

Mortgage Brokers' and Lenders' Registration Act

CHAPTER 291 OF THE REVISED STATUTES, 1989

as amended by

1999, c. 4, ss. 17-25; 2014, c. 39, ss. 9, 10



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Published by Authority of the Speaker of the House of Assembly
Halifax

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CHAPTER 291 OF THE REVISED STATUTES, 1989
amended 1999, c. 4, ss. 17-25; 2014, c. 39, ss. 9, 10

**An Act Respecting the Registration of
Mortgage Brokers and Persons Carrying
on the Business of Lending Money on the
Security of Mortgages of Real Property**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Mortgage Brokers' and Lenders' Registration Act*. R.S., c. 291, s. 1.

Interpretation

2 In this Act,

(a) “Minister” means the Minister of Consumer Affairs;

- (b) "mortgage" includes any charge on real property or on real and personal property for securing money or money's worth;
- (c) "mortgage broker" means a person who
 - (i) directly or indirectly, carries on the business of lending money on the security of real estate, whether the money is his own or that of another person,
 - (ii) carries on the business of dealing in mortgages, or
 - (iii) holds himself out as or, by an advertisement, notice or sign, indicates that he is a mortgage broker or a person who carries on the business of dealing in mortgages;
- (d) "prescribed" means prescribed by this Act or the regulations;
- (e) "Registrar" means the Registrar of Mortgage Brokers. R.S., c. 291, s. 2.

Registrar of Mortgage Brokers

3 (1) The Minister shall appoint a Registrar of Mortgage Brokers who has the functions and duties set out in this Act and the regulations and such other functions and duties under this Act and the regulations as the Minister may determine.

(2) The Minister may, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, authorize another person to act in the Registrar's stead.

(3) The Minister may appoint one or more deputy registrars as required to assist the Registrar in the performance of the Registrar's duties.

(4) A deputy registrar may perform any of the duties and exercise any of the powers of the Registrar as directed by the Registrar.

(5) A person appointed or authorized to act pursuant to this Section must be employed under the *Civil Service Act* and that Act applies to that person. 2014, c. 39, s. 9.

Personnel and experts

4 (1) To assist the Registrar in performing his functions, there shall be appointed in accordance with the *Civil Service Act* such auditors, accountants, inspectors, clerks and other persons as are necessary.

(2) With the approval of the Governor in Council, the Registrar may engage solicitors, accountants, actuaries and other professionally or technically qualified persons. R.S., c. 291, s. 4.

Mortgage Brokers Register

5 The Registrar shall keep a register to be called the Mortgage Brokers Register, in which he shall enter

- (a) the name of every mortgage broker who holds a permit under this Act;
- (b) the name under which the business is carried on;
- (c) the address or the addresses, if more than one, at or from which the business is carried on; and
- (d) such other matters as are prescribed. R.S., c. 291, s. 5; 1999, c. 4, s. 17.

Permits and renewals

6 Upon receipt of an application for a permit or a renewal of a permit and upon payment of the prescribed fee, where the Registrar is satisfied that the applicant satisfies all the requirements of this Act and the regulations respecting the issuance or renewal of the permit and is a suitable candidate for a permit, the Registrar shall issue a permit or renewal to the applicant. 1999, c. 4, s. 18.

Refusal to issue

7 Where the Registrar is not satisfied that an applicant satisfies all the requirements of this Act and the regulations respecting the issuance or renewal of a permit and is a suitable candidate for a permit or where the Registrar is of the opinion that it is not in the public interest to issue a permit or renewal to the applicant, the Registrar may refuse to issue or renew the permit. 1999, c. 4, s. 18.

Residence requirement

8 The Registrar shall not grant a permit under this Act to any person other than a corporation who has not had his usual place of abode in the Province for at least three months before the date of application for a permit or to any corporation which does not at the time of the application for a permit maintain a permanent office in the Province. R.S., c. 291, s. 8; 1999, c. 4, s. 19.

Expiration and renewal

9 (1) Every permit shall expire one year from the date on which it was issued but may be renewed on application in the prescribed form and upon payment of the prescribed fee.

(2) Notwithstanding subsection (1), the Minister may determine for a particular permit an expiry date which is less than one year from the date on which it was issued.

(3) Where a permit is issued for a period of less than one year, the permit fee may be varied as determined by the Minister. R.S., c. 291, s. 9; 1999, c. 4, s. 20.

Suspension or cancellation

10 (1) The Registrar may suspend for a stated term or until a condition has been met or may cancel any permit if in the opinion of the Registrar it is in the public interest to do so.

(2) The suspension or cancellation shall be recorded in the Register by the Registrar. R.S., c. 291, s. 10; 1999, c. 4, s. 21.

Misleading advertisement

11 Where in the opinion of the Registrar a person who holds a permit under this Act is making false, misleading or deceptive statements in an advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of the material. R.S., c. 291, s. 11; 1999, c. 4, s. 22.

Appeal

12 A person, aggrieved by a decision or direction of the Registrar, may appeal therefrom to a judge of the county court for the district in which the person resides or carries on his principal business, and the judge may confirm, vary or set aside the decision or direction. R.S., c. 291, s. 12.

Investigation

13 The Registrar, or a person to whom as his representative or representatives he in writing delegates authority, may examine any person or thing whatsoever at any time in order to ascertain whether any fraudulent act, or any offence against this Act or the regulations, has been, is being, or is about to be committed. R.S., c. 291, s. 13.

Powers, privileges, immunities

14 For the purpose of exercising his functions under this Act, the Registrar has all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*. R.S., c. 291, s. 14.

Right of entry and inspection

15 The Registrar or a person authorized by him for the purpose may enter the premises of a mortgage broker or any person he has reasonable cause to believe is acting as a mortgage broker and inspect the records and files of the person and make copies of or take extracts from any books, records or documents on those files. R.S., c. 291, s. 15.

Powers of Registrar

16 The Registrar may

- (a) conduct studies, inquiries and surveys for the purpose of obtaining information as to what persons are carrying on business as mortgage brokers in the Province, concerning their methods and practices of car-

rying on business, and to keep himself informed of developments and changes in those methods and practices;

(b) consult with and co-operate with mortgage brokers and other interested persons and organizations to assist in the attainment of the purposes of this Act;

(c) encourage co-operation by mortgage brokers and organizations of persons engaged in the business of mortgage brokers in the administration and enforcement of this Act;

(d) disseminate information respecting the lending or obtaining of money on the security of mortgages, the practices of mortgage brokers, the costs of loans secured by mortgages, and such other information as he considers to be in the public interest;

(e) *repealed 2014, c. 39, s. 10.*

R.S., c. 291, s. 16; 2014, c. 39, s. 10.

Advisory board

17 The Minister may from time to time appoint an advisory board or boards to inquire into or investigate any matter or matters relating to the administration of this Act or any matter falling within the provisions of this Act or the regulations and to assist or advise the Registrar with respect to any matter referred to the board by the Registrar. R.S., c. 291, s. 17.

Regulations

18 The Governor in Council may make regulations

(a) prescribing the form or forms of applications for registration and for renewal of registration;

(b) prescribing fees for registration;

(c) prescribing the form and content of records to be kept by mortgage brokers;

(d) requiring mortgage brokers to make reports and returns to the Registrar;

(e) prescribing the form and content of reports and returns to be made to the Registrar either at stated intervals or upon demand of the Registrar;

(f) requiring mortgage brokers to submit to borrowers statements disclosing particulars of mortgages and loans and prescribing the form and content of those statements, and prescribing different forms for different types of transactions or different classes of mortgage brokers;

(g) providing that the completion of any transaction or class of transaction involving a mortgage be postponed until such time or times as is

or are prescribed by the regulations after the submission to the mortgagor of a statement showing particulars of the mortgage;

(h) exempting persons and classes of persons, in whole or in part, from all or any provision of this Act or the regulations;

(i) exempting mortgage brokers from all or any provisions of this Act or the regulations with respect to specified transactions or classes of transactions;

(j) empowering the Registrar to exempt any person or class of person or any transaction or class of transaction from any or all of the provisions of this Act and the regulations, excepting provisions respecting registration, and prescribing the circumstances, terms and conditions in which such exemption may be granted;

(k) relating to advertising by mortgage brokers;

(l) prescribing additional functions and duties of the Registrar and persons appointed to assist in the administration of this Act. R.S., c. 291, s. 18.

Certificate as prima facie evidence

19 A certificate purporting to be signed by the Registrar and certifying as to any matter of record in his office is admissible in evidence in any action or proceedings in any court, or in any matter before any board, commission or other body without proof of the signature or official position of the person who signed or purported to sign the certificate and is *prima facie* proof of the matter therein certified. R.S., c. 291, s. 19.

Deemed mortgage broker

20 For the purposes of this Act, a person shall be deemed to be carrying on business as a mortgage broker if in any period of twelve consecutive months he

(a) lends money on the security of five or more mortgages; or

(b) lends money on the security of four mortgages to an aggregate amount of thirty thousand dollars or more. R.S., c. 291, s. 20.

Promotional material as prima facie proof

21 A statement in a letter, advertisement, card or other document that is issued, published, distributed or made by a person to the effect that he is engaged in the business of a mortgage broker or is acting as a mortgage broker, or is lending money on the security of real estate, is admissible in evidence and is *prima facie* proof that he is a mortgage broker. R.S., c. 291, s. 21.

Disclosure of mortgage particulars

22 At the time a mortgage broker agrees to give or renew a mortgage, but not later than forty-eight hours before the mortgagor or borrower signs the mortgage or a document committing the mortgagor or borrower to the mortgage, the

mortgage broker shall disclose to the mortgagor or borrower the particulars of the mortgage in accordance with the regulations, and the mortgage broker shall keep in his files a duplicate of the statement signed by the mortgagor or borrower. R.S., c. 291, s. 22.

Prepayment

23 (1) Every mortgage entered into or renewed on or after the thirtieth day of June, 1985, shall state whether the mortgage may be prepaid and, if it can, the mortgage shall state the terms of the prepayment.

(2) If the mortgage is silent with respect to prepayment, it can be prepaid without penalty at any time. R.S., c. 291, s. 23.

Right to assignment

24 Notwithstanding any stipulation to the contrary, where a mortgagor is entitled to redeem the mortgage or where the mortgagee demands payment of the mortgage by the mortgagor, the mortgagor, upon payment of any balance outstanding in respect of the mortgage, may require the mortgagee, instead of giving a release of mortgage, to assign the mortgage to such third person as he directs, and the mortgagee is bound to assign accordingly. R.S., c. 291, s. 24.

Failure to comply with Act

25 Failure to comply with the provisions of this Act does not affect the validity of a mortgage. R.S., c. 291, s. 25.

Particulars required in promotional material

26 Where a person uses, in connection with a business relating to mortgages, a letter, card or other document or paper or publishes an advertisement in any form relating to mortgages, the letter, card, document, paper or advertisement shall show

(a) where the person holds a permit under this Act, the permit holder's name and address; or

(b) where the person does not hold a permit under this Act, the person's full name and address. R.S., c. 291, s. 26; 1999, c. 4, s. 23.

Prohibited activities

27 (1) No person shall

(a) carry on business as a mortgage broker unless the person holds a valid permit under this Act;

(b) carry on business as a mortgage broker otherwise than in the name of the permit holder or elsewhere than at or from the address of the permit holder; or

(c) advertise or in any other way indicate that the person is a mortgage broker other than under the name of the permit holder.

(2) No mortgage broker shall make or cause to be made any representation in writing that he holds a permit under this Act. R.S., c. 291, s. 27; 1999, c. 4, s. 24.

Misleading advertisement

28 No person who holds a permit under this Act shall make any false, misleading or deceptive statement in any advertisement, circular, pamphlet or other similar material. R.S., c. 291, s. 28; 1999, c. 4, s. 25.

Offence and penalty

29 (1) Every person who violates any provision of this Act or the regulations or who fails to observe or comply with an order or direction given by the Registrar under this Act or the regulations is liable to a fine of not more than five thousand dollars or imprisonment for not more than six months, or both.

(2) Where a corporation is convicted of an offence under subsection (1), it is liable to a penalty of not more than twenty-five thousand dollars. R.S., c. 291, s. 29.
