

1981 BILL 82

Third Session, 19th Legislature, 30 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 82

**MORTGAGE BROKERS REGULATION AMENDMENT ACT,
1981**

THE MINISTER OF CONSUMER AND
CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 82

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MORTGAGE BROKERS REGULATION AMENDMENT ACT, 1981

(Assented to , 1981)

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

1 The Mortgage Brokers Regulation Act is amended by this Act.

2 Section 6 is repealed and the following is substituted:

6(1) A person wishing to be registered under this Act shall apply
to the Superintendent for registration.

(2) A person is not eligible to be registered unless

(a) in the case of an individual, that person is a resident of
Alberta and has been a resident of Canada for not less than
3 months immediately prior to the date of his application for
registration, or

(b) in the case of a partnership or corporation, that partner-
ship or corporation maintains a business office in Alberta at
the time of its application for registration.

6.1(1) A partnership or corporation may apply for registration
under this Act, and shall in an application designate any indi-
vidual who will act as its representative.

(2) An individual designated by a partnership or corporation as
its representative under subsection (1) must be

(a) in the case of a partnership, a partner, an officer appointed
by the partnership, a manager designated by the partnership
or an employee of the partnership, and

(b) in the case of a corporation, a member of the board of
directors of the corporation, an officer of the corporation, a

Explanatory Notes

1 This Bill will amend chapter 242 of the Revised Statutes of Alberta 1970.

2 Section 6 presently reads:

6 The Superintendent 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.

manager designated by the corporation or an employee of the corporation,

and shall meet the qualifications of a mortgage broker required under the regulations.

(3) A designated representative may carry on business as a mortgage broker on behalf of the partnership or corporation without being registered as a mortgage broker.

(4) No individual shall act as a designated representative of more than 1 partnership or corporation.

6.2(1) A person who applies for registration shall provide the Superintendent with

(a) a completed application in the form provided for in the regulations,

(b) proof satisfactory to the Superintendent that that person has complied with the applicable requirements in this Act and the regulations,

(c) an affidavit in the form provided for in the regulations,

(d) the fee prescribed by the regulations,

(e) the address of the office in Alberta from which he will carry on business as mortgage broker, and

(f) in the case of a partnership or corporation, the names and addresses of all individuals who will be designated representatives of the partnership or corporation.

(2) The Superintendent may from time to time require

(a) that further information be submitted by an applicant or a registered mortgage broker within a time specified by the Superintendent, and

(b) verification by affidavit or otherwise of any information, whenever submitted.

6.3 The Superintendent shall grant registration under this Act to an applicant unless he is of the opinion, based on facts known to him, that to do so would not be in the public interest.

6.4(1) A registered mortgage broker shall immediately notify the Superintendent in writing of

(a) a change in the address of his business office,

(b) a change in the bank, trust company, credit union or

treasury branch in which that mortgage broker maintains a trust account,

(c) a change in partners, if that mortgage broker is a partnership,

(d) a change in officers or directors, if that mortgage broker is a corporation, and

(e) a change in its designated representatives, if that mortgage broker is a partnership or corporation.

(2) A registered mortgage broker who ceases to carry on the business of mortgage broker shall immediately notify the Superintendent in writing and shall return his certificate of registration with the notice.

3 Section 8 is repealed and the following is substituted:

8 No person shall do any of the following:

(a) carry on business as a mortgage broker unless he

(i) is registered as a mortgage broker, or

(ii) is a designated representative of a partnership or corporation that is registered as a mortgage broker;

(b) carry on business as a mortgage broker

(i) otherwise than in his registered name or elsewhere than at or from his registered address, in the case of a registered mortgage broker, or

(ii) otherwise than on behalf of the partnership or corporation he represents, in the case of a designated representative;

(c) unless he is a registered mortgage broker or a designated representative of a registered mortgage broker, advertise himself as or in any manner represent that he is a mortgage broker;

(d) make or cause to be made any representation in writing that he is registered under this Act.

4 Section 9(1)(a) is repealed and the following is substituted:

(a) keep records that are necessary for the proper recording of his business transactions and financial affairs and preserve those records for at least 3 years after they come into existence, or any other period that the Superintendent directs,

3 Section 8 presently reads:

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, or

(c) unless he is a registered mortgage broker, advertise himself as, or in any manner represent that he is a mortgage broker.

(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) or (2) is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine of not more than \$500, 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 \$1,000 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 \$5,000.

4 Section 9(1)(a) presently reads:

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,

5 *The following is added after section 9:*

9.1(1) A registered mortgage broker shall maintain in a bank, trust company, treasury branch or credit union in Alberta an account designated as a trust account into which he shall deposit forthwith all money he receives in trust in respect of his business as a mortgage broker.

(2) A registered mortgage broker shall keep all money in a trust account separate and apart from money that belongs to him, and shall disburse it only for the purposes for which he received it.

(3) A mortgage broker who is entitled to a commission, fee or other remuneration, or to reimbursement of expenses incurred by him, shall not withdraw from a trust account any of the commission, fee, remuneration or reimbursement for expenses until after completion of the transaction.

(4) A registered mortgage broker shall, forthwith after establishing a trust account under subsection (1), notify the Superintendent in writing of the name and address of the financial institution at which the trust account is maintained.

9.2 A registered mortgage broker shall keep a trust ledger in which he shall maintain a separate record for each person on whose behalf he is acting of

- (a) all money that he receives in trust,
- (b) all money that he holds in trust, and
- (c) all disbursements he makes from money he receives or holds in trust,

in respect of each transaction of a mortgage for that person.

6 *Section 10 is amended by repealing subsection (2) and substituting the following:*

- (2) A registered mortgage broker who proposes to transact
- (a) any mortgage the amount of which is less than \$150 000, or
 - (b) a mortgage on the principal residence of the mortgagor, regardless of the amount

shall, at least 24 hours before the time the mortgage documents are signed by the mortgagor, deliver to the mortgagor a statement in the form prescribed by the regulations showing the information

5 Trust account.

6 Section 10 presently reads:

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

referred to in subsection (1) as it relates to the mortgage and any other information required by the regulations.

(3) The statement referred to in subsection (2) shall be in duplicate and the registered mortgage broker shall

(a) obtain proof of delivery of the statement by way of an acknowledgment of delivery signed by the borrower on the duplicate copy retained by the company, and

(b) keep and maintain the duplicate copy so signed for his records.

7 Sections 11 to 16 are repealed and the following is substituted:

11 The Superintendent may require an applicant or registered mortgage broker to provide to him a bond in the amount and form provided in the regulations.

12(1) If a registered mortgage broker who is a principal under a bond provided under this Act has a judgment obtained against him or his designated representative which

(a) is based on a finding of fraud or breach of trust in respect of any transaction in mortgages,

(b) becomes final by reason of lapse of time or of being confirmed by the highest court to which that judgment may be appealed, and

(c) is not satisfied within 30 days of the date that it becomes final,

the bond is forfeited on the Superintendent notifying the surety in writing that the judgment remains unsatisfied 30 days after the date that it became final.

(2) If a bond is forfeited under subsection (1), the surety shall pay to the Minister

(a) the amount of the judgment in respect of which the bond was forfeited within 60 days of the date that the bond was forfeited, and

(b) the amount of any other judgment obtained against the mortgage broker who was the principal under the bond, or his designated representative, that

(i) is based on a finding of fraud or breach of trust in respect of any transaction in mortgages,

(ii) within 2 years after the date that the bond was for-

the information required under subsection (1) on a form approved by the Superintendent and shall obtain proof of the delivery.

7 Sections 11 to 16 presently read:

11 The Superintendent may require an applicant or a registered mortgage broker to deliver a bond approved by him in a form prescribed by the regulations and in an amount and within a time specified by the Superintendent.

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 Superintendent 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 Superintendent.

(3) For the purposes of every act and omission occurring during the

feited becomes final by reason of lapse of time or of being confirmed by the highest court to which the judgment may be appealed, and

(iii) remains unsatisfied 30 days after the judgment becomes final,

within 60 days of being notified in writing by the Superintendent that the judgment became final.

(3) If the Minister receives money under subsection (2), he shall pay that money into the Court of Queen's Bench in trust for those persons who obtained judgments referred to in subsection (2) and, on receiving the money payable under subsection (2), the Court shall, after 2 years have expired from the date the bond was forfeited, pay out that money to the persons who obtained those judgments.

(4) In the case of a bond forfeited under subsection (1),

(a) if the total amount paid to the Minister by the surety under subsection (2) is less than the face value of the bond,

(b) if within 2 years after the date that the bond was forfeited an action is commenced against the mortgage broker who was the principal under that bond or his designated representative, alleging fraud or breach of trust in respect of any transaction in mortgages, and

(c) if judgment is obtained in an action referred to in clause (b) against that mortgage broker or his designated representative that

(i) is based on a finding of fraud or breach of trust in respect of any transaction in mortgages,

(ii) becomes final by reason of lapse of time or of being confirmed by the highest court to which the judgment may be appealed, and

(iii) remains unsatisfied 30 days after the judgment becomes final,

the surety shall pay to the Minister the amount of the judgment within 60 days of being notified in writing by the Superintendent that the judgment has become final.

(5) If the Minister receives money under subsection (4), he shall pay that money into the Court of Queen's Bench in trust for those persons who obtained judgments referred to in subsection (4) and on receiving the money payable under subsection (4), the Court shall, after determining to its satisfaction that the actions referred

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 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 Attorney General may take such proceedings as he considers appropriate 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, or

(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 Court of Queen's Bench 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 section 12, subsection (1), clause (a) or (b), and

(b) the Superintendent 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.

to in subsection (4) have been concluded, pay out that money to those persons who obtained the judgments.

(6) If the amount paid into Court under subsection (3) is insufficient to satisfy the judgments referred to in subsection (2), the Court shall pay out the money on a pro rata basis.

(7) If the amount paid into Court under subsection (5) is insufficient to satisfy the judgments referred to in subsection (4), the Court shall pay out the money on a pro rata basis.

(8) Notwithstanding any other provision of this Act, the total liability of a surety under a bond shall not exceed the face value of that bond.

13 A registration granted to a mortgage broker under this Act expires if the bond provided by that mortgage broker to the Superintendent under this Act

(a) is forfeited, or

(b) is terminated, unless prior to the bond being terminated the mortgage broker provides the Superintendent with a bond to replace it.

8 *Section 20(1) is repealed and the following is substituted:*

20(1) The Superintendent,

(a) where he is about to investigate or during or after the investigation of any person under section 17,

(b) where he is about to cancel or suspend or has cancelled or suspended the registration under this Act of any person,

(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 Superintendent, are connected with or arise out of a mortgage transaction, are about to be or have been instituted against any person, or

(d) where he has reason to believe that the trust funds in a registered mortgage broker's trust account are less than the amount that he is accountable for,

may do any or all of the following:

(e) apply to the Court of Queen's Bench by way of origi-

8 Section 20(1) presently reads:

20(1) The Superintendent

(a) where he is about to investigate or during or after the investigation of any person under section 17, or

(b) where he 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 Superintendent, 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, custodian, trustee, receiver or liquidator appointed under the Bankruptcy Act (Canada), The Judicature

nating notice for the appointment of a receiver, receiver manager or trustee to hold or manage, as the case may be, all or part of the property of a mortgage broker;

(f) in writing

(i) direct any person having on deposit or under his control or for safekeeping any funds or securities of a person referred to in clause (a), (b), (c) or (d) to hold those funds or securities,

(ii) direct a person referred to in clause (a), (b), (c) or (d) to refrain from withdrawing funds or securities referred to in subclause (i) from any person who has them on deposit, under control or for safekeeping, or

(iii) direct a person referred to in clause (a), (b), (c) or (d) to hold any funds or securities of clients or others that he has in his possession or under his control in trust for a receiver appointed under clause (e) or for an interim receiver, custodian, trustee, receiver, receiver and manager or liquidator appointed under the *Bankruptcy Act* (Canada), the *Judicature Act*, the *Companies Act* or the *Winding-up Act* (Canada)

until the Superintendent in writing revokes the direction or consents to release any particular fund or security from the direction.

9 *Section 22 is repealed and the following is substituted:*

22(1) The Superintendent may cancel or suspend the registration of a registered mortgage broker

(a) if he or his designated representative contravenes this Act or the regulations,

(b) if the funds in his trust account are less than the amount that he is accountable for,

(c) if he or his designated representative misappropriates funds held in trust,

(d) if he or his designated representative induces or attempts to induce a party to a contract concerning a mortgage transaction to breach that contract, or

(e) if it is in the public interest to do so.

(2) If a mortgage broker's registration is cancelled under subsection (1), then, subject to an appeal under section 24, he is not eligible to be registered again until 12 months have elapsed from the date of the cancellation.

Act, The Companies Act or the Winding-up Act (Canada), or until the Superintendent in writing revokes the direction or consents to release any particular fund or security from the direction.

9 Section 22 presently reads:

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

10 *The following is added after section 24:*

24.1(1) A person

(a) whose registration has been cancelled or suspended under section 22, and

(b) who has in respect of that cancellation or suspension commenced an appeal under section 24,

may apply by originating notice to the Court of Queen's Bench for an order reinstating the cancelled registration or removing the suspension, as the case may be, pending the determination of the appeal.

(2) The Court may hear an application made under this section not less than 2 days after the originating notice has been served on the Superintendent.

(3) On hearing an application made under this section, the Court may, subject to any conditions it considers proper, reinstate the cancelled registration or remove the suspension, as the case may be, pending the determination of the appeal under section 24.

11 *Section 33 is amended*

(a) *by repealing clauses (b) and (f);*

(b) *by adding the following after clause (d):*

(d.1) respecting

(i) the experience, education and training that an applicant must possess, and

(ii) examinations that an applicant must undergo

before he is entitled to be registered under this Act,

(d.2) exempting mortgages or classes of mortgages from all or any of the requirements of section 10,

12 *The following is added after section 33:*

33.1 The Minister may make regulations providing for

(a) forms and their contents for the purposes of this Act, and

10 Reinstatement pending appeal.

11 Section 33 presently reads in part:

33 The Lieutenant Governor in Council may make regulations

(b) respecting the method of registration,

(f) prescribing forms and providing for their use, and

12 Regulations, Offence, General.

(b) the amount and form of bonds to be provided by applicants and registered mortgage brokers under this Act.

Offence

33.2 A person who contravenes this Act or the regulations is guilty of an offence and liable to a fine of not more than \$5000.

33.3 A prosecution under this Act may be commenced within 2 years from the date on which the offence is alleged to have been committed, but not thereafter.

General

33.4 A document or other notice under this Act may be served on an applicant or registered mortgage broker by leaving it at or sending it by registered mail to the address provided pursuant to section 6.2 or 6.4.

33.5 The Superintendent may bring an action and institute proceedings in his name of office

- (a) for the enforcement of this Act, and
- (b) for the recovery of fees payable under section 6.2.

13(1) Subject to subsection (2), a registration that is valid and subsisting on the date section 2 of this Act comes into force is deemed to have been granted under the Mortgage Brokers Regulation Act as amended by this Act.

(2) A partnership or corporation that is a registered mortgage broker on the date section 2 of this Act comes into force shall, within 30 days after that date, provide the Superintendent with the information required by section 6.2(1)(f) of the Mortgage Brokers Regulation Act, as enacted by section 2 of this Act.

14 Sections 6 and 7 comes into force on Proclamation.

In accordance with section 4(1) of The Interpretation Act, 1980, this Bill, except sections 6 and 7, comes into force on the date it receives Royal Assent.

13 Transitional.