CANADIAN MORTGAGE BROKER INDUSTRY

11/19/2013

Key Issues for MBRCC Consideration

Issues are outlined that affect mortgage brokers across Canada and if addressed would meet the MBRCC mandate to improve and promote the harmonization of mortgage broker regulatory practices across Canada to serve the public interest.

Canadian Mortgage Broker Industry

KEY ISSUES FOR MBRCC CONSIDERATION

INTRODUCTION

The existing provincial associations in British Columbia, Alberta, Atlantic Canada and Ontario are respectfully submitting four topics for consideration by the Mortgage Broker Regulator Council of Canada (MBRCC).

The provincial associations, like MBRCC, support the harmonization of practices across Canada for the benefit and growth of the mortgage broker industry. Consistent practices and assurance of a minimum standard of knowledge and professional conduct are essential to the long term viability of the profession.

We are of the view that the following four items warrant special consideration as they will not only impact the manner in which mortgage brokerages and their brokers do business, but also, and more importantly, the degree of consumer protection being provided.

These items are:

1. Regulating Bank Representatives

2. Suitability

3. Education

4. Principle Based Regulation

REGULATING BANK REPRESENTATIVES

The mortgage broker industry within Canada has for the last few years been raising the question as to whether mortgage representatives from banks and credit unions should be regulated under provincial mortgage broker legislation.

The more specific question is, should bank road representatives be “exempt” from mortgage broker licensing legislation because their employer is exempt from the same legislation and regulated under the Office of the Superintendent of Financial Institutions (“OSFI”) and the Financial Consumer Agency of Canada (“FCAC”). The Provincial Associations would suggest to MBRCC that the type of activity being undertaken should drive the answer to this question.

The analysis starts with the question of what the purpose of mortgage broker licensing is and what harm(s) it seeks to prevent? Across the country mortgage broker regulators have implemented licensing requirements to impose a bottom line standard of conduct on mortgage brokers, to ensure they provide full disclosure, represent the interests of the client as an agent or quasi-agent, and act in accordance with a set of rules and ethical practices. These are essential steps to providing consumer protection and ensure industry professionalism.

The essential difference between financial institution representatives and mortgage brokers is that brokers are, in most cases, independent from the financial institutions in which they place a borrower’s mortgage. Their role is to shop for mortgages at different financial institutions and find the most suitable deal that fits the borrowers’ needs – this is what makes them an agent or a quasi-agent for the client mortgage brokers also have a clear and unequivocal duty to disclose conflicts of interest to clients. Most jurisdictions have forms which are intended to be used for this purpose. This model of brokering contrasts starkly from that adopted by the bank road representative who is fundamentally a salesperson, whose focus is selling mortgages to customers using a model where the bank is the quintessential mortgage shop. A prepackaged mortgage is offered by the bank representative and the consumer can either say “yes please” or “no thank you”. There are instances where the bank employee is unable to provide a mortgage to a customer, and instead refers them to completely different arm of the bank that may even utilize another trade name. These other bank representatives may source a third mortgage for the client, which is not from the bank but rather a separate lender, whether institutional or private. To make matters even more complicated, this bank representative may even perform this task by utilizing a middle person, who is a registered or licensed broker. Without oversight from the Provincial regulator and appropriate guidelines, issues of consumer protection arise.

The two models of mortgage arranging, if juxtaposed, are clearly different and adhere to opposing principles, particularly in relation to the originator's duty to the borrower. Banks do not act as a fiduciary or fiduciary like agent to the borrower and their clients may not necessarily be charged competitive fees and/or interest rates. OSFI provides regulation of financial institutions to ensure their solvency, and FCAC is authorized to regulate certain conduct issues arising within financial institutions. Neither however, imposes on bank mortgage representatives any of the rules of conduct commonly found in most professional licensing systems.

Imposing boundaries on the conduct of bank representatives creates a level playing field with mortgage brokers in ensuring adequate and reasonable consumer protection. If bank representatives act like employees of a bank by seeing clients at the place of the bank's business and facilitating mortgages only from their bank, then they should clearly be exempted from provincial mortgage brokering licensing requirements. However, if a bank representative acts like a mortgage broker in any of the following ways, then they should be under the same provincial licensing requirements as their independent mortgage broker counterparts:

- Placing mortgages with lenders other than the bank who employs them, through referral, co-brokering or direct brokering;
- Conducting mortgage brokering business in a name which is not the name of the financial institution which employs them; or
- Acting as an independent contractor and not an employee of the bank, by conducting mortgage arranging activities outside of the bank's place of business and not under the direct supervision of bank manager.

The position of the Provincial Associations is clear. If a bank representative is in any way dealing with third party transactions they need to operate under the same rules as mortgage brokers with the requisite regulation and training. This is no different than the changes that took place with repsect to bank officers who were selling mutual funds and were required to be licensed to consult on this issue with clients. Some financial institutionshave already embraced mortgage broker licensing and provincial regulation. Take for example, CIBC which has licensed its broker arm, Home Loans Canada under provincial mortgage broker legislation, providing an example for the rest of the financial institutions to follow.

We recommend that all provincial mortgage broker licensing jurisdictions adopt exemptions which reflect the above requirements by amending their brokering licensing legislation, and vigorously enforcing the requirements. We see the licensing requirement applying to the individual who is engaged in the act of mortgage brokering, and not to the administration or management staff. This will clearly serve the public and help ensure that consumers are treated fairly by the mortgage industry.

The Provincial Associations would work with the MBRCC on any research required to further define and clairfy this issue as well as provide supporting data. The Associations would also recommend a joint venture with the MBRCC to address consumer outreach and messaging on the role, value and differences on using a mortage broker to ensure consistant messaging on this issue.

SUITABILITY

The provincial associations have determined that imposing mortgage suitability requirements on mortgage brokers is a vitally important consumer protection measure for borrowers. Through a duty to ensure mortgage suitability, every licensed mortgage broker should be obligated to perform a suitability test to ensure the client is receiving the appropriate financing based on their individual circumstances. The ability to compare the various financing options available from multiple lenders, assess a client's unique, individual situation and provide a summary of the best-suited options based on the advantages and disadvantages of each will clearly provide great benefit to the consumer and demonstrate the value of a mortgage broker to borrowers.

If every mortgage broker made a commitment to strict adherence to processes and documentation aimed at ensuring that the wrong advice is not provided to the client, the best interests of the consumer would be well served. This degree of professionalism would promote positive experiences that lead to continued growth in consumer awareness of the broker origination channel through word of mouth endorsements and increased consumer satisfaction of the industry overall.

Clear language in communicating the impact, both positive and negative, of issues such as prepayment privileges and penalties, compounding frequency, or whether a mortgage is registered as a mortgage or a collateral charge will make the options available for the consumer more understandable. The broker industry's ability to clearly identify these differences in mortgage options will help the consumer find the most 'suitable' option that best meets their needs.

Finding best practices for determining product suitability during a typical consultation meeting with a client to determine their financial literacy should include;

- Describing how to take reasonable steps to ensure that recommended mortgage or investment option is suitable for a borrower.
- Determining the kinds of questions to discuss with the client as part of establishing whether a mortgage is suitable in various situations.
- Identifying material risks and clarifying all relevant aspects of the mortgage transaction for the client.
- Using plain language to disclose risks to clients in writing.
- Understanding how to act in the best interest of the client.

EDUCATION

The long term objective within education would be to establish a national educational standard through development of a joint education platform. The mortgage broker community wants and needs a professional industry that has high entrance requirements through substantive licensing, ongoing professional development requirements, standardized operational requirements and a strong ethic to not only adhere to provincial regulatory requirements but surpass them.

We are in an environment where suitability of the industry and industry associations are in question. Key issues that need to be addressed to allow for cross provincial collaboration includes establishing a consistent and defined model of role allocation between the regulators and provincial associations. Without greater consistency of roles cross-provincial collaboration becomes difficult. Harmonizing educational requirements and delivery models must be a priority for everyone within the industry including the regulators. Multiple delivery models results in a focus on delivering a cut-rate product not on quality.

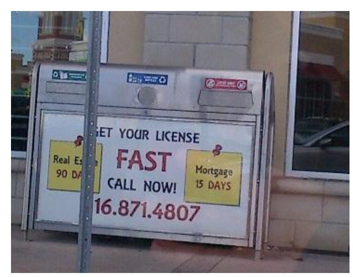

PHOTO WAS TAKEN RECENTLY IN TORONTO BUT THIS SCENARIO IS SIMILAR IN VANCOUVER.

Brokers facilitate a consumer's largest debt obligation. Education should be about attracting individuals who want to be well trained professionals not those trying to fast track or find workarounds from doing the necessary work.

To achieve quality is expensive but necessary. Reduction of costs could occur through interprovincial collaboration but at the present time each association holds a different responsibility within education; in BC, MBABC delivers professional development, in AB, AMBA delivers part of the licensing course. One association per province delivering all professional development or all licensing would allow for shared costs, improved standards and greater professionalism through a shared foundation that can accommodate regional differences.

Delivery and development partners such as UBC, RECA, FSCO and FICOM could continue to play an essential role around legislative and regulatory education. What we suggest could change is an improved delivery on the practice of mortgage brokering and ongoing professional development through the provincial associations. MBRCC can provide the platform for that to occur through policies that enshrine the educational core principles already developed through consistent grass roots delivery via their provincial associations.

The “side-effects” of this would be standardized documentation and processes; standardized professional titles and establishment of a national designation based on substantive professional requirements. MBRCC can also facilitate education by standardizing job titles to avoid the situation where a broker of record in one province is a called something else in another province. All of these would contribute positively to suitability. Consumers need to know who they are dealing with and the industry needs to have one title across the country rather than having broker, sub-broker, agent and so forth for the same occupation.

In a mortgage environment that is moving towards self-regulation the provincial associations’ key value is their focus on the mortgage broker community. The provincials bring grass roots outreach that provides a strong understanding of the practice of brokering. Working in parallel with the provincial associations would allow MBRCC to leverage these advantages to ensure suitability, consistency, quality, consumer protection and ongoing professionalism for the industry through high quality education on a consistent and stable platform that allows for continuity across the country while addressing provincial nuances in practice and regulation.

PRINCIPLE BASED REGULATION

We understand that the financial advisor and insurance industries are looking to principals based regulation, which focusses on regulating professional behaviours and outcomes as opposed to creating rules with a strict compliance approach. The problem with an approach to regulation which focusses on rules and rule enforcement is that regulation becomes reactive and post hoc, not to mention expensive and staff intensive. Enforcement costs are usually passed onto the industry and then to the consumer accordingly. An alternative to this style of regulation could focus on protecting mortgage borrowers and investors by identifying emerging risks and using rules to guide professionals in their handling of those risks.

Generally speaking, principles-based regulation focuses on a higher level of articulation regarding what the regulator(s) expect intermediaries to do. Current evidence suggests this approach is more appropriate than a large volume of detailed standards. In particular, current thought around this issue suggests that completely prescriptive standards are unlikely to be appropriate for governing business conduct as they may not be able to cover all the possible scenarios and complexities involved in business transactions such as mortgage brokering. Prescriptive rules that establish minimum standards are however, still necessary for critical areas of the regulatory framework to ensure adequate levels of consistency, certainty and consumer protection.

With principles-based regulation, intermediaries (brokers) are responsible for deciding how best to align their business objectives within the boundaries of applicable rules and regulations. This requires exercise of proper judgment by brokers having due regard to the nature, size and complexity of their business. Where appropriate, the Regulator could provide guidance to the industry to clarify the principles or outcomes sought to be achieved, with the aim of assisting brokers in making better decisions about what internal controls and risk management systems should be adopted. The focus is less on extensive rules and more directive regulations. Input from the industry is more extensive and the goal becomes facilitating the required behaviours rather than mandating them.

An example would be a national designation run by the industry associations with a common platform that focused on best practices and skills such as marketing, ethics, and financial analysis to determine suitability. The result would be a series of educational courses that are practical in that they show the broker how to apply the theory to their business operations as well as the principles behind the training. The underlining principles of professionalism, self-regulation and accountability would then be addressed.

Principles based regulation is worth exploring in terms of a national approach as it lends itself to facilitating ethical professional behavior through best practices and education rather than reliance on punitive measures through legislation or regulation.

CONCLUSION

The MBRCC seeks to ensure consistent regulation and greater professionalism in order to protect consumers through the mortgage process. Provincial associations represent the grass roots, front line, aspects of the industry and can provide the input, expertise and insight needed to allow the MBRCC to accomplish their goals. Any of the noted issues can be expanded upon to produce a full white paper outlining the details of the topic, providing real examples and even proposing workable solutions.

As the voice to our provincial industries the Associations are able to work together to ensure issues are quickly identified and brought forward in a careful, considered and responsive manner. We are also committed to working collectively to identify and administer any solutions. We hope that the MBRCC will consider these issues as you review your ongoing priorities and will utilize the Provincial Associations as an ongoing resource. IMBA, AMBA, MBABC and MBAAC are committed to working together as well as with MBRCC to create a stronger, sustainable profession of mortgage brokers across Canada.

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Submitted On:

November 19th, 2013