
MORTGAGE BROKERS ACT

CHAPTER 313

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Definitions

- 1 In this Act:

“**commission**” means the commission established under the *Commercial Appeals Commission Act*;

“**court**” means the Supreme Court;

“**mortgage**” includes every instrument by which land in British Columbia is, in any manner, conveyed, assigned, pledged or charged as security for the payment of money or money’s worth to be reconveyed, reassigned or released on satisfaction of the debt, but does not include an agreement for sale of or a right to purchase land or an interest in land;

“mortgage broker” means a person who does any of the following:

- (a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker’s own or that of another person;
- (b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;
- (c) carries on a business of buying and selling mortgages or agreements for sale;
- (d) in any one year, receives an amount of \$1 000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;
- (e) during any one year, lends money on the security of 10 or more mortgages;

“person” includes an individual, corporation, firm, partnership, association, syndicate, any unincorporated organization and an agent of any of them;

“registrar” means a person appointed by the Lieutenant Governor in Council to act as registrar or a person authorized by the registrar to perform the registrar’s duties under this Act;

“submortgage broker” means any person who, in British Columbia, actively engages in any of the things referred to in the definition of mortgage broker and is employed, either generally or in a particular case, by, or is a director or a partner of, a mortgage broker.

PART 1 – REGISTRATION

Powers of registrar

- 2 The registrar has the powers, and must discharge the duties conferred or imposed on the registrar by this Act.

Register

- 3 (1) The registrar must keep a register to be called The Mortgage Brokers Register, in which the registrar must enter
 - (a) the name of every mortgage broker and submortgage broker registered under this Act,
 - (b) the name under which the business is carried on, and
 - (c) the address, or the addresses if more than one, at or from which the business is carried on.
- (2) An application for registration as a mortgage broker or submortgage broker under this Act must be made to the registrar in a form and containing information the registrar specifies, together with payment of the prescribed fee.

- (3) An applicant must state in the application an address for service in British Columbia
- (4) Except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service as stated in the application.
- (5) A mortgage broker or submortgage broker must notify the registrar promptly after a change of that person's business address or address for service.
- (6) A mortgage broker must
 - (a) promptly after registration, deliver to the registrar a list of the names and addresses of submortgage brokers employed by the mortgage broker, and
 - (b) during the continuance of the mortgage broker's registration promptly notify the registrar of the name and address of each new submortgage broker employed or of each submortgage broker who ceases to be employed.
- (7) If a submortgage broker ceases to be employed, the notice must also state the reason why the submortgage broker ceases to be employed by the mortgage broker.
- (8) The termination of the employment of a submortgage broker with a mortgage broker operates as a suspension of the registration of the submortgage broker until
 - (a) notice in writing has been received by the registrar from another person registered as a mortgage broker of the employment of the submortgage broker by that other person, and
 - (b) the employment has been approved in writing by the registrar.

Granting of registration by registrar**4 The registrar**

- (a) must grant registration or renewal of registration to an applicant if in the opinion of the registrar the applicant is suitable for registration and the proposed registration is not objectionable,
- (b) must not refuse to grant or refuse to renew registration without giving the applicant an opportunity to be heard, and
- (c) may, in the registrar's discretion, attach to the registration or renewal of registration terms, conditions or restrictions the registrar considers necessary.

Power of registrar to investigate

- 5** The registrar may, and on receipt of a sworn complaint must, investigate any matter or thing arising out of this Act or the regulations.

Procedure and powers of registrar for inquiry

- 6 (1) In this section, “**securities**” means securities as defined in the *Securities Act*.
- (2) For sections 5 and 8, the registrar may investigate, inquire into and examine
- (a) the affairs of the person in respect of whom the investigation is being made and 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 the person and any property, assets or things owned, acquired or alienated in whole or in part by that person or by any person acting on behalf of or as agent for that person, 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 the person, and the relationship that may at any time exist or have existed between the person and any other person by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, securities or other property, the transfer, negotiation or holding of securities, interlocking directorates, common control, undue influence or control or any other relationship.
- (3) The registrar under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as the court has for the trial of civil actions.
- (4) For the purposes of subsection (3), the failure or refusal of a person to attend, to answer questions or to produce the documents, records and things in the person’s custody or possession makes the person liable to be committed for contempt by the court as if in breach of an order or judgment of the court.
- (5) A bank or an officer or employee of a bank is exempt from the operation of subsections (3) and (4).
- (6) A person giving evidence under this Act may be represented by counsel.
- (7) On an inquiry under this Act, the registrar may search for, seize and take possession of any documents, records, securities or other property of the person whose affairs are being investigated.
- (8) On an inquiry under this Act, the registrar may appoint an accountant or other expert to examine documents, records, properties and matters of the person whose affairs are being investigated.
- (9) If the inquiry discloses a contravention of this Act or the regulations or orders or directions of the registrar, the registrar may order the costs to be paid by the person.

- (10) The registrar may file a copy of the order made under subsection (9) with the registrar of the court, and the order is then deemed to be a judgment of the court.

Freezing of trust funds

7 (1) If

- (a) the registrar is about to examine, or is examining, or has examined a person under this Act,
- (b) the registrar is about to make or has made a direction, decision, order or ruling suspending or cancelling the registration of any person under this Act, or
- (c) criminal proceedings or proceedings in respect of a contravention of this Act, or the regulations, or the orders or directions of the registrar, are about to be, or have been, instituted,

the registrar may, in writing or by telegram

- (d) direct any person having on deposit or under control or for safekeeping any funds or securities of the person referred to in paragraph (a), (b) or (c) to hold the funds or securities,
 - (e) direct the person referred to in paragraph (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, and
 - (f) direct the person referred to in paragraph (a), (b) or (c) to hold all funds or securities of clients or others in the person's possession or control in trust for any interim receiver, custodian, trustee, receiver, receiver and manager or liquidator lawfully appointed.
- (2) The registrar may, in writing, revoke a direction under subsection (1) or consent to release any particular fund or security from the direction.
- (3) A direction under subsection (1) does not apply 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 states.
- (4) In the case of a bank, loan or trust company a direction under subsection (1) applies only to the offices, branches or agencies of it named in the direction.
- (5) If a person in receipt of a direction given under subsection (1) is in doubt respecting the application of the direction to any funds or security or, if a claim is made by a person not named in the direction, the person may apply to the court, which may direct the disposition of the funds or security and may make an order as to costs as seems just.
- (6) In any of the circumstances mentioned in subsection (1) (a), (b) or (c), the registrar may make and file in the office of a land title district a certificate that proceedings have been, or are about to be, taken.

Section 8

- (7) A certificate under subsection (6), if registered, has the same effect as the registration of a certificate of pending litigation, except that the registrar may, in writing, revoke or modify the certificate.
- (8) In any of the circumstances mentioned in subsection (1) (a), (b) or (c), the registrar may apply to the court for the appointment of a receiver, or a receiver and manager, or a trustee of the property of the person, and in such cases section 152 of the *Securities Act* applies.

Suspension or cancellation of registration

- 8 (1) The registrar may, after giving the person registered under this Act an opportunity to be heard, suspend or cancel any registration if, in the opinion of the registrar, any of the following apply:
- (a) the person would be disentitled to registration if the person were an applicant under section 4;
 - (b) the person is in breach of a condition of registration, or of this Act or the regulations;
 - (c) the person is a party to a mortgage transaction which is harsh and unconscionable or otherwise inequitable;
 - (d) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest.
- (2) If the length of time that would be required to give the person an opportunity to be heard under subsection (1) would, in the registrar's opinion, be prejudicial to the public interest, the registrar may suspend registration without giving the person an opportunity to be heard.
- (3) If under subsection (2) the registrar suspends registration without giving the person an opportunity to be heard, the registrar must promptly send written notification of the suspension to the person and to the commission.
- (4) An appeal to the commission from an order under subsection (2) does not operate as a stay and no order may be made under section 12 (2) of the *Commercial Appeals Commission Act*.

Appeal to commission

- 9 A person aggrieved by a direction, decision or order under this Act by the registrar may appeal it to the commission.

Certificate of registrar

- 10 A certificate purporting to be signed by the registrar and certifying as to any matter of record in the office of the registrar or the date on which facts first came to the registrar's knowledge for the purposes of section 22 (7), is admissible in evidence in an action or proceeding in any court, or in a matter before any board, commission or other body, as proof of the matter certified in it, without proof of the office or signature of the registrar.

Nonapplication of Act

- 11** (1) The registration provisions of this Act do not apply to any of the following while acting as mortgage brokers or submortgage brokers under their proper names:
- (a) insurance companies;
 - (b) savings institutions;
 - (c) a member of the Law Society of British Columbia entitled to practise as a solicitor in British Columbia if the loan transaction is made in the course of and as part of the member's practice;
 - (d) any person acting for the government or for an agency of the government;
 - (e) a liquidator, receiver, trustee in bankruptcy or a person acting under the authority of any court or an executor or trustee acting under the terms of a will or marriage settlement.
- (2) The registration provisions of this Act do not apply to any of the following:
- (a) an employee, or director, of a person exempted from registration under subsection (1) (a) or (b) or paragraph (b) of this subsection;
 - (b) a person lending money, directly or indirectly, on the security of land to provide housing for the person's employees;
 - (c) any other person or class of persons exempted from registration by the registrar.

Deemed registration

- 12** (1) Subject to subsection (3), a person who holds a valid and subsisting licence under the *Real Estate Act* or registration under the *Securities Act* is deemed registered under this Act as a mortgage broker or submortgage broker.
- (2) A person who is deemed a mortgage broker or submortgage broker under subsection (1) must, at the request of the registrar, file with the registrar information the registrar requires under this Act.
- (3) The registrar may order, with respect to any person, that subsection (1) does not apply.

Effect of failure to register

- 13** (1) A mortgage is not rendered void, voidable or unenforceable, solely because of the failure of any person to register under this Act, or because of any defect or irregularity in an application for registration, or renewal of registration.
- (2) This section is retroactive to January 1, 1972 to the extent necessary to give it full force and effect as and from that date.

False statements

- 14** (1) A mortgage broker or submortgage broker must not make any false, misleading or deceptive statement in any advertisement, circular, pamphlet or other similar material.

- (2) A mortgage broker must publish the name under which he or she is registered in every advertisement, circular, pamphlet or other similar material used in connection with his or her business.
- (3) If a mortgage broker or submortgage broker in the opinion of the registrar does any of the things mentioned in subsection (1) or fails to do any of the things mentioned in subsection (2), the registrar may, in addition to any proceedings that may be instituted under section 22, order the person to stop using the advertisement, circular, pamphlet or other similar material.

PART 2 – DISCLOSURE

Application of Part 2

- 15** This Part applies only to a mortgage in which there is an amount by way of bonus, commission, discount, finder's fee, brokerage fee or amount of a similar kind, by whatever name called, required to be paid by the borrower, in addition to interest and reasonable appraisal, survey and legal fees, as part of the cost of obtaining the amount paid to the borrower or on the borrower's account.

Prior disclosure

- 16** (1) A person lending money on a mortgage to which this Part applies must provide to the borrower at or before the time the person signs the mortgage a separate statement in writing, designated as a disclosure statement, in the prescribed form, completed and signed by the lender, or the lender's authorized agent.
- (2) The disclosure statement need not be incorporated in, or attached to, the mortgage.
- (3) If the lender provides a disclosure statement required by subsection (1), the borrower may, but not later than 48 hours after the borrower signed the mortgage or received the disclosure statement, whichever first occurs, rescind the mortgage by delivering or posting by prepaid mail to the lender and to the registrar of titles, in whose office the land comprised in the mortgage is registered, a notice in the form set out in the disclosure statement.
- (4) For subsection (3), Saturday, Sunday or a holiday is not to be included in the calculation of time.
- (5) A notice under subsection (3), if sent by prepaid mail, is deemed to be given at the time of mailing.
- (6) The delivery of a notice under subsection (3) to the appropriate land title office has the same effect as a caveat lodged under section 283 of the *Land Title Act*.
- (7) If a borrower gives notice under subsection (3), the borrower must
- (a) promptly repay to the lender the full amount, if any, actually advanced on the mortgage, and

- (b) within 10 days of receipt of a statement of expenses reasonably and necessarily incurred by the lender, if any, pay those expenses.
- (8) If a borrower complies with subsection (7), the lender must execute and provide to the borrower a discharge of the mortgage.
- (9) If there is a dispute respecting compliance with subsection (7) or (8) or the expenses incurred by the lender, the lender or the borrower may apply to the court by originating notice, on 2 clear days' notice to the other party, for an order that that party comply with subsection (7) or (8) within a time and on terms, including payment of interest, as the court considers just.
- (10) If a mortgage to which this Part applies is assigned by a lender, the rights and obligations of subsections (3), (7), (8) and (9) and of section 17 apply as between the borrower and assignee.

Redemption order on nondisclosure

- 17** (1) In addition to a right of action that the borrower may have at law or in equity, on application by originating notice within one month after signing a mortgage, the court may, if it finds that the lender has omitted to provide a disclosure statement as required by section 16, or that the borrower has been deliberately misled by anything contained in a disclosure statement provided by the lender under section 16, by order,
- (a) permit the borrower to redeem the mortgaged land on payment into court of the principal money advanced under the mortgage, together with interest on it at the rate specified in the mortgage on the amount actually advanced, together with all expenses reasonably and necessarily incurred by the lender in respect of the mortgage, and
 - (b) provide that, on payment into court, the mortgage is to be discharged.
- (2) On presentation of a copy of an order made under this section certified by the registrar of the court and on production of a certificate of the registrar of the court all payments required by the order have been made, the registrar of titles, in whose office the mortgage is registered, must cancel the registration of the mortgage.

Failure to provide or defect in disclosure statement

- 18** Except as otherwise provided in this Part, a mortgage is not rendered void, voidable or unenforceable, solely because of the failure of a lender to provide a disclosure statement to the borrower, or because of a defect, omission or irregularity in a disclosure statement.

Nonwaiver

- 19** This Part applies despite an agreement of waiver.

PART 3 – GENERAL**Liability of registrar, commission, etc.**

- 20** An action may not be brought or continued against the registrar or a person acting under the authority of the registrar for anything done by the registrar or the person in the performance of duties under this Act or the regulations or in pursuance or intended or supposed pursuance of this Act or the regulations, unless it was done in bad faith.

Offences

- 21** (1) Unless exempted under section 11, a person must not do any of the following:
- (a) carry on business as a mortgage broker or submortgage broker unless the person is registered under this Act;
 - (b) carry on business as a mortgage broker otherwise than in the person's registered name or elsewhere than at or from the person's registered address;
 - (c) advertise or in any other way indicate that the person is a mortgage broker or submortgage broker other than under the registered name of the mortgage broker;
 - (d) employ as a submortgage broker any person not registered under this Act.
- (2) A mortgage broker must not make or cause to be made any representation in writing that the mortgage broker is registered under this Act.

Penalties

- 22** (1) A person who contravenes this Act or the regulations, or an order or directive of the registrar, commits an offence.
- (2) A person who commits an offence under subsection (1) is liable on conviction
- (a) for a first offence, to a fine of not more than \$5 000, or
 - (b) for any subsequent offence
 - (i) in the case of an individual, to a fine of not more than \$5 000 and to imprisonment for a term of not more than 6 months, and
 - (ii) in the case of a corporation, to a fine of not more than \$10 000.
- (3) If a corporation is guilty of an offence under subsection (1), every director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of the offence and is liable on conviction to the penalties provided in subsection (2).
- (4) Subsection (3) does not relieve the corporation that actually committed the offence from liability.
- (5) In addition to the penalties provided in this section, the registrar may take any other action or proceeding against the person or corporation provided by law.

- (6) In proceedings for an offence under this Act, it is a defence if the person charged proves that the commission of the offence was due to a mistake of fact, or to an accident, and that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or herself or any person under his or her control.
- (7) A proceeding under this Act may not be commenced more than 2 years after the facts on which the proceeding is based first came to the knowledge of the registrar.

Power to make regulations

- 23** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting applications for registration and renewal of registration and the expiration of registrations;
 - (b) prescribing the fees payable for registration and renewal of registration;
 - (c) prescribing limitations and conditions generally applicable to registration and renewal;
 - (d) requiring the keeping by a mortgage broker of books, accounts and records as may be prescribed;
 - (e) prescribing the amount of brokerage or other fees;
 - (f) defining words or expressions not defined in this Act;
 - (g) respecting any matter necessary or advisable to carry out the intent and purpose of this Act;
 - (h) prescribing the form of disclosure statements and amending, varying or repealing them;
 - (i) exempting persons and classes of persons from all or any of this Act or the regulations with respect to specified transactions or classes of transactions;
 - (j) prescribing the practice and procedure of a hearing under section 8 and of inquiries, investigations and examinations under this Act.
- (3) The registrar may make regulations as follows:
- (a) prescribing and requiring the forms for registration under this Act;
 - (b) prescribing the forms to be used in carrying on the business of a mortgage broker or by persons dealing with mortgage brokers;
 - (c) designating the persons required to use the forms prescribed;
 - (d) prescribing the limitations and conditions under which the prescribed forms are to be used.
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MORTGAGE BROKERS — HISTORICAL TABLE

Legislative History

MORTGAGE BROKERS ACT

RSBC 1996, chapter 313

Section	History
1	RS1979-283-1; 1982-68-40; 1989-40-134.
2	RS1979-283-2.
3	RS1979-283-3; 1980-5-2; 1983-10-21.
4	RS1979-283-4.
5	RS1979-283-5.
6	RS1979-283-6.
7	RS1979-283-7; 1985-83-208; 1992-55-1, Sch. 1.
8	RS1979-283-8; 1982-68-41.
9	RS1979-283-9; 1982-68-42.
10	RS1979-283-10.
11	RS1979-283-11; 1989-47-378; 1992-59-54.
12	RS1979-283-12.
13	RS1979-283-13.
14	RS1979-283-14.
15	RS1979-283-16.
16	RS1979-283-17.
17	RS1979-283-18.
18	RS1979-283-19.
19	RS1979-283-20.
20	RS1979-283-21; 1982-68-43.
21	RS1979-283-22.
22	RS1979-283-23.
23	RS1979-283-24; 1985-83-210.

EXPLANATORY NOTE

Amendments Not in Force: If there are any legislative changes to the Act that are not in force as of December 31, 1996, these are identified in *italics* at the beginning of the historical table. The "Section" column identifies the affected provisions of the Act. The "Citation" column identifies the amending legislation by its citation in the 1996 Statute Revision Supplement.

Legislative History: The second part of the table provides a legislative history of each section of the Act between the 1979 Statute Revision and the 1996 Statute Revision. The "Section" column identifies all sections of the Act in force on December 31, 1996. The "History" column for each section begins with the citation of the section immediately before the 1996 Statute Revision. This is followed by a list of citations for the legislation that enacted or amended the section between the 1979 Statute Revision and the 1996 Statute Revision (if a section was repealed and replaced during that period, these last citations begin at the most recent replacement).

Legislative citations have the format of "year-chapter-section".