

1985 BILL 61

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 61

**MORTGAGE BROKERS REGULATION
AMENDMENT ACT, 1985**

THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 61

1985

MORTGAGE BROKERS REGULATION AMENDMENT ACT, 1985

(Assented to _____, 1985)

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 1 is amended*

(a) in subsection (1) by renumbering clause (a) as clause (a.2) and by adding the following before clause (a.2):

(a) "carry on business as a mortgage broker" means

(i) solicit a person to borrow or lend money to be secured by a mortgage,

(ii) negotiate a mortgage transaction,

(iii) collect mortgage payments and otherwise administer mortgages, or

(iv) buy, sell or exchange mortgages or offer to do so,

on behalf of another person and for money or other consideration;

(a.1) "designated representative" means an individual referred to in section 4.1;

(b) by repealing subsection (1)(b) and substituting the following:

(b) "mortgage" means

(i) a mortgage of real property, of chattels real or of a mortgage of real property or chattels real, or

(ii) any charge on real property, on chattels real or on a mortgage of real property or chattels real for securing the repayment of money or other consideration;

(c) by repealing subsection (1)(c) and substituting the following:

(c) "mortgage broker" or "broker" means a person who carries on business as a mortgage broker, and includes a designated representative;

(c.1) "person" includes a number of persons in partnership;

Explanatory Notes

1 This Bill will amend chapter M-19 of the Revised Statutes of Alberta 1980.

2 Section 1 presently reads:

1(1) In this Act,

(a) "Minister" means the Minister of Consumer and Corporate Affairs;

(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,

(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) "Superintendent" means the Superintendent of Real Estate appointed under the Real Estate Agents' Licensing Act;

(2) For the purposes of subsection (1)(c), a person

(a) who, in any one calendar year, receives an amount of \$1000 or more in fees or other consideration, excluding legal fees, for arranging mortgages for other persons, or

(b) who, during any one calendar year, lends his own money on the security of 10 or more mortgages,

is be deemed to be carrying on a business as a mortgage broker.

(c.2) “records” includes

- (i) accounts, books, returns, statements, reports, financial documents or other memoranda of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by any other means, and
- (ii) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate;

(d) *by repealing subsection (2).*

3 *Section 2 is amended*

(a) *by repealing clauses (h), (i) and (j) and substituting the following:*

- (h) an employee of a person dealing in mortgages as a principal while that person is so acting in a lawful manner and while the employee is acting within the regular course of his employment on behalf of that person;

(b) *by repealing clause (l).*

4 *Section 4(2)(b) is repealed and the following is substituted:*

(b) in the case of a partnership or corporation, that partnership or corporation

- (i) maintains a business office in Alberta, and
- (ii) has designated a suitable individual under section 4.1(1).

5 *Section 4.1 is amended*

(a) *in subsection (1), by striking out “any” and substituting “at least 1”;*

(b) *by adding the following after subsection (1):*

- (1.1) The partnership or corporation shall maintain at least 1 individual who is designated by it to act as its representative.

3 Section 2 presently reads:

2 This Act does not apply to

- (a) a bank;*
- (b) a treasury branch;*
- (c) a credit union;*
- (d) a trust company;*
- (e) an insurer to which the 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 clauses (a) to (f) in his capacity as agent or employee;*
- (h) a person who does not participate in the negotiations of a mortgage transaction with the mortgagor;*
- (i) a corporation registered as a loan corporation or as a loaning land corporation under the Loan and Trust Corporations Act (Ontario);*
- (j) a loan company to which Part I of the Loan Companies Act (Canada) applies or a British loan company to which Part II of the Loan Companies Act (Canada) applies;*
- (k) a member of The Law Society of Alberta in the course of his practice as a barrister and solicitor;*
- (l) any person acting for the Crown or for a Crown corporation;*
- (m) any person or class of persons exempted by the regulations.*

4 Section 4(2) presently reads:

(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 partnership or corporation maintains a business office in Alberta at the time of its application for registration.*

5 Section 4.1 presently reads in part:

4.1(1) A partnership or corporation may apply for registration under this Act, and shall in an application designate any individual who will act as its representative.

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

(c) in subsection (2), by striking out “must be” and substituting “or section 4.4(1)(e) must be resident in Alberta and”.

6 Section 4.3 is repealed and the following is substituted:

4.3 The Superintendent may register an applicant on being satisfied that the applicant

(a) is a suitable person to carry on business as a mortgage broker having regard to the training, competence and personal integrity of the applicant and his designated representatives, and

(b) meets the requirements of this Act and the regulations.

7 Section 4.4(2) is repealed and the following is substituted:

(2) A registered mortgage broker who ceases to carry on business as a mortgage broker shall

(a) immediately notify the Superintendent in writing and return his certificate of registration with the notice, and

(b) within 30 days of ceasing to carry on the business, provide to the Superintendent a report by his auditor on the status of his trust account.

(3) The Superintendent may require that the person ceasing to carry on business provide further relevant information about his trust account or that the auditor's report contain such further information as he directs, and the person so required shall comply with that requirement.

8 Section 6(d) is repealed.

9 The following is added after section 6:

6.1(1) A registered mortgage broker shall not solicit, accept or receive from the public or his clients money or any other consideration except in the usual course of carrying on business as a mortgage broker or to the extent that it represents his commission, fees, remuneration and expenses for carrying out any such business.

(2) A registered mortgage broker shall not receive money in the course of carrying on business as such unless, before receiving the money, he has entered into a written agreement with the person providing it or on whose behalf it is to be held that expressly acknowledges the trust arrangement between them and sets forth the terms on which the money will be received and disbursed.

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

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

6 Section 4.3 presently reads:

4.3 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.

7 Section 4.4(2) presently reads:

(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.

8 Section 6 presently reads in part:

6 No person shall do any of the following:

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

9 Prohibitions against raising money and respecting conflicts of interest.

(3) Before accepting any money in connection with carrying on any business as a mortgage broker, a registered mortgage broker shall provide to the person on whose behalf he is acting and any other person who is providing the money full particulars in writing of

(a) any direct or indirect interest that he or any associate within the meaning of the *Securities Act* or officer, director or manager of the broker or, where the broker is a partnership, any partner in the partnership, has or may acquire in the transaction or money, and

(b) any intention on his part to have himself or another person referred to in clause (a) named in any document that would tend to indicate that he or that person had such an interest.

10 *Section 7(1) is amended*

(a) *in clause (a) by striking out “keep records” and substituting “keep or have readily available at a business office in Alberta records”;*

(b) *by repealing clause (b) and substituting the following:*

(b) file with the Superintendent before June 30 in each year a report relating to the broker’s trust account as of the preceding March 31 by the broker’s auditor in the form prescribed by the regulations, and

11 *Section 7.1 is amended*

(a) *in subsection (2) by striking out “, and shall disburse it only for the purposes for which he received it”;*

(b) *by adding the following after subsection (2):*

(2.1) A person shall not release or instruct the release from trust of money that is in trust in connection with the carrying on of the business of a mortgage broker except in accordance with the terms of the trust governing the use of that money and for the purposes for which it was received.

(c) *in subsection (3) by striking out “A mortgage” and substituting “A registered mortgage”.*

12 *Section 7.2 is amended by adding “or have readily available in a business office in Alberta” after “keep”.*

10 Section 7 presently reads in part:

7(1) A registered mortgage broker shall

(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,

(b) file with the Superintendent annually and at any other time or times the Superintendent requires a financial statement that is satisfactory to the Superintendent as to his financial position, certified by the mortgage broker, or an officer or partner of the mortgage broker, and reported on by the auditors of the mortgage broker, and

(c) file with the Superintendent any other information the Superintendent requires in such form as he may prescribe.

11 Section 7.1(2) and (3) presently read:

(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.

12 Section 7.2 presently reads:

7.2 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.

13 Section 8 is amended

(a) in subsection (1) by striking out “and maintain” and substituting “or have readily available in a business office in Alberta”;

(b) by adding the following after subsection (2):

(2.1) A registered mortgage broker, before accepting money to be used for making a loan or an investment in a mortgage, shall deliver to the prospective lender or investor a written statement containing the information and documents prescribed by the regulations.

(2.2) Subsection (2.1) does not apply where the prospective lender or investor

(a) is a corporation

(i) engaged in a business consisting of or including the making of secured loans or investments in mortgages, or

(ii) making a loan or investment exceeding \$150 000, or

(b) has previously signed a declaration in the form prescribed by the regulations waiving his right under that subsection.

(c) in subsection (3),

(i) by adding “or (2.1)” after “(2)”;

(ii) in clause (a),

(A) by striking out “borrower” and substituting “borrower, lender or investor, as the case may be,”;

(B) by striking out “company” and substituting “broker”.

14 The following is added after section 8:

8.1 Forthwith after the completion of a transaction for the lending of money on the security of a mortgage or the purchase of a mortgage on behalf of another person, a registered mortgage broker shall provide the client with

(a) a copy of the duplicate original of the registered mortgage,

(b) a copy of a certificate of charge issued by the land titles office with respect to the mortgage,

(c) a copy of the solicitor’s report with respect to the registration and the effect of the transaction, and

(d) except to the extent that he has previously provided it under section 8, a statement of the total amount invested or advanced on the mortgage and, in the case of a transaction for the lending of money, a copy of the statement required to be provided to the mortgagor under section 8(2).

13 Section 8 presently reads:

8(1) A 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) 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 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.*

14 Disclosure requirements.

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

9 An applicant or a registered mortgage broker, if so required by the regulations, shall provide to the Superintendent a bond in the amount and form provided by the regulations.

16 *Section 10 is amended*

(a) *by striking out “Minister” wherever it occurs and substituting “Superintendent”;*

(b) *in subsection (3) by striking out “after 2 years have expired from” and substituting “as soon as possible after all such persons have been given the opportunity to make a claim for the money before the Court but not less than 2 years after”;*

(c) *in subsection (4)(c)(ii) by adding “after the expiration of 2 years from the date that the bond was forfeited” after “final”;*

(d) *in subsections (6) and (7) by adding “among the persons who obtained those judgments” after “basis”.*

15 Section 9 presently reads:

9 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.

16 Section 10 presently reads:

10(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 forfeited 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,

17 Section 15(7) is amended by adding “or” at the end of clause (d), by striking out “, or” at the end of clause (e) and by repealing clause (f).

18 Section 18 is amended

(a) in subsection (1),

(i) by adding the following after clause (b):

(b.1) where he has reason to believe that a registered mortgage broker has ceased or is about to cease to carry on business as such and there is no suitable person to administer the trust account,

(ii) in clause (e) by adding “or of the broker’s trust account” after “broker”;

(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 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.

17 Section 15(7) presently reads:

(7) In an investigation under this section

(a) the failure without reasonable excuse of a person to furnish information required by the person making the investigation,

(b) the failure without reasonable excuse of a 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 a person to produce any thing where the evidence, answer or production would be required in an action,

is also prima facie proof on which

(d) the Attorney General, or his representative, may base an affirmative finding concerning any fraudulent act to which he may consider it relevant,

(e) the Court of Queen's Bench may grant an interim or permanent injunction, or

(f) a justice may base a conviction for an offence against this Act or the regulations.

18 Section 18(1) and (4) presently read:

18(1) The Superintendent,

(a) where he is about to investigate or during or after the investigation of any person under section 15,

(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

- (iii) in clause (f) by striking out “clause (a), (b), (c) or (d)” wherever it occurs and substituting “any of clauses (a) to (d)”;*
- (b) in subsection (4) by adding “, (b.1)” after “(b)”.*

19 *Section 23.1(b) is repealed and the following is substituted:*

- (b) the requiring of applicants or registered mortgage brokers or any class of them to provide a bond and governing the form and amount of the bond;
- (c) the information and documents to be contained in the written statement referred to in section 8(2.1).

20 *Section 23.2 is repealed and the following is substituted:*

23.2(1) A person who contravenes this Act or the regulations is guilty of an offence and liable

- (a) in the case of a corporation, to a fine of not more than \$25 000, and
- (b) in any other case, to a fine of not more than \$5000.

(2) Where a corporation is convicted of an offence against this Act or the regulations, every officer, director, employee or agent

(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 originating 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 Business Corporations Act, as the case may be, 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.

(4) In any of the circumstances mentioned in subsection (1)(a), (b) or (c), the Superintendent 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.

19 Section 23.1 presently reads:

23.1 The Minister may make regulations providing for

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

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

20 Section 23.2 presently reads:

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

of the corporation who authorized the commission of the offence or assented to it or acquiesced or participated in it is also guilty of an offence and is liable to the penalty provided for in subsection (1)(b).

(3) A partnership is not liable as such under subsection (1), but where a partner in a partnership that is a mortgage broker is convicted of an offence against this Act or the regulations, each partner of his in that partnership who authorized the commission of the offence or assented to it or acquiesced or participated in it is also guilty of an offence and is liable to the penalty provided for in subsection (1)(b).

21 Section 23.4 is amended by adding “or certified” after “by registered”.

22 Section 3(1)(c) of the Collection Practices Act is amended by adding “or a mortgage broker registered under the Mortgage Brokers Regulation Act,” after “Act”.

23 This Act comes into force on Proclamation.

21 Section 23.4 presently reads:

23.4 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 4.2 or 4.4.

22 Consequential.

23 Coming into force.