

Digital Government and Service NL
Amendments to the Mortgage Brokers Act
What We Heard
March 2022

Introduction

Purchasing a house or condominium is one of the biggest financial investments most people will make in a lifetime. According to statistics gathered from Chartered Banks, and released by the Bank of Canada in August 2019, approximately 69 per cent of all household debt in Canada is a residential mortgage. Mortgage contracts are complex, and include various types of interest rates, amortization periods, term lengths and penalties for early termination. It is important for consumers to have qualified professional guidance to help them navigate the mortgage process, including mortgage brokers.

A mortgage broker is a person who deals in mortgages and promotes themselves as being able to provide services usually provided by a mortgage broker, or a person who, for-profit, finds mortgage money on behalf of others. Mortgage brokers in Newfoundland and Labrador offer mortgages through financial institutions such as banks or trust companies, mortgage finance companies or private lenders.

The **Mortgage Brokers Act**, administered by Digital Government and Service NL (DGSNL), governs the registration and licensing of mortgage brokers to operate in this province. This legislation came into effect in 1976, and has been amended periodically to keep pace with changes in the industry, as well as consumer demand. In 2010, substantive amendments were made to enhance consumer protection by allowing the Registrar of Mortgage Brokers increased powers to examine and investigate alleged violations.

As part of government's commitment to modernize legislation, DGSNL made changes to the **Real Estate Trading Act** in 2019 to enhance consumer protection. One key change was restricting a licensed real estate person from providing both real estate and mortgage brokerage services on the same real estate transaction. These changes were made following consultation with the public and industry. During consultations on the amendments to the **Real Estate Trading Act**, it was determined that a more in depth review of the **Mortgage Brokers Act** was necessary to similarly enhance consumer protection.

To inform government decision making regarding changes to the **Mortgage Brokers Act**, DGSNL sought feedback from the public and stakeholders. Starting on September 13, 2021, through the engageNL portal, people were invited to complete an online questionnaire with their observations and suggestions regarding the proposed amendments. Written submissions were also accepted. The deadline for feedback was October 31, 2021.

The consultations focused on three issues: licensing and education requirements, trust accounts and a code of ethics. General comments on various other aspects of the legislation was requested. Feedback was received from 34 individuals from all regions of the province, identifying as either licensed mortgage brokers, employees of mortgage brokers, customers of mortgage brokers or a member of the public. This document summarizes the feedback and comments.

Issue 1: Licensing Requirements and Education

The **Mortgage Brokers Act** recognizes a mortgage broker and a mortgage lender, but only requires the registration of a mortgage broker. There is often a lack of clarity within the industry and by consumers regarding these titles. Other jurisdictions, including Saskatchewan, Ontario, New Brunswick and Nova Scotia, recognize an expanded classification of mortgage professionals that provides clarity and reflects the evolution of roles involved and services provided. This expanded classification is similar to other licensed professionals in this province, including insurance and real estate professionals.

The question posed was whether Newfoundland and Labrador should include an expanded classification of licensed mortgage brokering professionals similar to that of New Brunswick and Nova Scotia. Ninety-four percent of respondents agreed or strongly agreed that the province's mortgage broker legislation should include similar classifications.

Besides Prince Edward Island, Newfoundland and Labrador is the only province that does not have educational requirements for mortgage brokering professionals. Training and education are important, not only to start a career as a mortgage-brokering professional, but also to ensure mortgage brokering professionals have current industry knowledge. For consumers, dealing with a knowledgeable professional is critical to ensuring continued high quality service.

Consultations questioned whether it is important to establish education and continuing education requirements for mortgage brokering professionals. Ninety-four percent of respondents agreed or strongly agreed that education and continuing education requirements are important. Seventy-seven percent of respondents agreed that all licensees should be required to complete ongoing continuing education.

Respondents were asked to provide opinions about the regulation of new licensees – in particular, specific restrictions and supervision requirements. Sixty-one percent agreed that there should be specific restrictions for new licenses including background checks, minimum education levels and accountability/evaluation to protect consumers. Eighty-four percent responded that new licensees should be required to work under the supervision of an experienced mortgage-brokering professional to receive mentoring.

Respondents were also asked to elaborate on other factors to maintain a licence as a mortgage-brokering professional. Those who replied suggested:

- Certain volume or number of transactions per year;
- Code of conduct; and
- Grandparenting of existing brokers.

Issue 2: Trust Accounts

The **Mortgage Brokers Act** does not currently regulate the administration of a trust account, used by a mortgage broker for transactions with clients. Most Canadian jurisdictions have this regulation. The **Real Estate Trading Act, 2019** was recently updated to reflect stronger regulation of trust account activity by real estate professionals.

The consultation questioned whether the current legislation should be updated to strengthen the administration of trust accounts. Eighty-six percent of respondents agreed or strongly agreed that legislative changes are necessary. Respondents were also asked to identify specific matters related to trust account administration that should be included. Respondents highlighted trust account agreements; establishing a trust bank account; access to funds in a trust account; and record keeping and reporting. Five percent of respondents indicated mortgage brokers are never in possession of client funds and suggested trust accounts are not required.

Issue 3: Code of Ethics

Most jurisdictions in Canada have a code of ethics, which licensees must follow in order to maintain their licence. Newfoundland and Labrador does not have a code of ethics for mortgage brokering professionals.

Building from recent amendments to the **Real Estate Trading Act, 2019**, consultations on the **Mortgage Broker Act**, questioned if code of ethics should be adopted as the measure of suitability for a person to remain in the mortgage brokering industry. Ninety-seven percent of respondents agreed or strongly agreed with adopting a code of ethics. Respondents indicated that a code of ethics should address professional conduct, conflict of interest, disclosure requirements and brokerage supervision and responsibilities. Fifty-seven percent of respondents agreed that a code of ethics should include accompanying guidelines providing prescriptive rules regarding some items, such as disclosure requirements, conflicts of interest, incentives, inducements, gifts and commission sharing.

Ninety-seven percent of respondents further agreed that there should be strengthened enforcement measures to ensure compliance with the **Mortgage Brokers Act**, the **Mortgage Brokers Regulations** and the code of ethics. Respondents highlighted licence suspension, licence cancellation, financial penalties and probationary periods as enforcement measures to adopt.

Issue 4: General Comments

There are also general areas guiding interactions between mortgage brokering professionals and customers, which could enhance the quality of service and consumer protection.

Respondents were provided a list of eight items for proposed inclusion in amendments to the **Mortgage Brokers Act**. Agreement to include those items in amendments was:

- Errors and omission insurance (42 per cent);
- Disclosure requirements (40 per cent);
- Record keeping (39 per cent);
- Financial reporting (32 per cent);
- Service agreements (32 per cent);
- Dispute resolution (26 per cent);
- Working capital (21 per cent); and
- Advertising (16 per cent).

Respondents were provided an opportunity to identify other issues related to the legislation. Less than two per cent responded and other than one comment that bank mortgage specialists should be included within the scope of the legislation, the comments were not specific to legislative amendments.

Conclusion

Based on the feedback from consultations on the proposed amendments to the **Mortgage Brokers Act**, many respondents seemed to support the proposed legislative changes outlined in the questionnaire. There was substantial support for updating the licensing classifications, enhancing education and continuing education requirements, adopting a code of ethics and strengthening administration of trust funds and expanding enforcement measures.

DGSNL appreciates all of the feedback received in response to the consultation process and looks forward to further engagement opportunities.