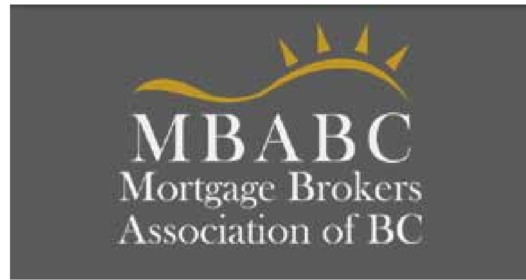

Business Practices and Consumer Protection Act

What does it mean to you?

Author and seminar speaker:
Cathy Swallow
Director MBABC
February 2007

Disclaimer: Mortgage Brokers Association of B.C. and Canadian Institute of Mortgage Brokers and Lenders provides this Calculator and/or this Information without any express or implied warranties, representations, endorsements or conditions with respect to the accuracy or validity of the Calculator, Disclosure Statements and information including without limitation, warranties as to merchantability, operation, non-infringement, usefulness, completeness, accuracy, reliability and fitness for a particular purpose. They are published as an aid to developing professional competence with the understanding that the authors and the publisher are not providing legal or other professional advice. You must exercise your professional judgment about the correctness and applicability of the material.
Mortgage Brokers Association of B.C. and Canadian Institute of Mortgage Brokers and Lenders are not responsible for and will not be liable to you or anyone else for any damages whatsoever and howsoever caused (including direct, indirect, incidental, special, consequential, exemplary or punitive damages) arising out of or in connection with use of the Calculator, Disclosure Statements or information contained in this document. Mortgage Brokers Association of B.C. and Canadian Institute of Mortgage Brokers and Lenders are not responsible or liable for any difficulties or consequences associated with downloading and/or utilizing such services.

Business Practices and Consumer Protection Act

The BPCPA became law in B.C. July 01, 2006. The information in this seminar is the MBABC's interpretation of the sections in the Act that apply to mortgage lending. A copy of the entire act and regulations can be downloaded off FICOM's website, or ordered from the Queens Printer in Victoria. The Regulations for Disclosure plus Part 5 of the Act itself are enclosed at the end of this presentation.

Although this seminar focuses on the APR calculation and disclosure requirements, the Act also covers such things as:

1) Ordering credit reports only with the consent of the individual, and being able to supply proof consent was obtained
2) Advertising: see FICOM's bulletin at the end of this seminar for their guidelines
3) $75.00 is the maximum mortgage discharge fee that can be charged for the preparation of a discharge in registerable form (applies to all mortgages discharged after July 01, 2006)

4) A discharge must be presented to the borrower within 30 days of a mortgage being paid in full (note: it is the borrowers responsibility to register this discharge)
5) Default charges: A credit grantor must not impose default charges other than the following:
   - Court ordered costs incurred in collecting or attempting to collect a debt
   - Reasonable charges in respect of costs, including legal costs incurred in realizing a security interest or protecting the subject matter after default
   - Reasonable charges that reflect costs incurred by the credit grantor because a cheque or other payment instrument given by the borrower to the credit grantor was dishonored

You Should Know

- Form 6 is no longer to be used
- Form 10 is still required (conflict of interest)
- Form 9 is still required (issued to private lenders)

There is no official government approved disclosure document, therefore mortgage brokers may use a disclosure document they create themselves. MBABC and CIMBL have prepared a form for those brokers using EXCEL. This form can be downloaded from the MBABC website, and is made up of a spreadsheet, plus printable disclosure documents for open and fixed credit.

There are two types of disclosures: "*Open Credit Disclosure Statements"* which are for revolving lines of credit and credit cards; AND "*Fixed Credit Disclosure Statements"* which are for all other residential mortgages including variable and fixed rate mortgages, regardless of whether the term is open or closed.

- If there are multiple borrowers one copy of the disclosure must be given to at least one borrower
- The disclosure may be based on estimates and assumptions if the actual information is not available, if the amounts are reasonable, and they are clearly identified as estimates or assumptions.
- If the annual interest rate is floating the assumption is that the index rate (prime rate in most cases) on the date of calculation will remain in effect for the whole term
- If the credit grantor does not extend credit in the ordinary course of carrying on business (a private investor as an example), they are exempt from providing disclosure documents. If a mortgage broker is involved, the broker is responsible to provide a disclosure. If the broker does not have

an agreement with the lender to provide ongoing administration of the mortgage, then the broker is to give Schedule A to the lender and borrower to be exempt from the duties imposed under section 79 (A) of the Act. The broker must supply the borrower with the initial disclosure only. (see enclosed Schedule A at the back of this presentation) If the mortgage broker is administering the mortgage, then all future disclosures are the responsibility of the mortgage broker

- Disclosures under the BPCPA are required if the borrower is an individual, and the borrower is borrowing primarily for personal, family or household purposes (does not apply to commercial loans or borrowing for business purposes)
- If more than one broker receives a fee on a transaction, the designated mortgage broker (agreed upon in writing by all brokers receiving a fee) issues the initial disclosure. If no written agreement is in place, then all brokers must issue one
- Disclosure statements must be issued whether there are fees being charged or not, and a copy retained in the brokers file for 7 years. The lender is to be given a copy to enable them to include all costs in the lender's disclosure
- Disclosure statements must be issued 2 full business days (where the lender is open for business), before entering into the credit agreement (closing day). Under certain conditions the 2 days may be waived by the borrower. See Part 4 in the attached Regulations for the list of conditions.
- If a mortgage has multiple products, a separate disclosure is required for each product
- An APR (annual percentage rate) is to be disclosed in all Fixed Credit Disclosure Statements (in addition to the contract rate). The APR is not required for Open Disclosures covering lines of credit and credit cards.

Calculating the APR
(the annual percentage rate)

THE APR IS THE COST OF BORROWING EXPRESSED AS A PERCENTAGE OF THE AVERAGE MORTGAGE BALANCE FOR THE TERM OF THE MORTGAGE.

$$APR = \frac{(100 \times C)}{(T \times P)}$$

C: is the total cost of credit
T: is the length of the term expressed in years
P: is the average outstanding principal balance over the term

The top line is: 100 multiplied by the cost of credit

The bottom line is: the term stated in years multiplied by the average balance over the term

The top line is divided by the bottom line and you get the APR.

We need to learn what makes up the cost of credit, and how to calculate the average balance. Once we have those two numbers the above calculation is easy.

The Average Balance

To obtain the average balance, the MBABC spreadsheet does the calculation for you. In order to calculate the average balance manually, first print a mortgage amortization schedule. Take the original mortgage balance and add it to the outstanding balances after each payment is made, dropping the final outstanding balance at maturity. For example if you have a three year term, with monthly payments, you will have 36 amounts to add together, including the original mortgage principal. Now divide this by the number of balances you added together (36 in this example) and you will have the average balance of the mortgage.

The Cost Of Credit

- It is the total interest costs for the term, plus the costs of obtaining the loan (non-interest costs), unless the costs are exempt under the act, which we will outline in the pages ahead

- It is the anticipated dollar cost of the mortgage loan over its term

- It is the difference between “Value Given” and “Value Received”

Calculating the Cost of Credit

If we were manually calculating THE COST OF CREDIT we would take the total interest costs for the term of the mortgage from the amortization schedule we prepared, and we would add **non-interest costs** such as:

- Lender fees

- Broker fees
- Appraisal and/or Site Survey costs (unless exempt below)
- Other costs to obtain the mortgage required by the lender, such as title insurance (any costs to obtain the mortgage that are not exempt by the ACT as listed below)
- Legal fees if the lender restricts the choice of lawyer or notary in any way
- Legal disbursements other than land registry fees

Please note:
The non-interest costs that are **exempt** in the ACT and are not included in the cost of credit are:

- Appraisals and survey certificates if the borrower is given a copy of the document with unrestricted use
- High Ratio default insurance (Genworth & CMHC, as examples)
- Casualty insurance (example:fire) and optional insurance (example:mortgage life or disability insurance)
- Land Title Registration costs (this is the majority of the legal disbursements)
- Legal fees if borrower can choose any lawyer or notary
- Acquiring shares of a credit union

Now we have a list of all the items that make up the cost of credit and we have a list of exempt items the ACT tells us are not included in the cost of credit.

Calculating the APR

We now know how to calculate the average balance of the mortgage and the cost of credit. The APR calculation is now simple. Take the cost of credit and multiply this by 100. Take the average mortgage balance and multiply it by the number of years in the term. The first result is divided by the second result and you have the APR. This is the total anticipated costs of the mortgage expressed as a percentage of the average mortgage balance. This APR will be different from the contract rate stated in the mortgage. The only time the contract rate will be the same as the APR is:

- If there are no non-interest costs
- If the payment frequency is the same as the compounding frequency (example monthly compound, monthly payment). As the consumer pays less interest on a semi-annual compounded mortgage than a monthly compounded mortgage, the APR will be less than the contract rate on a semi-annual compounded mortgage with monthly payments.

The ACT describes a different method for calculating the APR, which gives the same result. Here, the Cost of Credit is arrived at by taking the difference between Value Given and Value Received. If we understand the above calculation, then this method will be easier to understand. This Value Given, Value Received method is the one we are required to use in our disclosure statements.

Value Received

What is value received?
When a new mortgage is funded, the borrower receives value. He receives a cheque for a certain number of dollars. He sometimes receives other value in place of receiving the value in cash. Let's say the lender pays off a previously advanced mortgage. The dollars the client receives are now reduced, however there is value received by the borrower when the old mortgage is repaid. The client received those funds at a previous time when the previous mortgage was advanced. The lender might also deduct an appraisal fee from the proceeds. If the borrower is given a copy of the appraisal for unrestricted use, the ACT says the borrower has received value. Whenever the lender reduces the actual cash given to the borrower from the gross mortgage balance, we must add back to that cash the items the borrower received value for. The ACT even tells us to add back high ratio mortgage insurance, as this is also considered value received by the ACT. Once we add items back that have been deducted from the mortgage proceeds, they will not be included in the cost of credit.

Value Received items are:

- Money transferred or to be transferred to the borrower by the credit grantor (original mortgage balance minus lender deductions)
- Pre-existing financial obligations paid out or consolidated under this loan agreement (example other mortgages or debts being refinanced)
- Cash price of products purchased under the loan agreement (example cash paid to the vendor for a home purchase)
- Land title registration fees (the majority of the legal disbursements)
- Purchase of credit union shares
- Legal fees if borrower has the right to choose lawyer or notary
- High Ratio Mortgage Insurance Premiums and Application fees
- Appraisal and Survey costs if borrower gets a copy for own use

To recap, Value Received is the cash the borrower receives, plus the items the borrower receives value for that were deducted from the mortgage proceeds by the lender.

If there are Value Received Items that were **not** deducted from the lenders proceeds, then they are listed on your disclosure statement as “Other Payments Not Included In Cost of Credit”.

Let’s look at an example:

Gross Mortgage $408,000
Less deductions by lender:
High Ratio Fee -$8000
Lender fee -$4000
What we have left after lender deductions is cash paid to the borrower in the amount of $396,000

Value Received:
Cash $396,000
Plus High Ratio fee +$8000
Total Value Received $404,000

Any other “value received” items this client paid for need to be listed as: “Other payments not included in the Cost of Credit” because they were not listed on this disclosure as deductions by lender.

The $4000 lender fee was not added, because this is not a value received item. It is an item that needs to be included in the cost of credit.

Value Received = cash received, plus items deducted out of the mortgage proceeds that do not belong in the cost of credit.

Value Given

What is value given?

- money paid to the lender by the borrower (total payments during the term AND the principal balance outstanding at the end of the term)
- money paid by the borrower to a third party for services required by the lender (example: title insurance covering lender) **not including** items that are exempt (value received items)
- broker fees, lender fees, lender self-insured high ratio fees
- legal fees if borrower **does not** have free choice of lawyer or notary
- in other words all non-interest costs that belong in the cost of credit

Note:
On your disclosure form, list Value Given items in one of two places, but not both (or they will end up in the cost of credit twice)

- Deducted from mortgage proceeds by lender
- Value Given List

Looking at the example on the previous page, if there were no other costs incurred to obtain this mortgage other than the ones listed on page 11, the total "**Value Given"** would be the total payments for the term of the mortgage plus the balance outstanding at maturity.

Cost of Credit

Value Given is the money the borrower pays to the lender. **Value Received** is the money and items of value the borrower receives from the lender. The difference between the two is the **cost of credit.**

Disclosure Requirements

1) Show the **total mortgage amount, less items the lender deducts** from proceeds (both value given and value received items). The result is: the **cash the borrower will receive** from the lender on closing day.
2) Make up a **Value Received List**. Add the above cash amount to the value received items which were listed as deductions by the lender. (Do not add items like lender fees because those are value given items.)
3) List the other value received items which were not deducted by lender in a list called "**Other payments not included in the cost of credit".** Include the interest adjustment in this list.
4) Make up a **Value Given List**. Include in this list the total mortgage payments for the term of the mortgage plus the outstanding balance at the end of the term. List all the non-interest costs that belong in the cost of credit. Do not list value given items that were listed as deductions by lender, or they will be included twice in the APR calculation. Do not include items considered value received.

You now have three lists where all costs associated with this mortgage will be disclosed: Value Received, Value Given, and Other costs not included in the cost of credit.

Value Given less Value Received is the **Cost of Credit**. This is used to calculate the APR.

The MBABC/CIMBL spreadsheet and disclosure document found on the MBABC website does the APR calculations for you, as long as you place each cost in the correct section. As it is easy to make an error we recommend that each APR

calculation be checked using following manual calculation. The spreadsheet calculates the total payments over the term of the mortgage, the average balance, and the balance outstanding at maturity.

Manual Calculation:
Add the total interest costs for the term of the mortgage plus all the non-interest costs that belong in the cost of credit (make sure no value received items are listed here) and compare this total to the total cost of credit the spreadsheet calculated. It's a quick double check, to make sure you completed the spreadsheet correctly.

There are other things you need to know about disclosures, so we strongly recommend you read the following enclosures found at the back of this presentation in their entirety:

1) Schedule "A" which is required for private lenders
2) Example of the MBABC spreadsheet available for use
3) Example of the MBABC disclosure available for use
4) Part 5 of the BPCPA
5) Disclosure of the Cost of Consumer Credit **Regulations**

NOTE:
Part 5 Division 6 of the Act lists all other items that need to be included in the disclosure document in addition to the APR. Please read this section to obtain that list. There is a separate list included for Fixed and Open Disclosures. FICOM have confirmed the APR is not required in the OPEN disclosure statement.

FINAL ITEMS OF INTEREST

- Many brokers have advised that the INTEREST ONLY button on the spreadsheet does not work. If this is the case, an adjustment is required on your computer in the Excel program as follows:
  1 In Excel select Options
  2 Select Security tab
  3 Select Macro Security
  4 Select Medium

- Disclosure statements must be issued at the following times:
  1) Two days prior to the borrower incurring an obligation under a credit agreement
  2) Once every 12 months of the interest rate is floating
  3) Within 30 days of any 1% increase in the interest rates

4) Within 30 days of the borrower missing a payment if the charges imposed increase the principal owing and the payments do not cover accrued interest
5) Within 30 days after an amendment to a credit agreement
6) At least 21 days prior to maturity if the mortgage is being renewed
7) Every month if the loan is open revolving credit

After the mortgage is funded if the broker is not administering the mortgage, the lender will be responsible for these (unless exempt).

- It is not acceptable on your disclosure to state: see lenders mortgage approval. Complete all information in full.

- If there are items on the MBABC disclosure spreadsheet form you would like to see fixed or changed, please e-mail: cathyswallow@telus.net

Schedule A

The *Business Practices and Consumer Protection Act* imposes disclosure requirements on credit grantors who extend credit in the ordinary course of carrying on their businesses. However, the credit grantor under the proposed credit agreement is not extending credit in the ordinary course of carrying on business. Consequently, many of the disclosure requirements of the *Business Practices and Consumer Protection Act* will not apply to this credit agreement such that statements which would otherwise be provided to a borrower under that Act will not be made available to a borrower in respect of this agreement. I, ____am the loan broker for this credit agreement and, as such, am required to, and will, provide the borrower with an initial disclosure statement before the borrower enters into the credit agreement.

Signed ____________________________
Date _____________________________