

Financial and Corporate Sector Policy Branch

Ministry of Finance

PO Box 9418 Stn Prov Govt

Victoria, B.C. V8W 9V1

***E-mail*** fcsp@gov.bc.ca

December 11, 2012

Dear Ministry Staff,

**Submissions Re: the Mortgage Brokers Act – Personal Mortgage Broker Corporations**

On behalf of the Mortgage Brokers Association of BC (MBABC) and the Mortgage Brokers Institute of BC (MBIBC), I would like to make submissions on changes to the *Mortgage Brokers Act* (the Act) concerning personal mortgage broker corporations.

By way of background, the MBABC is a 20 year old professional association which represents over 1600 mortgage professionals in British Columbia. The MBIBC is a non-profit organization which creates specialized mortgage industry education, which has been approved for relicensing qualification by FICOM.

Current Legislation

The Act does not directly enable individual submortgage brokers to collect broker earnings through a corporation in order to split income for tax purposes or defer the payment of taxes.

Submortgage broker is defined in section 1 of the Act to mean “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**”. Submortgage brokers are therefore employed by mortgage brokers, essentially meaning that they are employees, who must be natural persons with social insurance numbers and not corporations. However, the second part of the definition of submortgage broker contemplates that a submortgage broker may be a partner of a mortgage broker. Under common law in British Columbia, a partner of a mortgage broker may be a corporation - the Act thereby contemplates the registration of corporations as submortgage brokers. However, nearly all relationships that submortgage brokers will have with their sponsoring mortgage broker will not be that of partner in a formal partnership arrangement, but rather the more traditional relationship of a mortgage broker employing a submortgage broker. In addition, to our knowledge, there has not been a single corporation who is a partner of a mortgage broker, which has been registered as a submortgage broker.

During the last ten years, franchising and co-brokering have been used as a strategies by some submortgage brokers to incorporate while also maintaining ties to a larger, well known mortgage brokers. Under this arrangement, the submortgage broker must incorporate a franchisee entity, set up a separate office, enter into a franchise arrangement and a co-brokering relationship with the franchisor entity and then register as a mortgage broker. The challenge for franchisees which operate as co-brokers with their franchisors is that the public may be confused about which mortgage broker entity they are dealing with, as the two mortgage broker entities may share part of the franchisor name and management operations, in addition to operating in close proximity to one another.

Professional Corporations

Most professionals, such as doctors, dentist, lawyers, and realtors are able to incorporate professional corporations. The benefit to industry members is that a professional corporation enables them to take advantage of income splitting and tax deferral options.

Corporate tax deferral is an advantage for professional corporations as they will pay a lower tax rate on active business income, up to a single limit of $500,000, than their personal taxpaying counterparts. The professional can then defer the payment of corporate dividends to shareholders to maximize personal tax benefits. Income splitting is a clear advantage for professional corporations as the professional corporation can pay dividends to shareholders, such as spouses, children or affiliated corporations, who are at a lower tax rate than the professional. However, the incorporation of a professional corporation is only possible if it is provided for in the professions’ governing legislation. Currently, the Act does not permit the incorporation of personal mortgage broker corporations.

Amendments to the *Real Estate Services Act* (see Part 10 of *the Real Estate Services Act Regulations*, attached) were introduced in 2009, which permit licensed real estate professionals to incorporate personal real estate corporations. Remuneration paid to a real estate professional may be paid directly to his or her personal corporation, and then payment of fees or dividends may be paid from the personal corporation to the professional. The personal real estate corporation may only provide real estate services by the licensed professional and cannot avoid regulatory liability. In addition, under the Regulations, voting shares may only be issued to a licensed professional.

Recommendation

The definition of submortgage broker should be amended by eliminating the option of corporations, who are partners of the mortgage broker, to obtain submortgage broker registration. This provision is clearly not relevant in today’s mortgage broker environment. However, the Act should be further amended to enable submortgage brokers to incorporate professional mortgage broker corporations which are capable of collecting and retaining broker fees and commissions owing to a submortgage broker from their mortgage broker. This provision would modernize the legislation and put submortgage brokers on the same footing as other professionals, such as realtors. Permitting brokers to do this would also provide a simpler and more transparent mechanism for mortgage brokers to utilize corporations for tax savings strategies than co-broking strategies which are sometimes utilized, and may create confusion for the public. The net benefit of permitting personal mortgage broker corporations is therefore twofold: enhanced consumer protection and the removal of economic barriers for mortgage brokers.

The MBABC and MBIBC recommend that the Act be amended to permit submortgage brokers to incorporate personal mortgage broker corporations, in substantially the same

manner as Part 10 of the *Real Estate Services Act Regulations.*

Yours truly,



Samantha Gale

CEO, MBABC and MBIBC

**Part 10 — Personal Real Estate Corporations**

**Definitions**

**10.1** In this Part:

**"affiliated person"** , in relation to a controlling individual, means

(a) the spouse of the controlling individual,

(b) a child of the controlling individual,

(c) a corporation, all of the shares of which are beneficially owned by one or more of the controlling individual and the other individuals referred to in paragraphs (a) and (b), or

(d) a trust, all of the beneficiaries of which are one or more of the controlling individual and the other individuals referred to in paragraphs (a) and (b);

**"client"** means, in relation to a licensee, the principal who has engaged the licensee to provide real estate services to or on behalf of the principal;

**"controlling individual"** , in relation to a personal real estate corporation, means the individual who is the sole voting shareholder of the personal real estate corporation;

**"engaged"** , in relation to a personal real estate corporation, means

(a) employed by the personal real estate corporation, or

(b) acting in an independent contractor relationship with the personal real estate corporation;

**"licensee name"** means the licensee name of a licensee as established under the rules;

**"personal real estate corporation"** means a corporation that is licensed in accordance with this Part;

**"personal real estate corporation licence"** means a licence issued to a corporation in accordance with this Part;

**"spouse"** , in relation to a controlling individual, means a person who

(a) is married to the controlling individual, or

(b) is living and cohabiting with the controlling individual in a marriage-like relationship, including a marriage-like relationship between persons of the same gender.

[en. B.C. Reg. 17/2008, s. 2; am. B.C. Reg. 87/2009, s. 3.]

**Personal real estate corporations**

**10.2** A corporation that meets the requirements of

(a) Part 2 of the Act, and

(b) this Part of the regulations

may be licensed, under Part 2 of the Act and in accordance with this Part, as a managing broker, associate broker or representative.

[en. B.C. Reg. 17/2008, s. 2.]

**Corporate qualifications**

**10.3** A corporation may be licensed as a personal real estate corporation in accordance with this Part if it has all the following attributes:

(a) it is either

(i) a company, within the meaning of the *Business Corporations Act*, or

(ii) an extraprovincial company, within the meaning of the *Business Corporations Act*, that has the capacity in its jurisdiction of incorporation to carry on the business of providing real estate services;

(b) all the voting shares of the corporation are legally and beneficially owned by a single individual (the controlling individual);

(c) the sole director of the corporation is the controlling individual;

(d) the president, being the sole officer of the corporation, is the controlling individual;

(e) each non-voting share, if applicable, is legally and beneficially owned by the controlling individual or an affiliated person of the controlling individual;

(f) the legal name of the corporation includes both, but nothing other than,

(i) the legal name, a recognizable short form of the legal name or the licensee name of the controlling individual, and

(ii) the term "personal real estate corporation".

[en. B.C. Reg. 17/2008, s. 2.]

**Licensing of personal real estate corporation

and its related controlling individual**

**10.4** (1) A personal real estate corporation licence may be issued to a corporation that has the attributes described in section 10.3 only if

(a) the controlling individual meets the experience requirements established by the rules, and

(b) at the same time as the corporation's licence is issued,

(i) the controlling individual is issued a licence that complies with subsection (4), or

(ii) the controlling individual's licence is amended to comply with that subsection.

(2) A personal real estate corporation licence

(a) must be at the same licence level as the licence of the controlling individual,

(b) must be for the same category of real estate services as the licence of the controlling individual,

(c) must indicate the name of the controlling individual, and

(d) in addition to the application of section 7 (4) *[related licensees subject to brokerage conditions and restrictions]* of the Act, is subject to any conditions and restrictions that apply to the licence of the controlling individual.

(3) A personal real estate corporation

(a) may be licensed only in relation to the same brokerage as the controlling individual, and

(b) must be engaged by that same brokerage to provide real estate services.

(4) The licence of the controlling individual must indicate

(a) the licensee name of the personal real estate corporation by which the controlling individual is engaged to provide real estate services, and

(b) the licensee name of the related brokerage of that corporation.

[en. B.C. Reg. 17/2008, s. 2.]

**Application for personal real estate corporation licence**

**10.5** (1) Without limiting section 9 of the Act, an application for a personal real estate corporation licence must be accompanied by

(a) evidence satisfactory to the real estate council that the applicant corporation meets all the requirements of section 10.3 *[corporate qualifications]*,

(b) an application

(i) for a licence for the controlling individual, or

(ii) in the case of a controlling individual who is already licensed, to amend the licence of the controlling individual to comply with section 10.4 (4), and

(c) the written consent of the proposed related brokerage to the application.

(2) Without limiting section 13 of the Act, the real estate council may refuse to issue a personal real estate corporation licence if the real estate council considers that it would not, in the circumstances, be in the public interest for real estate services to be provided by the corporation.

[en. B.C. Reg. 17/2008, s. 2.]

**Relationship between personal real estate corporation

and controlling individual**

**10.6** (1) Despite section 7 (1) (b), (3) and (5) of the Act, a controlling individual may be engaged by a personal real estate corporation to provide real estate services on behalf of a brokerage, and may receive remuneration in relation to those real estate services from the personal real estate corporation, if all the following requirements are met:

(a) the controlling individual and the personal real estate corporation have each obtained a licence in accordance with Part 2 of the Act and this Part;

(b) the controlling individual is engaged by the personal real estate corporation;

(c) the real estate services provided by the personal real estate corporation are provided only by the controlling individual;

(d) any other persons engaged by the personal real estate corporation are not licensees;

(e) the personal real estate corporation does not conduct any business other than the provision of real estate services and ancillary services directly associated with the provision of real estate services;

(f) the controlling individual and the personal real estate corporation otherwise comply with the requirements of this Part.

(2) A controlling individual engaged by a personal real estate corporation in accordance with subsection (1) (b) is deemed, for the purposes of the Act, regulations, rules and bylaws, to be engaged by the related brokerage of the corporation, but must not in fact be engaged by that brokerage, or by any other brokerage, to provide real estate services.

(3) The fact that a controlling individual is engaged by a personal real estate corporation to provide real estate services on behalf of a brokerage does not affect

(a) the controlling individual's liability with respect to the provision of real estate services,

(b) the controlling individual's obligations and responsibilities to a client, or

(c) the application of the provisions of the Act, this regulation, and the rules and bylaws to the controlling individual.

[en. B.C. Reg. 17/2008, s. 2.]

**Corporation must maintain attributes**

**10.7** (1) A personal real estate corporation must continue to maintain the attributes described in section 10.3.

(2) If a personal real estate corporation ceases to have any of the attributes described in section 10.3, the licence of the corporation becomes inoperative.

(3) On application of a personal real estate corporation whose licence has become inoperative under subsection (2), the real estate council may reinstate the licence if it is satisfied that the corporation meets all of the requirements of section 10.3.

[en. B.C. Reg. 17/2008, s. 2.]

**Licences of corporation and controlling individual

to reflect each other**

**10.8** (1) The real estate council

(a) may amend the licence of a personal real estate corporation to reflect the conditions and restrictions applicable to the licence of the controlling individual, and

(b) may amend the licence of a controlling individual to reflect the conditions and restrictions applicable to the licence of the personal real estate corporation.

(2) If the licence of a controlling individual is suspended or cancelled, the licence of the controlling individual's personal real estate corporation is suspended or cancelled as of the time at which the controlling individual's licence is suspended or cancelled.

(3) If the licence of a personal real estate corporation

(a) is suspended or cancelled, or

(b) becomes inoperative under section 22 (1) of the Act or section 10.7 (2) of this regulation,

the licence of the controlling individual is suspended or cancelled, or becomes inoperative, as the case may be, as of the time at which the personal real estate corporation's licence is suspended or cancelled, or becomes inoperative.

(4) If the real estate council reinstates a personal real estate corporation licence under section 22 (2) of the Act or section 10.7 (3) of this regulation, it must reinstate, with any necessary amendment, the controlling individual's licence that became inoperative under subsection (3) of this section.

[en. B.C. Reg. 17/2008, s. 2.]

**Application of discipline and enforcement provisions**

**10.9** (1) If a personal real estate corporation commits

(a) professional misconduct, or

(b) conduct unbecoming a licensee,

the controlling individual is subject to discipline proceedings and other regulatory enforcement under Part 4 of the Act in relation to that conduct as if the controlling individual had committed the conduct.

(2) If a controlling individual commits

(a) professional misconduct, or

(b) conduct unbecoming a licensee,

the personal real estate corporation is subject to discipline proceedings and other regulatory enforcement under Part 4 of the Act in relation to that conduct as if the personal real estate corporation had committed the conduct.