receiver, custodian, etc.

15. Assignment of bond.

16. Powers where no claim filed.

17. (1) Order to investigate.

14. Where Her Majesty becomes a creditor of any person in respect of a debt to the Crown arising from the provisions of section 12, the commission may take such proceedings as it deems fit under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Companies Act* or the *Winding-up Act* (Canada) for the appointment of an interim receiver, custodian, trustee, receiver or liquidator.

15. The Lieutenant Governor in Council may direct the Provincial Treasurer

- (a) to assign any bond forfeited under section 12 and transfer the collateral security, if any,
- (b) to pay over any moneys received under such bond, or
- (c) to pay over any moneys realized from the sale of the collateral security under section 13,

to any person, or to the clerk of the Supreme Court of Alberta in trust for such persons as may become judgment creditors of the person bonded or to any trustee, custodian, interim receiver, receiver or liquidator of such person.

16. Where

- (a) a bond has been forfeited under section 12 by reason of a conviction or judgment under clause (a) or (b) of section 12, and
- (b) the commission has not
 - (i) within two years of the conviction or judgment having become final, or
 - (ii) within two years of the registered mortgage broker in respect of whom the bond was furnished, having ceased to carry on business as such,

whichever occurs first, received notice in writing of any claim against the proceeds of the bond or of such portion thereof as remains in the possession of the Provincial Treasurer,

the Lieutenant Governor in Council may direct the Provincial Treasurer to pay such proceeds or portion thereof to that person or to any person who upon forfeiture of the bond made any payments thereunder, after first deducting the amount of any expenses that have been incurred in connection with any investigation or other matter relating to that person.

Investigation and Action by Commission

17. (1) Where upon a statement made under oath it appears probable to the commission that any registered mortgage broker has committed

- (a) any criminal, fraudulent, wrongful or improper act,

(2) Scope of investigation.

(3) Summoning of witnesses.

- (b) any offence against this Act or the regulations,
- (c) by any false, misleading or deceptive statement or advertisement, representation or promise, or by any dishonest concealment of material facts, induced or attempted to induce any person to borrow money or to be responsible for the repayment thereof or to agree to the terms of any transaction with respect to money loaned on the security of a mortgage,
- (d) induced or attempted to induce any person to pay or be responsible for the payment of excessive or exorbitant fees or expenses in connection with a loan on the security of a mortgage,

the commission may by order appoint any person to make such investigation as it deems expedient for the due administration of this Act and in the order shall determine and prescribe the scope of the investigation.

(2) For the purposes of an investigation ordered under subsection (1) the person appointed to make the investigation may investigate, inquire into and examine

- (a) the affairs of the person in respect of whom the investigation is being made and into any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with that person and into any property, assets or things owned, acquired or alienated in whole or in part by that person or by any person as his agent, and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to, or in connection with any such person and into the relationship that might at any time exist or have existed between that person and any other person by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

(3) For the purposes of subsections (1) and (2) the person making the investigation has the same power to summon and enforce the attendance of witnesses or persons and compel them to give evidence on oath or otherwise, and to produce documents, records and things as is vested in the Supreme Court of Alberta or a judge thereof for the trial of civil actions, but

- (a) the provisions of rules of court or of law relating to the service of subpoenas upon and to the payment of conduct money or witness fees to witnesses do not apply,

(4) Seizure of property.

(5) Appointment of accountant, etc.

(6) and (7) Failure to furnish information or appear.

- (b) no person is entitled in respect of any document, record or thing asked for, given or produced, to claim any privilege on the ground that he might be criminated or exposed to a penalty or to civil litigation thereby,
- (c) no person shall refuse to answer any question upon any ground of privilege, but a solicitor shall not be required to disclose any communications between himself and his client, and
- (d) no provision of *The Alberta Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.

(4) Where an investigation is ordered under this section the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person whose affairs are being investigated.

(5) Where an investigation is ordered under this section the commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person whose affairs are being investigated.

(6) Where an investigation is ordered under this section

- (a) the failure without reasonable excuse of any person to furnish information required by the person making the investigation,
- (b) the failure without reasonable excuse of any person summoned for examination under subsection (3) to appear or his refusal to give evidence, or to answer any question, or
- (c) the failure without reasonable excuse or refusal of any person to produce any thing where the evidence, answer or production would be required in an action,

constitutes an offence.

(7) Where an investigation is ordered under this section

- (a) the failure without reasonable excuse of any person to furnish information required by the person making the investigation,
- (b) the failure without reasonable excuse of any person summoned for examination under subsection (3) to appear or his refusal to give evidence, or to answer any question, or
- (c) the failure without reasonable excuse or refusal of any person to produce any thing where the evidence, answer or production would be required in an action,

is also *prima facie* evidence upon which

- (d) the Attorney General, or his representative, may

(8) Report of investigation.

18. Evidence not to be disclosed.

19. Report of result of investigation.

20. (1) and (2) Order to hold funds.

- base an affirmative finding concerning any fraudulent act to which he may deem it relevant,
- (e) the Supreme Court of Alberta, or a judge thereof, may grant an interim or permanent injunction, or
 - (f) a justice may base a conviction for an offence against this Act or the regulations.
- (8) Every person appointed under subsection (1) or (5) shall report the result of his investigation or examination to the commission and to the Registrar.

18. A person shall not, without the consent of the commission, disclose any information or evidence obtained or the name of any witness or person examined or sought to be examined under section 17.

19. (1) Where an investigation has been made under section 17 the commission may report the result thereof including the evidence, findings, comments and recommendations, to the Attorney General.

(2) The Attorney General may cause the report to be published in whole or in part in such manner as he deems proper.

20. (1) The commission

- (a) where it is about to investigate or during or after the investigation of any person under section 17,
- (b) where it is about to make or has made a direction, decision, order or ruling suspending or cancelling the registration under this Act of any person, or
- (c) where
 - (i) criminal proceedings, or
 - (ii) proceedings in respect of a violation of this Act or the regulations,that, in the opinion of the commission, are connected with or arise out of a mortgage transaction, are about to be or have been instituted against any person,

may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any funds or securities of the person referred to in clause (a), (b) or (c), to hold such funds or securities or direct the person referred to in clause (a), (b) or (c) to refrain from withdrawing any such funds or securities from any other person having any of them on deposit, under control or for safekeeping or to hold all such funds or securities of clients or others in his possession or control in trust for any interim receiver, cutodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Companies Act* or the *Winding-up Act* (Canada), or until the commission in writing revokes the direction or

(3) Application for direction.

(4) and (5) Notice to registrar of land titles.

21. Order to cease use of false, etc., material.

22. Action by Registrar as to cancellation or suspension of registration or refusal of renewal of registration.

23. Notice of direction, decision, etc.

consents to release any particular fund or security from the direction.

(2) Notwithstanding subsection (1)

(a) no direction given under subsection (1) applies to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and

(b) in the case of a bank, loan or trust company the direction only applies to the offices, branches or agencies thereof named in the direction.

(3) Any person in receipt of a direction given under subsection (1), if in doubt as to the application of the direction to any funds or security, or in case of a claim being made thereto by any person not named in the direction, may apply to the Supreme Court of Alberta or a judge thereof who may direct the disposition of such funds or security and may make such order as to costs as seems just.

(4) In any of the circumstances mentioned in clause (a), (b) or (c) of subsection (1), the commission may in writing or by telegram notify any registrar of land titles that proceedings that might affect land belonging to the person referred to in the notice are being or are about to be taken.

(5) The notice given under subsection (4) shall be registered against the lands mentioned in the notice and has the same effect as the registration of a certificate of *lis pendens*, except that the commission may in writing revoke or notify the notice.

Powers of the Registrar

21. Where in the opinion of the Registrar any registered mortgage broker is making false, misleading or deceptive statements in any advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of such material.

22. Where the Registrar is satisfied that a registered mortgage broker has done any of the things mentioned in clauses (a) to (d) of subsection (1) of section 17, whether or not any investigation has been made under that section, or if for any other reason the Registrar is of the opinion that registration of that person is not in the public interest, the Registrar, after giving him an opportunity to be heard, may suspend, cancel or refuse to renew his registration.

Reviews

23. A notice of every direction, decision, order or ruling of the Registrar granting or refusing to grant registration

24. Request for hearing and review.

25. Hearing.

26. Notice of hearing.

27. Evidence.

to or renewing, refusing to renew, suspending, cancelling or changing the registration of any person shall be served upon the applicant or the person whose registration is thereby affected and upon such other person as in the opinion of the Registrar is primarily affected by the direction, decision, order or ruling, at the address appearing in the application or upon the records of the commission.

24. Any person

- (a) upon whom a notice is served under section 23, or
- (b) who is primarily affected by any direction, decision, order or ruling of the commission,

may, by notice in writing served upon the Registrar within thirty days after the mailing of the notice, request a hearing and review of the direction, decision, order or ruling.

25. (1) A hearing and review requested under section 24 shall be heard by the full commission or two members thereof.

(2) Notwithstanding subsection (1), where the chairman is of the opinion that he should not sit upon a hearing and review, the Lieutenant Governor in Council may

- (a) appoint a person as an acting member of the commission for the purposes of the hearing and review, and fix his remuneration, and
- (b) designate one of the members of the commission to act as chairman for the purposes of the hearing and review.

26. Where a hearing and review is requested under section 24, the Registrar shall serve a notice in writing of the time, place and date thereof

- (a) upon the person requesting the hearing and review, and
- (b) upon such other persons who, in the opinion of the commission, are primarily affected by the hearing.

27. (1) Upon the review, the commission may hear such evidence as may be submitted to it by the person requesting the review or any other person and which in the opinion of the commission is relevant to the review.

(2) Upon a review the commission is not bound by the legal or technical rules of law concerning evidence and all oral evidence submitted shall be taken down in writing and together with such documentary evidence and things as are received in evidence by the commission shall form the record.

(3) The Attorney General may designate counsel to assist the commission upon a review.

28. Powers of commission on review.

29. Notice of order after review.

30. Appeal to Appellate Division of Supreme Court.

(4) Upon a review the commission has the same power to summon and enforce the attendance of witnesses or persons and compel them to give evidence on oath or otherwise, and to produce documents, records and things as is vested in the Supreme Court of Alberta or a judge thereof for the trial of civil actions, but

- (a) the provisions of rules of court or of law relating to the service of subpoenas upon and to the payment of conduct money or witness fees to witnesses do not apply,
- (b) no person is entitled in respect of any document, record or thing asked for, given or produced, to claim any privilege on the ground that he might be criminated or exposed to a penalty or to civil litigation thereby,
- (c) no person shall refuse to answer any question upon any ground of privilege, but a solicitor shall not be required to disclose any communications between himself and his client, and
- (d) no provision of *The Alberta Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.

28. Upon a review, the commission may by order confirm or revoke the direction, decision, order or ruling under review or may make such alteration therein or addition thereto as a majority of the members of the commission deem proper.

29. A notice of the order made upon every review shall be served forthwith upon the person requesting the review and to such other person as in the opinion of the commission is primarily affected by such order.

Appeals

30. (1) Where the commission has reviewed a direction, decision, order or ruling pursuant to this Act, any person upon whom a notice is served under section 29 or any other person who is primarily affected by such direction, decision, order or ruling or by the order made upon the review may appeal to the Appellate Division of the Supreme Court of Alberta.

(2) Every appeal shall be by notice of motion served upon the Registrar within thirty days after the mailing of the notice under section 29 and the practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, but the Lieutenant Governor in Council may vary or amend such practice and procedure or may prescribe the practice and procedure that shall be applicable to appeals taken under this action.

31. Order of Supreme Court.

32. Effect of new material.

33. Regulations.

34. Proof of evidence.

(3) The Registrar shall certify to the Registrar of the Appellate Division of the Supreme Court of Alberta

- (a) the direction, decision, order or ruling that has been reviewed by the commission,
- (b) the order of the commission upon the review, together with any statement of reasons therefor,
- (c) the record of the review, and
- (d) all written submissions to the commission or other material that in the opinion of the Registrar are relevant to the appeal.

(4) The Attorney General may designate counsel to assist the court upon the hearing of any appeal taken under this section.

31. Where an appeal is taken under section 30, the court may by its order direct the commission to make such direction, decision, order or ruling or to do such other act as the commission is authorized and empowered to do under this Act or the regulations and as the court deems proper having regard to the material and submissions before it and to this Act and the regulations, and the commission shall make such direction, decision, order or ruling or do such act accordingly.

32. An order of the court is final and there is no appeal therefrom but notwithstanding such order the commission has power to make any further direction, decision, order or ruling upon new material or where there is a material change in the circumstances, and every direction, decision, order or ruling is subject to the provisions of this Act.

Regulations

33. The Lieutenant Governor in Council may make regulations

- (a) exempting persons or classes of persons from this Act in addition to those exempted under section 3,
- (b) respecting the method of registration,
- (c) prescribing the fees payable on application for registration, registration and renewal of registration,
- (d) prescribing the limitations and conditions subject to which a person may be registered,
- (e) requiring the keeping of such books and records as may be prescribed,
- (f) prescribing forms and providing for their use, and
- (g) respecting any matter necessary or advisable to carry out the intent and purpose of this Act.

34. The production of a certificate purporting to be signed by the chairman of the commission or the Registrar is admissible in evidence in any court as *prima facie* proof

35. Commencement of Act.

of its contents without proof of the appointment or signature of the chairman or Registrar, as the case may be.

35. (1) This Act, except section 8, comes into force on the day upon which it is assented to.

(2) Section 8 comes into force on the first day of July, 1964.

No. 122

FIRST SESSION
FIFTEENTH LEGISLATURE
12 ELIZABETH II
1964

BILL

An Act respecting Mortgage Brokers

Received and read the

First time

Second time

Third time

HON. MR. MANNING
