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September 13, 2013

Mortgage Brokerages, Lenders and Administrators Act Review
Mr. Steven Del Duca
Parliamentary Assistant to the Minister of Finance
7 Queen's Park Cres., 7th Floor
Toronto, ON M7A 1Y7

The Real Estate and Mortgage Institute of Canada Inc. (REMIC) is pleased to have had an opportunity to participate in the *MBLAA* Review Introductory Stakeholder Roundtable. This letter represents our formal comments in response to the *MBLAA* Review being conducted by Mr. Steven Del Duca, MPP Parliamentary Assistant to the Minister of Finance.

REMIC provides the course required for licensing as a mortgage agent in Ontario and instructs over 2,000 students per year in this province. As a leader in developing and delivering education for the mortgage brokerage industry REMIC consulted exclusively with more than one thousand mortgage agents and brokers. The following comments are based on REMIC's consultations and experience in interpreting the legislation for educational purposes.

REMIC appreciates the leadership exhibited by Mr. Del Duca and the Ministry of Finance in its review of the *MBLAA* and its commitment to public consultations.

REMIC would be pleased to discuss these comments further. Should you have any questions or comments please do not hesitate to contact me at joe.white@remic.ca or by telephone at 416-878-9448.

Sincerely,

Joseph J. White
President
Real Estate and Mortgage Institute of Canada Inc.

REMIC's comments regarding the *MBLAA* Review being conducted by Mr. Steven Del Duca, MPP Parliamentary Assistant to the Minister of Finance

The following comments are provided by REMIC and are based on consultations with the mortgage brokerage industry, a survey of over one thousand mortgage agents and brokers as well as experience in interpreting the legislation for educational purposes

<u>Definition of mortgage instrument.</u>
The term "mortgage instrument" is used in the legislation and is not defined.

Location(s)
Regulation 188/08, sections 11 (1) 6 a; 17 (1); 17 (2); 30 (3); 31 (1) 2; 35 (1); 35 (2); 46 (1) 2;

Why this is important
Specific disclosure must be provided to the borrower within specific time frames. These time frames are based on when the borrower "signs a mortgage instrument." There is confusion on whether the instrument refers to the charge (typically signed at the lawyer's on closing) or the lender's approval. This has resulted in inconsistencies with relation to when disclosure is provided to the borrower and therefore puts the public at risk of not receiving proper disclosure.

Solution
We suggest that this is not synonymous with a lender's approval.
We suggest that the term "mortgage instrument" be defined in Regulation 188/08, section 1 as follows: "mortgage instrument" means the charge/mortgage or any document that legally binds real property as security for a loan.

<u>Definition of mortgage agreement.</u>
The term "mortgage agreement" is used in the legislation and is not defined.

Location(s)
Regulation 188/08, sections 11 (6) a; 35 (1);

Why this is important
Specific disclosure must be provided to the borrower within specific time frames. These time frames are based on when the borrower "enters into the mortgage agreement or signs a mortgage instrument or a mortgage renewal agreement." There is confusion on whether the agreement refers to the charge (typically signed at the lawyer's on closing) or the lender's approval. This has resulted in inconsistencies with relation to when disclosure is provided to the borrower and therefore puts the public at risk of not receiving proper disclosure.

Solution
It is our opinion that based on section 10 (6) a the term "agreement" is synonymous with "mortgage instrument" and therefore is not the lender's mortgage approval. We suggest that the term "mortgage agreement" and "mortgage renewal agreement" be defined in Regulation 188/08, section 1 as follows:

“Mortgage agreement” and “mortgage renewal agreement” means the charge/mortgage or any document that legally binds real property as security for a loan.

Syndicate mortgages

A syndicate mortgage is a single mortgage with more than one lender/investor.
Unlike single lender mortgages on residential properties, syndicate mortgages are becoming a popular way to finance commercial projects via investments by tens or hundreds of investors, many of whom are small investors given the fact that these investments are RRSP eligible. These projects are typically more complicated than smaller residential mortgages.

Why this is important
All mortgages carry risk. However based on the size of many of the current syndicate mortgages if a project defaults the likelihood of many consumers suffering losses is much greater than in comparison with a single residential loan.

Solution
Given these facts we suggest that consultations be held with current providers of syndicate mortgages and other industry stakeholders to address these complexities and draft appropriate consumer protection legislation. This proactive approach may reassure investors that the ministry is aware of this situation and taking an active role to ensure that investors receive uniform disclosure regardless of the project.

Bank employees

Over 72% of respondents indicated a belief that bank employees (also referred to as road reps) who act as mobile mortgage representatives also act or behave as mortgage brokers and therefore should be regulated by the *MBLAA*.

Why this is important
If a bank employee meets the definition of dealing in mortgages as defined in section 2 (1) of the *MBLAA* and is dealing in mortgages with lenders other than the bank that employs him or her, the bank employee is acting as a mortgage broker. By not being required to meet the same standards of disclosure borrowers are not afforded the same protection as those borrowers dealing with a mortgage agent or broker.

Solution
We suggest that consultations be held with banks and other industry stakeholders to address how to harmonize the disclosure that a borrower receives in a brokered transaction, regardless of whether it is brokered by a mortgage broker or a bank employee.

Other comments based on our industry survey

- 67% stated a belief that new mortgage agents should be required to undergo a mentoring process during their first year of licensing.
- The highest percentage of respondents, 40%, feel that 47 hours is an appropriate number of instructional hours for the course required by those wishing to become a licensed mortgage agent.
- 60% stated a belief that FSCO should authorize more than one provider of the mortgage broker course.

- 71% stated that individual mortgage agents and brokers should be able to purchase their own errors and omissions insurance (E and O insurance) directly from an insurance provider as opposed to being forced to be covered by the mortgage brokerage's E and O policy as is currently the case. Comments reflect the frustration over not being able to choose their own E and O provider.

Overall REMIC feels that the *MBLAA* and its *Regulations* have succeeded in strengthening consumer protection and is pleased with the overall performance of the legislation during its first term. REMIC believes that with the consideration of its comments the legislation will provide even more clarity to the mortgage brokerage industry and protection for consumers.