



Information Bulletin

Bulletin Number: MB 15-001

Topic: PROHIBITED MORTGAGE BROKER FEES

Issue Date: OCTOBER 2015

The Office of the Registrar of Mortgage Brokers is aware that some mortgage brokers are charging prohibited fees and using coercive practices to induce consumers to complete on mortgage transactions. In some cases brokers threaten legal action to collect these fees if the consumer elects not to proceed with the transaction.

The Registrar's office protects consumers from mortgage broker misconduct, and treats allegations of coercive practices seriously.

Industry is reminded that sections 4(3)(b)(ix) and 5 of the *Business Practices and Consumer Protection Act* (BPCPA) prohibit mortgage brokers from charging any fees for arranging a consumer mortgage in British Columbia, unless those fees are deducted from the mortgage advance at time of funding.

Examples of prohibited fees include:

- "Application fees" charged in advance of the mortgage being funded;
- "Commitment fees" charged at the time of application or issuance of a mortgage commitment;
- "Cancellation fees" charged in the event a borrower elects not to proceed with the mortgage arranged by the mortgage broker; and
- Any other non-third-party fees charged in advance of the mortgage being funded, or in the event a borrower elects not to proceed with the mortgage arranged by the mortgage broker.

The Office of the Registrar of Mortgage Brokers reviews allegations relating to prohibited fees and coercive practices on a case-by-case basis.

Further information on prohibited fees is found in Bulletin [MB 10-007](#).

Mortgage brokers contemplating charging consumer fees for their services or for third-party expenses should consider seeking legal advice to ensure compliance with the legislation.

Please refer to the attached "Frequently Asked Questions" for additional information regarding prohibited mortgage broker fees.

Frequently Asked Questions

Q: Does this mean I can't charge any fees to consumers?

A: No. It means that any fees the consumer is charged for your services can only be deducted from the mortgage proceeds at the time of funding.

The Registrar's office expects that mortgage brokers provide consumers with sufficient information to make an informed decision when charging a fee for mortgage broker services. As discussed in Bulletin [MB 10-007](#), an agreement on fees should be reached in advance and be included in a Client Service Agreement or similar agreement.

Mortgage brokers contemplating charging fees should review Bulletin [MB 10-007](#) and consider seeking legal advice to ensure compliance with the legislation.

Q: Does this prohibition apply to commercial mortgage deals?

A: No. The prohibition on certain fees under the BPCPA does not apply to commercial mortgage transactions. Non-consumer mortgages would include those to finance development projects or construction deals where the borrower is engaging in a business activity.

Q: Can I charge consumers for the third-party expenses I incur?

A: Yes. Mortgage brokers may recover from borrowers any third-party expenses paid by the mortgage broker during the process of arranging a mortgage, such as appraisal fees and legal fees.

Mortgage brokers contemplating recovering third-party expenses from borrowers may consider seeking legal advice to ensure compliance with the legislation.

Q: Can I charge a borrower a fee to cover my own administrative overhead in arranging a mortgage that the borrower elects to not proceed with?

A: No. You cannot recover internal administrative costs, including staffing costs, from a borrower who does not proceed with a mortgage you arranged. You are only able to recover costs paid to third-parties during the arranging process, such as appraisal or legal fees. In addition, mark-ups on third-party costs cannot be charged.

Q: What if I have an arrangement with a lender that allows me to offer lower interest rates but charges me a fee for any cancelled mortgage deals – can I pass this cost onto a borrower that elects not to proceed?

A: No. This is not considered a third-party expense in arranging a mortgage. It flows solely from an arrangement between the broker and the lender, and therefore is not a cost which can be passed on to the borrower in a consumer transaction.

Q: Can I collect a holding deposit from a borrower to cover expected third-party expenses in the process of arranging a mortgage?

A: Yes. However, once a mortgage commitment is issued and relevant third-party expenses have been recovered, any surplus deposit funds must be returned to the borrower, even if they elect not to proceed with the mortgage.

The Office of the Registrar expects that the amount of the holding deposit requested be based on reasonable estimates of relevant third-party expenses expected to be incurred.

For more information please contact the Office of the Registrar of Mortgage Brokers at the Financial Institutions Commission at 604-660-3555 (866-206-3030 (toll free)) or via email at BrokerConduct@ficombc.ca.

At the office of the Registrar of Mortgage Brokers, we issue information bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Mortgage Brokers Act*, *Business Practices and Consumer Protection Act* and Regulations. While the comments in a particular part of an information bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an information bulletin generally applies as of the date on which it was published, unless otherwise specified.