

MORTGAGE BROKERAGE - AVOID MISREPRESENTATIONS

Purpose: This bulletin explains responsibilities and prohibitions to help mortgage professionals avoid misrepresentations.

This bulletin applies to mortgage brokerages, brokers and associates.

A mortgage broker professional must not submit information to a third party that they know or ought to have known is false or misleading. Mortgage broker professionals must disclose any steps they take to verify information given to them by parties to a mortgage deal and must keep any documents relating to that information verification.

Responsibilities to avoid misrepresentations include:

- ensure they act honestly
- use reasonable care and skill in the delivery of their services
- practice in accordance with the legislation
- refuse to give services to any client who instructs the industry professional to withhold information that you must disclose under the legislation

Prohibitions to avoid misrepresentations include:

- make representations or carrying on with conduct that is reckless or intentional and that misleads or is likely to do so
- participate in fraudulent or unlawful activities in connection with the provision of services
- engage in conduct that undermines public confidence in the industry, harms the integrity of the industry or brings the industry into disrepute

Altering or concealing facts

A misrepresentation is a false or inaccurate statement and can include omitting information or failing to ask appropriate questions about information you have received when there is concern that the information is false.

Misrepresentations may occur fraudulently, carelessly or innocently.

You must not participate in the submission of material or important facts when you know or ought to know the provider of a fact is attempting to mislead the intended receiver of the information. Additionally, you must not withhold relevant information.

You have an important role to play in the process of connecting borrowers and lenders. You receive important financial, legal and confidential information from both parties and are typically responsible for providing information from one party to the other party.

Verification of information

You must disclose to all parties to a mortgage deal what steps, if any, you have taken to verify information that you receive from a borrower or lender. You must maintain copies of supporting documentation with respect to any information verification you have carried out.

Though the Rules do not require you to verify information you receive from a borrower or a lender, you are required to disclose what, if any, information verification steps you have taken. In this way, all parties are aware they may need to do their own due diligence to verify certain important information.

If you have reason to believe information you were given is false or if it appears to be inconsistent, you should take steps to verify the facts. If you can verify the information and it is truthful and consistent, proceed.

If you are unable to verify the information you receive, you must refuse to act on behalf of the party who gave you the false or inconsistent information and/or you should give full disclosure to all parties of your concerns and inability to verify the information.

This is part of your responsibility to ensure you act honestly and in accordance with the legislation. The Real Estate Council of Alberta expects you to look for inconsistencies in information that you receive from a prospective borrower.

Examples

1. A borrower approaches you to assist then to in secure financing for the purchase of a property. The property that has a legal suite in the basement, and he is looking for a mortgage with 90% loan-to-value ratio. After the interview with the borrower, you determine the man is currently living in a property he owns, but that he plans on living in the upstairs unit in the new house. You submit the application to the lender and it indicates it will be the principle residence of the borrower. The lender approves the loan based on this information

Prior to possession date and the funding of the mortgage, you become aware that the borrower/owner one-year leases to rent out both the basement suite and the upstairs unit of the property. You were in receipt of information through the application process and

you gave information to the lender that may be false or appears misleading. You should notify the lender in writing of the fact that the borrower will not be living in the property as shown on the application. You may be a participant in a mortgage fraud if you do not report the new information.

2. a couple purchases a new home and meets with you to obtain financing. They qualify for the property and they have a \$200,000 down payment for the \$500,000 house. They have a firm possession date for the sale of their current home and both their salaries support the purchase of the new home. In casual conversation with you, the husband mentions he is going to lose his job 30 days after possession of their new house. This is a material fact and you must disclose it to the lender who is finding the loan. If you do not disclose information about the husband's lay off, you may be in contravention

Related information

Legislation

- *Real Estate Act* Rules – sections 41, s.72

Information bulletins

- Avoid Misrepresentations
- Mortgage Fraud – Red Flags