

# ***Mortgage Brokerages, Lenders and Administrators Act, 2006***

By Cameron Paulikot and Ben Wong

On July 1, 2008, the Provincial Government passed and proclaimed into force a new mortgage brokerage act which will effectively alter the existing regime and replace the *Mortgage Brokers Act* (the "Former Act"). The new act, the *Mortgage Brokerages, Lenders and Administrators Act, 2006* ("MBLA 2006") sets out a much broader regulatory regime and widens the definition of "mortgage brokerage." This more ambitious legislation was created with the stated goal of increasing the level of consumer protection in the Province.

Notably, MBLA 2006 states that you must have a brokerage license granted from the Financial Services Commission of Ontario before carrying on the business of dealing in mortgages, trading in mortgages, mortgage lending or administering mortgages.<sup>1</sup>

## **ARE YOU "DEALING IN MORTGAGES"?**

Subsection 2(1) of MBLA 2006 states that a person is "dealing in mortgages" by doing any one of the following:

- (a) soliciting another person to borrow or lend money on the security of real property;
- (b) providing information to a prospective borrower or mortgage lender;
- (c) assessing a prospective borrower on behalf of a prospective lender; or
- (d) negotiating or arranging a mortgage on behalf of another person or attempting to do so.

## **ARE YOU "TRADING IN MORTGAGES"?**

Subsection 3(1) of MBLA 2006 states that a person is "trading in mortgages" by doing any one of the following:

- (a) soliciting another person or entity to buy, sell or exchange mortgages;
- (b) buying, selling or exchanging mortgages on behalf of another person or entity; and
- (c) buying, selling or exchanging mortgages on the person's or entity's own behalf.

## **ARE YOU "ADMINISTERING MORTGAGES"?**

Subsection 5(1) of MBLA 2006 states that a person is "administering mortgages" by doing any one of the following which requires the issuance of a Mortgage Administrators License<sup>2</sup>:

- (a) receiving payments from a borrower under a mortgage on behalf of another person or entity, and remitting them to or on behalf of that person or entity; or
- (b) taking steps on behalf of another person or entity to enforce payment by a borrower under a mortgage.

---

<sup>1</sup> Both "Mortgage Lending" and "Administering Mortgages" had not been defined in the previous legislation, the *Mortgage Brokers Act*.

<sup>2</sup> An exemption exists for collection agencies registered under the Collection Agencies Act, but is limited to prescribed activities.

## **ARE YOU “MORTGAGE LENDING”?**

Subsection 4(1) of MBLA 2006 states that a person is “mortgage lending” when lending money on the security of real property or holding themselves out as doing so. The effect of this regulated activity will be to limit private lenders from making mortgage loans unless they (a) qualify as a lending Institution under MBLA 2006 or (b) obtain a brokerage licence.

## **EXEMPTIONS**

MBLA 2006 contains a number of exempt entities and individuals. Without limitation, lawyers, simple referrals, financial institutions and the Crown are each exempt, subject to certain express conditions within MBLA 2006.

## **PENALTIES**

MBLA 2006 has expanded the offence provisions. Under the previous regime, it was an offence to furnish any false information or statement with respect to any application under the former Act. With the MBLA, this type of offence is relabeled as a prohibition. Moreover, the Act provides greater clarity by redefining false information to cover a wider gamut of prohibited activity.

MBLA 2006 also broadens the scope of liability for directors and officers of a corporation. For example, under the former Act, individuals had to have “knowledge” to be guilty of offences. The new regime seems to expand and clearly define what constitutes “knowledge” when defining the scope of liability for directors and officers of a corporation and partnership. For individuals, this element seems to be eliminated entirely. Provided that the individual or person contravenes or fails to comply with orders under the Act or conditions vis-à-vis their license, they are guilty of an offence.

## **HOW CAN WE HELP?**

We are committed to assisting our clients navigate MBLA 2006. Specifically, there are four classes of licence under MBLA 2006 – Mortgage Broker’s Licence, Mortgage Brokerage Licence, Mortgage Agent’s Licence and Mortgage Administrator’s Licence. We would be happy to discuss the eligibility procedure and guide you through the application process to avoid costly penalties and remedies that may be imposed under this broad legislative initiative.

*Cameron Paulikot is an associate at Aird & Berlis LLP and member of the firm’s Real Estate Group. He can be reached at 416.865.7758 or cpaulikot@airdberlis.com. Ben Wong is an articling student.*