The Mortgage Brokerages and Mortgage Administrators Act

being

Chapter M-20.1* of *The Statutes of Saskatchewan, 2007* (effective October 1, 2010), as amended by the *Statutes of Saskatchewan*, 2012, c F-13.5; 2014, c A-3.1; 2015, c 21; 2018, c 42; 2021, c 6; and 2024, c 4.

***NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

NOTE:

This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.

Table of Contents

PART I
Preliminary Matters

1 Short title
2 Interpretation
3 Non-application of Act
4 Superintendent's responsibilities

PART II
Licensing

5 Licence or endorsement required
6 Eligibility for licence
7 Eligibility for endorsement
8 Application for licence or endorsement
9 Financial security may be required
10 Issuing of licence
11 Granting of endorsement
12 Effect of licence or endorsement
13 Terms and conditions
14 Suspension or cancellation of licence or endorsement
15 Automatic suspension of licence in certain circumstances
16 Licence or endorsement not transferable
17 Continuous licence, endorsement
18 Further information or material
19 Notice of change to address for service, etc.
20 Licensee to notify superintendent if circumstances change
21 Opportunity to be heard

PART III
Brokering Mortgages

DIVISION 1
Mortgage Brokerages

22 Principal broker
23 Prohibition re unlicensed individuals, etc.
24 Duty to ensure compliance by brokers, etc.
25 Duty to act in borrower's best interests
26 Duty to act in private investor's best interests
27 Duties owed to borrower
28 Duties owed to private investor

DIVISION 2
Brokers and Associates

29 Restrictions on brokers and associates
30 Money received in trust to be turned over immediately

PART IV
Mortgage Administrators

31 Written agreement required
32 Duty to act in private investor's best interests
33 Disclosure to private investor
34 Copy of agreement to be provided

PART V
Regulation of Mortgage Brokerages, Brokers, Associates and Mortgage Administrators

35 Duty to maintain records
36 Prohibition against unfair or deceptive act or practice
37 Guarantee of investment in mortgage prohibited
38 Restriction on coercive tied-selling
39 Capital requirements
40 Other requirements and prohibitions

PART VI
Trust Property

DIVISION 1
Records

41 Requirements re records
42 Records relating to trust property

DIVISION 2
Requirements re Trust Property

43 Prerequisites to handling trust property
44 Trust property to be kept separate
45 Trust money to be placed in trust account
46 Administration of trust money by mortgage administrator
47 Administration of trust account

PART VII
Annual Filing Requirements

48 Annual return
49 Statutory declaration
50 Annual financial statement
51 Interim financial statements
52 Standards of financial reporting

PART VIII
Advertising and Communications

53 Advertising
54 False or misleading advertisement
55 Information to be disclosed in correspondence
56 Representations as to financial standing

PART IX
Powers of the Superintendent
57 Proceedings before superintendent
58 Power to require information or material
59 Actions on behalf of persons
60 Right to receive notices
61 Restrictions on access to records
62 Agreements with other jurisdictions
63 Experts
64 Orders respecting the preparation of reports

PART X
Inspections, Investigations and Enforcement

DIVISION 1
Interpretation of Part
65 Interpretation of Part

DIVISION 2
Inspections and Investigations
66 Inspections
67 Investigations
68 Travel costs
69 Receiver or receiver manager

DIVISION 3
Offences, Penalties and Enforcement
70 Offences and penalties
71 Special penalties
72 Compliance orders and restitution
73 Offence - destruction, etc., of evidence
74 Limitation on prosecution
75 Administrative penalties
76 Power of superintendent to order compliance
77 Power of court to order compliance
78 Costs

PART XI
Appeals
79 Appeal to court
80 Documents to be filed with the court for purposes of appeal
81 Decision by court
82 Application for stay

PART XII
General Provisions
83 Power of superintendent to review, rescind, amend or vary orders
84 Publication of decisions and orders
85 Immunity
86 Superintendent and others not compellable to give evidence
87 Evidence re certificate of superintendent
88 Evidence of carrying on business without a licence
89 Action for money
90 Service
91 Regulations

PART XIII
Repeal, Consequential and Coming into Force
92 RSS 1978, c M-21 repealed
93 SS 2002, c S-17.2, section 2 amended
94 Coming into force

CHAPTER M-20.1

An Act respecting Mortgage Brokerages, Brokers, Associates and Mortgage Administrators and to make consequential amendments to *The Saskatchewan Financial Services Commission Act*

PART I
Preliminary Matters

Short title

1 This Act may be cited as *The Mortgage Brokerages and Mortgage Administrators Act*.

Interpretation

2(1) In this Act:

(a) **"associate"** means an individual who brokers mortgages on behalf of a mortgage brokerage as an employee or otherwise;

(b) **"borrower"** includes a prospective borrower;

(c) **"broker"** means an individual who:

(i) brokers mortgages on behalf of a mortgage brokerage as an employee or otherwise; and

(ii) meets the prescribed criteria to act as a supervisor for an associate;

(d) **"court"** means, except in sections 59, 60, 61, 72, 86 and 89, the Court of King's Bench;

(e) **"endorsement"** means an endorsement to a mortgage brokerage licence granting the licensee the right to receive and hold trust money;

(f) **"investment in a mortgage"** means the acquisition of an interest in a mortgage by an investor and includes the lending of money on the security of a mortgage;

(g) **"investor"** means a person that makes an investment in a mortgage;

(h) **"licence"** means a valid licence issued pursuant to this Act;

(i) **"licensee"** means a person that holds a licence;

(j) **"minister"** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

(k) **"mortgage"** means any charge on real property or on an interest in real property for the purpose of securing the repayment of money or other consideration, and includes a mortgage of a mortgage;

(l) **"mortgage administrator"** means a person that carries on the business of administering mortgages;

(m) **"mortgage brokerage"** means a person that carries on the business of brokering mortgages;

(n) **"mortgage held in trust"** means a mortgage described in subclause (u)(ii);

(o) **"person"** includes a partnership;

(p) **"prescribed"** means prescribed in the regulations;

(q) **"principal broker"** means an individual designated as a principal broker by a mortgage brokerage pursuant to subsection 22(1);

(r) **"private investor"** means private investor as defined in the regulations;

(s) **"superintendent"** means the Saskatchewan Superintendent of Financial Institutions appointed pursuant to section 58 of *The Trust and Loan Corporations Act, 1997* and includes any deputy Superintendent of Financial Institutions appointed pursuant to that Act;

(t) **"trust money"** means any money received by a mortgage brokerage or a mortgage administrator, but does not include money that is clearly made as payment to the mortgage brokerage or mortgage administrator for fees or other remuneration earned by the mortgage brokerage or mortgage administrator, as the case may be;

(u) **"trust property"** means:

(i) trust money; and

(ii) a mortgage held in the name of a mortgage administrator, but only if another person:

(A) holds an interest in that mortgage; or

(B) is entitled to share in the proceeds of that mortgage.

(2) Notwithstanding any other provision of this Act or the regulations or of any other Act or law, if, pursuant to *The Financial and Consumer Affairs Authority of Saskatchewan Act*, the Financial and Consumer Affairs Authority of Saskatchewan is assigned the performance of all or any of the responsibilities imposed on the superintendent and the exercise of all or any of the powers given to the superintendent by this Act or the regulations:

(a) any reference with respect to those responsibilities or powers in this Act or the regulations to the superintendent is to be interpreted as a reference to the Financial and Consumer Affairs Authority of Saskatchewan; and

(b) this Act and the regulations are to be interpreted subject to the provisions of *The Financial and Consumer Affairs Authority of Saskatchewan Act*.

(3) For the purposes of this Act, a person is considered as carrying on business in Saskatchewan if:

(a) the person solicits, provides, promotes, advertises, markets, sells or distributes any products or services by any means that cause communication from the person or the person's agents or representatives to reach a person in Saskatchewan;

(b) the person has a resident agent or representative or maintains an office or place of business in Saskatchewan;

(c) the person holds himself or herself out as carrying on business in Saskatchewan; or

(d) the person otherwise carries on business in Saskatchewan.

(4) For the purposes of this Act, a person brokers mortgages if the person engages in one or more of the following activities:

(a) soliciting another person to obtain a mortgage loan or to make an investment in a mortgage, but only if the soliciting is done on behalf of another person;

(b) negotiating or arranging a mortgage loan or an investment in a mortgage on behalf of another person;

(c) providing advice to a person with respect to the appropriateness of:

(i) obtaining a particular mortgage loan; or

(ii) making a particular investment in a mortgage;

(d) undertaking any other prescribed activity.

(5) For the purposes of this Act, a person administers mortgages if the person, on behalf of an investor, engages in one or more of the following activities:

(a) receiving payments made by a borrower and remitting those payments to the investor;

(b) monitoring the performance of a borrower with respect to his or her obligations under the mortgage;

(c) undertaking any other prescribed activity.

2007, c M-20.1, s 2; 2012, c F-13.5, s 52; 2024, c 4, s 32.

Non-application of Act

3(1) This Act does not apply to the following:

(a) a lawyer entitled to practise law in Saskatchewan with respect to activities that are undertaken in the course of, and are part of, his or her practice of law;

(b) a person that exclusively refers prospective borrowers to prospective lenders, but only if the prescribed circumstances are met.

(2) All or any prescribed portion of any prescribed provision of this Act does not apply:

(a) to any prescribed person or any prescribed class of persons; or

(b) in any prescribed circumstance.

2007, c M-20.1, s 3.

Superintendent's responsibilities

4(1) The superintendent is responsible to the minister for the administration of this Act and the regulations.

(2) The superintendent may appoint any person to carry out any responsibility imposed on the superintendent pursuant to this Act or to exercise any of the powers conferred on the superintendent pursuant to this Act that the superintendent believes may be more conveniently carried out or exercised by that person.

(3) The superintendent may impose any limitations or terms and conditions that the superintendent considers appropriate on an appointment pursuant to subsection (2).

(4) The exercise of any of the superintendent's powers or the carrying out of any of the superintendent's responsibilities by a person who is appointed pursuant to subsection (2) is deemed to be the exercise or the carrying out by the superintendent.

2007, c M-20.1, s 4.

PART II
Licensing

Licence or endorsement required

5(1) No person shall carry on the business of brokering mortgages unless that person has a mortgage brokerage licence.

(2) No mortgage brokerage shall receive or hold trust money unless that mortgage brokerage:

(a) has a mortgage brokerage licence; and

(b) has been granted an endorsement by the superintendent.

(3) No individual shall broker mortgages on behalf of a mortgage brokerage, as an employee or otherwise, or hold himself or herself out as doing so, unless the individual:

(a) has a broker's licence or an associate's licence; and

(b) is acting on behalf of the mortgage brokerage named in his or her licence.

(4) No person shall carry on the business of administering mortgages unless that person has a mortgage administrator's licence.

2007, c M-20.1, s 5.

Eligibility for licence

6(1) A corporation, partnership or sole proprietorship is eligible to apply for a mortgage brokerage licence.

(2) Only a corporation is eligible to apply for a mortgage administrator's licence.

(3) Only an individual is eligible to apply for a broker's licence or an associate's licence.

2007, c M-20.1, s 6.

Eligibility for endorsement

7 A mortgage brokerage is eligible to apply for an endorsement if the mortgage brokerage:

(a) has a mortgage brokerage licence; and

(b) is a corporation.

2007, c M-20.1, s 7.

Application for licence or endorsement

8(1) Every applicant for a licence shall:

(a) apply to the superintendent in the form provided by the superintendent;

(b) provide the superintendent with:

(i) an address for service in Saskatchewan; and

(ii) any other information or material that the superintendent may reasonably require;

(c) if financial security is required pursuant to section 9, file financial security with the superintendent in accordance with that section;

(d) comply with the following:

(i) any prescribed errors and omissions insurance requirements;

(ii) any prescribed capital requirements;

(e) submit to the superintendent any prescribed fees; and

(f) comply with any other prescribed requirements and satisfy any other prescribed criteria.

(2) Every applicant for an endorsement shall:

(a) apply to the superintendent in the form provided by the superintendent;

(b) provide the superintendent with any other information or material that the superintendent may reasonably require;

(c) if financial security is required pursuant to section 9, file financial security with the superintendent in accordance with that section;

(d) comply with any prescribed capital requirements;

(e) submit to the superintendent any prescribed fees; and

(f) comply with any other prescribed requirements and satisfy any other prescribed criteria.

(3) The superintendent may require an applicant to verify, by affidavit or otherwise, any information or material submitted to the superintendent pursuant to this section.

2007, c M-20.1, s 8.

Financial security may be required

9(1) The superintendent may require:

(a) an applicant to file financial security with the superintendent as part of the applicant's application;

(b) a licensee whose licence has been suspended to file financial security with the superintendent before the licence is reinstated; or

(c) a licensee to file financial security with the superintendent at any time during the term of a licence.

(2) A person required to file financial security with the superintendent pursuant to this section must, at all times, maintain that financial security.

(3) Financial security filed pursuant to this section:

(a) must be in the amount and in the form that the superintendent considers appropriate; and

(b) may be forfeited in the manner set out in the regulations.

2007, c M-20.1, s 9.

Issuing of licence

10 The superintendent may:

(a) issue a licence if the superintendent:

(i) receives an application pursuant to subsection 8(1);

(ii) is satisfied that the applicant meets the requirements and satisfies the criteria for the licence set out in this Act and the regulations and has otherwise complied with this Act and the regulations; and

(iii) is satisfied that the applicant is suitable to be licensed and that the issuance of the licence is not for any reason objectionable; or

(b) refuse to issue a licence.

2007, c M-20.1, s 10.

Granting of endorsement

11 The superintendent may:

(a) grant an endorsement to a mortgage brokerage that applied for the endorsement if the superintendent:

(i) receives an application pursuant to subsection 8(2);

(ii) is satisfied that the applicant meets the requirements and satisfies the criteria for the endorsement set out in this Act and the regulations and has otherwise complied with this Act and the regulations; and

(iii) is satisfied that the applicant is suitable to be granted an endorsement and that the granting of the endorsement is not for any reason objectionable; or

(b) refuse to grant an endorsement.

2007, c M-20.1, s 11.

Effect of licence or endorsement

12(1) A mortgage brokerage licence authorizes the licensee to carry on the business of brokering mortgages.

(2) An endorsement on a mortgage brokerage licence authorizes the licensee to receive and hold trust money in the course of its mortgage brokerage business.

(3) A broker's licence authorizes the licensee to broker mortgages on behalf of the mortgage brokerage named in his or her licence.

(4) An associate's licence authorizes the licensee to broker mortgages on behalf of the mortgage brokerage named in his or her licence.

(5) A mortgage administrator's licence authorizes the licensee:

(a) to carry on the business of administering mortgages; and

(b) to receive and hold trust property in the course of that business.

2007, c M-20.1, s 12.

Terms and conditions

13(1) Subject to section 21, at the time a licence or endorsement is issued, granted or reinstated, the superintendent may impose any terms and conditions on a licence or endorsement that the superintendent considers necessary.

(2) Subject to section 21, at any time after a licence or endorsement is issued, granted or reinstated, the superintendent may do all or any of the following:

(a) amend, modify or vary terms and conditions imposed on a licence or endorsement;

(b) impose new terms and conditions on a licence or endorsement;

(c) repeal terms and conditions and substitute new terms and conditions in their place.

(3) No licensee shall fail to comply with the terms and conditions imposed on the licensee's licence or endorsement.

2007, cM-20.1, s13.

Suspension or cancellation of licence or endorsement

14(1) Subject to section 21, the superintendent may suspend or cancel a licence or endorsement:

(a) on any ground on which the superintendent might have refused to issue the licence pursuant to section 10 or grant the endorsement pursuant to section 11;

(b) if a licensee has failed to comply with this Act or the regulations; or

(c) in accordance with section 15.

(2) If the superintendent considers it appropriate to do so, and on receipt of any prescribed reinstatement fee, the superintendent may reinstate a licence or endorsement that has been suspended.

2007, cM-20.1, s14.

Automatic suspension of licence in certain circumstances

15(1) A licence issued to a mortgage brokerage is automatically suspended if the mortgage brokerage ceases to have at least one broker authorized to broker mortgages on its behalf.

(2) A licence issued to a broker or an associate is automatically suspended in the following circumstances:

(a) if the broker or associate ceases to be authorized to act on behalf of the mortgage brokerage named on the broker's licence or the associate's licence, as the case may be;

(b) if the mortgage brokerage named on the broker's licence or associate's licence, as the case may be, has its licence suspended or cancelled.

(3) An endorsement granted to a mortgage brokerage is automatically suspended if the mortgage brokerage licence issued to the mortgage brokerage is suspended.

(4) In the circumstances mentioned in subsections (1) to (3), the superintendent may:

(a) reinstate the suspended licence or endorsement if the prescribed circumstances are met and any fee required pursuant to subsection 14(2) has been paid; or

(b) cancel the licence or endorsement if it has not been reinstated within the prescribed period.

2007, cM-20.1, s15.

Licence or endorsement not transferable

16 A licence issued or reinstated, or an endorsement granted or reinstated, pursuant to this Part is not transferable or assignable.

2007, c M-20.1, s 16.

Continuous licence, endorsement

17 A licence or endorsement continues in force indefinitely unless it is suspended or cancelled in accordance with this Act.

2007, c M-20.1, s 17.

Further information or material

18(1) At any time, the superintendent may:

(a) require an applicant or a licensee to submit to the superintendent any further information or material that the superintendent may reasonably require; and

(b) require verification, by affidavit or otherwise, of any information or material submitted to the superintendent pursuant to clause (a).

(2) No applicant or licensee who receives a request from the superintendent pursuant to subsection (1) shall fail to comply with that request within the period specified by the superintendent.

2007, c M-20.1, s 18.

Notice of change to address for service, etc.

19 No licensee shall fail to notify the superintendent in writing immediately of any change to an address for service, fax number or email address provided in an application pursuant to this Part.

2007, c M-20.1, s 19; 2015, c 21, s 26.

Licensee to notify superintendent if circumstances change

20 Within seven days after a prescribed change in circumstances, an applicant or licensee shall notify the superintendent in writing.

2007, c M-20.1, s 20.

Opportunity to be heard

21(1) In this section, **"action"** means:

(a) an action that the superintendent may take pursuant to clause 10(b) or 11(b), section 13 or clause 14(1)(a) or (b); or

(b) an order that the superintendent may make pursuant to subsection 39(2), 75(1), 76(2) or 78(1), (2) or (3).

(2) Before taking an action, the superintendent shall give the person who is the subject of the action a written notice:

(a) setting out the action proposed to be taken by the superintendent and the grounds that, in the superintendent's opinion, justify the proposed action; and

(b) informing the person of the person's right to make representations to the superintendent on why the action should not be taken.

(3) A person to whom a notice is sent pursuant to subsection (2) may, within 15 days after receiving that notice, advise the superintendent that:

(a) the person requests an oral hearing; or

(b) the person wishes to make written representations to the superintendent respecting why the action should not be taken.

(4) A person that requests an oral hearing pursuant to clause (3)(a) must, within seven days after requesting the hearing, contact the superintendent and arrange a date, time and place for the hearing.

(5) Written representations pursuant to clause (3)(b) must be received by the superintendent within 30 days after the person receives the notice pursuant to subsection (2).

(6) The superintendent may take the actions stated in the notice without considering any representations of the person if the person fails to:

(a) advise the superintendent in accordance with subsection (3);

(b) meet the requirements of subsection (4) or (5) within the required time; or

(c) appear on the date and at the time and place arranged for the hearing without the prior approval of the superintendent.

(7) The superintendent may extend the periods mentioned in subsection (3), (4) or (5) if, in the superintendent's opinion, it is appropriate to do so.

(8) Nothing in this section requires the superintendent to give an oral hearing to any person who has made written representations in accordance with this section.

(9) Notwithstanding subsection (2), if the superintendent considers that it is necessary and in the public interest to take immediate action, the superintendent may immediately do any of the things described in section 13, clause 14(1)(a) or (b) or subsection 76(2) without giving the person an opportunity to be heard, but the superintendent shall give the person an opportunity to make written representations or attend a hearing before the superintendent within 15 days after the date on which the superintendent takes the action.

(10) On holding a hearing or receiving a person's written representations pursuant to this section, the superintendent shall, within a reasonable period:

(a) consider the submissions and make a decision;

(b) notify the person, in writing, of the superintendent's decision;

(c) provide written reasons for the superintendent's decision; and

(d) provide the person with information respecting the right of appeal pursuant to section 79.

2007, c M-20.1, s 21.

PART III
Brokering Mortgages

DIVISION 1
Mortgage Brokerages

Principal broker

22(1) Every mortgage brokerage shall designate one individual to act as a principal broker who:

(a) has a broker's licence; and

(b) satisfies any other prescribed criteria.

(2) A principal broker shall:

(a) designate a broker to act as a supervisor for each associate authorized to act on behalf of the mortgage brokerage;

(b) ensure that no associate brokers mortgages except under the supervision of a broker designated pursuant to clause (a); and

(c) exercise any other prescribed powers and perform any other prescribed duties.

2007, c M-20.1, s 22.

Prohibition re unlicensed individuals, etc.

23 No mortgage brokerage shall:

(a) authorize or permit an unlicensed individual, or an individual whose licence is under suspension, to broker mortgages on the mortgage brokerage's behalf; or

(b) authorize or permit a broker or associate to act on the mortgage brokerage's behalf if that person has another mortgage brokerage named in his or her licence.

2007, c M-20.1, s 23.

Duty to ensure compliance by brokers, etc.

24 Every mortgage brokerage shall ensure that every broker and associate authorized to act on the mortgage brokerage's behalf complies with all applicable requirements established pursuant to this Act or the regulations.

2007, c M-20.1, s 24.

Duty to act in borrower's best interests

25 Subject to section 26, every mortgage brokerage shall act in the best interests of the borrower.

2007, cM-20.1, s25.

Duty to act in private investor's best interests

26(1) A mortgage brokerage is not required to act in the best interests of the borrower and must act in the best interests of a private investor if:

(a) the mortgage brokerage:

(i) solicits the private investor to make an investment in a mortgage;

(ii) negotiates or arranges an investment in a mortgage by the private investor; or

(iii) provides advice to the private investor with respect to the appropriateness of making a particular investment in a mortgage; and

(b) the private investor is not represented by another mortgage brokerage with respect to the investment in the mortgage.

(2) A mortgage brokerage that is required to act in the best interests of a private investor pursuant to subsection (1) must immediately advise the borrower, in writing, that:

(a) it is acting on behalf of a private investor; and

(b) it is obligated to act in the private investor's best interests, which may be in conflict with the borrower's best interests.

2007, cM-20.1, s26.

Duties owed to borrower

27 Every mortgage brokerage required to act in the best interests of a borrower pursuant to this Part shall:

(a) provide to the borrower, within the prescribed time, the prescribed information in the prescribed manner;

(b) determine the mortgage loan that is most suitable for the borrower in accordance with the regulations;

(c) provide to the borrower, in the prescribed manner, a written assessment of the determination made pursuant to clause (b) that contains the prescribed information at least one business day before the earlier of:

(i) the day on which the borrower commits himself or herself to enter into the mortgage; and

(ii) the day on which the borrower makes any payment in connection with the mortgage, including, but not limited to, any application fee paid by the borrower in connection with the mortgage; and

(d) obtain a written acknowledgement from the borrower indicating that the written assessment mentioned in clause (c) was provided to him or her.

2007, cM-20.1, s27.

Duties owed to private investor

28(1) Every mortgage brokerage required to act in the best interests of a private investor pursuant to this Part shall, within the prescribed time and in the prescribed manner, provide the private investor with the following information and documentation:

(a) a copy of the prescribed investor disclosure form, completed and signed by the mortgage brokerage;

(b) the prescribed information and documentation.

(2) Every mortgage brokerage shall obtain a written acknowledgement from every private investor to whom subsection (1) applies indicating that:

(a) the completed investor disclosure form mentioned in clause (1)(a) was provided to him or her; and

(b) the information and documentation required to be provided pursuant to clause (1)(b) was provided to him or her.

2007, c M-20.1, s 28.

DIVISION 2
Brokers and Associates

Restrictions on brokers and associates

29(1) No broker shall act on behalf of a mortgage brokerage other than the mortgage brokerage named in the broker's licence.

(2) No associate shall act on behalf of a mortgage brokerage other than the mortgage brokerage named in the associate's licence.

2007, c M-20.1, s 29.

Money received in trust to be turned over immediately

30 Every broker and associate who receives trust money in the course of brokering mortgages on behalf of a mortgage brokerage shall immediately turn that money over to the mortgage brokerage.

2007, c M-20.1, s 30.

PART IV
Mortgage Administrators

Written agreement required

31 A mortgage administrator shall not administer a mortgage on behalf of a private investor unless the mortgage administrator has entered into an agreement with that private investor that:

(a) is in writing;

(b) includes the prescribed terms and conditions; and

(c) contains the prescribed information.

2007, c M-20.1, s 31.

Duty to act in private investor's best interests

32 Every mortgage administrator that administers a mortgage on behalf of a private investor must act in the best interests of that private investor.

2007, c M-20.1, s 32.

Disclosure to private investor

33(1) Before entering into an agreement with a private investor in accordance with section 31, a mortgage administrator shall provide the private investor with a statement in the prescribed manner disclosing the prescribed information.

(2) If, at any time, there is a change to any of the information required to be disclosed pursuant to subsection (1), the mortgage administrator shall provide the private investor with an additional statement in accordance with subsection (1) within the prescribed time.

2007, c M-20.1, s 33.

Copy of agreement to be provided

34 After a mortgage administrator and a private investor enter into an agreement in accordance with section 31, the mortgage administrator must provide a copy of the agreement to the private investor within 10 days.

2007, c M-20.1, s 34.

PART V
Regulation of Mortgage Brokerages, Brokers, Associates and Mortgage Administrators

Duty to maintain records

35(1) In this section and in Part VI, **"record"** includes a book, paper, document or thing, whether in electronic form or otherwise, that may contain information respecting the finances or business of a mortgage brokerage, broker, associate or mortgage administrator.

(2) Every mortgage brokerage and mortgage administrator shall ensure that the following records are kept:

(a) complete and accurate financial records of the licensee's operations in Saskatchewan that include the prescribed information;

(b) complete and accurate records respecting all the information to be disclosed and documentation to be provided to borrowers or private investors pursuant to this Act or the regulations;

(c) complete and accurate records respecting all written agreements that the mortgage brokerage or mortgage administrator has entered into;

(d) in the case of a mortgage brokerage that receives or holds trust money, the records required pursuant to Part VI;

(e) in the case of a mortgage administrator, the records required pursuant to Part VI;

(f) any other prescribed records.

(3) Every mortgage brokerage and mortgage administrator shall:

(a) retain the records mentioned in this section for the prescribed period; and

(b) make available for inspection by the superintendent the records mentioned in this section during regular business hours:

(i) at the place of business of the mortgage brokerage or mortgage administrator in Saskatchewan; or

(ii) at any other location approved by the superintendent.

2007, c M-20.1, s 35.

Prohibition against unfair or deceptive act or practice

36 No licensee shall engage in any unfair or deceptive act or practice with respect to a transaction or proposed transaction involving a mortgage.

2007, c M-20.1, s 36.

Guarantee of investment in mortgage prohibited

37 No licensee shall directly or indirectly offer any guarantee with respect to an investment in a mortgage.

2007, c M-20.1, s 37.

Restriction on coercive tied-selling

38(1) No licensee shall require, impose undue pressure on or coerce a borrower or private investor, as a condition of receiving a product or service, to purchase another product or service from a particular person.

(2) No licensee shall knowingly assist an investor to require, impose undue pressure on or coerce a borrower, as a condition of receiving a product or service, to purchase another product or service from a particular person.

(3) Notwithstanding subsections (1) and (2), a licensee may offer, or assist an investor to offer, a product or service to a borrower or private investor on more favourable terms or conditions than the licensee or investor would otherwise offer, if the more favourable terms or conditions are offered on the condition that the borrower or private investor obtain another product or service from any particular person.

2007, c M-20.1, s 38.

Capital requirements

39(1) Every mortgage brokerage and mortgage administrator required to comply with any capital requirements set out in the regulations made pursuant to subclause 8(1)(d)(ii) or clause 8(2)(d) shall, at all times maintain that capital.

(2) If the superintendent is satisfied that it would be in the public interest to do so, the superintendent may order an increase in the amount of capital required to be maintained pursuant to subsection (1) by a mortgage brokerage that holds an endorsement or a mortgage administrator.

2007, c M-20.1, s 39.

Other requirements and prohibitions

40 Every licensee shall comply with:

(a) any other prescribed requirements; and

(b) any other prescribed prohibitions.

2007, c M-20.1, s 40.

PART VI
Trust Property

DIVISION 1
Records

Requirements re records

41 In addition to the requirements set out in section 35, every mortgage brokerage that receives or holds trust money and every mortgage administrator shall:

(a) if applicable, ensure that the records that are kept distinguish between:

(i) money and assets pertaining to the operation of the business; and

(ii) money and mortgages received or held in trust by the business;

(b) in the case of a mortgage administrator, ensure that records are kept showing, for each mortgage received or held in trust, particulars of all transactions connected with that mortgage; and

(c) ensure that any other prescribed records are:

(i) kept, reviewed and reconciled as prescribed; and

(ii) retained in accordance with subsection 35(3).

2007, c M-20.1, s 41.

Records relating to trust property

42 Unless otherwise authorized in writing by the superintendent:

(a) every mortgage brokerage that receives or holds trust money shall keep records of all transactions involving trust money received or held on behalf of Saskatchewan residents separate and apart from records of those transactions relating to trust money received or held on behalf of residents of other jurisdictions; and

(b) every mortgage administrator shall keep records of all transactions involving trust property received or held on behalf of Saskatchewan residents separate and apart from records of those transactions relating to trust property received or held on behalf of residents of other jurisdictions.

2007, c M-20.1, s 42.

DIVISION 2
Requirements re Trust Property

Prerequisites to handling trust property

43(1) No licensee shall receive or hold trust money except in accordance with this section.

(2) A mortgage brokerage may receive or hold trust money on behalf of a private investor if:

(a) the mortgage brokerage is licensed to carry on business as a mortgage brokerage and has been granted an endorsement by the superintendent;

(b) the mortgage brokerage has duly executed a written trust agreement with the private investor on whose behalf the trust money will be received or held that contains the prescribed information and the prescribed terms and conditions; and

(c) the private investor has committed in writing:

(i) to proceed with an investment in a mortgage on a specific property, and an existing mortgage is available on that property; or

(ii) to proceed with an investment in a mortgage on a specific property, and an application has been made for a new mortgage on that property.

(3) A mortgage administrator may receive or hold trust money:

(a) if the mortgage administrator is licensed to carry on business as a mortgage administrator; and

(b) in the case where the mortgage administrator receives or holds trust money on behalf of a private investor, if the mortgage administrator has duly executed a written trust agreement with the private investor on whose behalf the trust money will be received or held that contains the prescribed information and the prescribed terms and conditions.

(4) No licensee shall receive or hold a mortgage in trust unless:

(a) it is licensed to carry on business as a mortgage administrator; and

(b) if the licensee is receiving or holding the mortgage in trust on behalf of a private investor:

(i) it has duly executed a written trust agreement with the private investor on whose behalf the mortgage will be received or held that contains the prescribed information and the prescribed terms and conditions; and

(ii) a mortgage agreement, assignment of mortgage or other instrument conveying the mortgage, or portion of a mortgage, to the licensee:

(A) has been duly executed; and

(B) expressly states that the licensee is acting as a trustee for an investor.

2007, c M-20.1, s 43.

Trust property to be kept separate

44 Every licensee that receives or holds trust property must keep all trust property separate and apart from all other money and property belonging to the licensee or its employees.

2007, c M-20.1, s 44.

Trust money to be placed in trust account

45 Every licensee receiving trust money shall:

(a) deposit the money into a trust account within the prescribed period that is:

(i) held with a prescribed financial institution in Saskatchewan;

(ii) held in the name of the licensee as shown on its licence; and

(iii) designated as a trust account by the financial institution; and

(b) comply with this Part and the regulations made pursuant to this Part.

2007, c M-20.1, s 45.

Administration of trust money by mortgage administrator

46 If a mortgage administrator receives trust money in the form of periodic payments with respect to a mortgage administered by the mortgage administrator on behalf of a private investor, the mortgage administrator:

(a) shall pay that money to the private investor within 30 days after receiving it; and

(b) shall not pay any interest earned on that money to the private investor.

2007, c M-20.1, s 46.

Administration of trust account

47(1) No licensee shall:

(a) without the prior approval of the superintendent:

(i) open a new trust account;

(ii) move an existing trust account;

(iii) close a trust account; or

(iv) open or maintain more than one trust account with respect to trust money held on behalf of Saskatchewan residents;

(b) withdraw any money from a trust account that would result in a negative balance in an individual account in its trust ledger;

(c) withdraw any money from a trust account except in accordance with the trust agreement relating to that money;

(d) authorize a financial institution to deduct from a trust account any service charge or any other charge; or

(e) pay any personal or general office expense from a trust account.

(2) A licensee must maintain, at all times, a sufficient balance in its trust account to meet all of its obligations with respect to the trust money.

(3) If, contrary to subsection (2), there is a shortfall of money in a trust account, the licensee must immediately:

(a) notify the superintendent of the shortfall; and

(b) deposit its own money into the trust account to correct the shortfall.

(4) Every licensee shall keep trust money held on behalf of Saskatchewan residents separate and apart from any trust money held on behalf of residents of other jurisdictions.

2007, c M-20.1, s 47.

PART VII
Annual Filing Requirements

Annual return

48 Every licensee shall provide the superintendent with an annual return within the prescribed time that contains the prescribed information.

2007, c M-20.1, s 48.

Statutory declaration

49 Every mortgage brokerage licensed pursuant to this Act that did not hold an endorsement during the preceding fiscal year must provide the superintendent with a statutory declaration that:

(a) contains the prescribed information;

(b) is sworn under oath or affirmed by:

(i) in the case of a licensee that is a sole proprietorship, the sole proprietor;

(ii) in the case of a licensee that is a partnership, any two partners; or

(iii) in the case of a licensee that is a corporation, any two directors; and

(c) is delivered to the superintendent within the prescribed period.

2007, c M-20.1, s 49.

Annual financial statement

50 In each fiscal year, every mortgage brokerage that held an endorsement during the preceding fiscal year and every mortgage administrator shall provide the superintendent with a financial statement for the preceding fiscal year that:

(a) contains and is accompanied by the prescribed information and documentation; and

(b) is delivered to the superintendent within the prescribed period after the end of the fiscal year to which it relates.

2007, c M-20.1, s 50.

Interim financial statements

51 Every mortgage brokerage that holds an endorsement and every mortgage administrator licensed pursuant to this Act shall, on request, provide the superintendent with interim financial statements:

(a) for the period specified by the superintendent;

(b) containing any information the superintendent considers necessary; and

(c) within the period specified by the superintendent.

2007, c M-20.1, s 51.

Standards of financial reporting

52(1) Subject to subsection (2):

(a) every financial statement prepared for the purposes of this Act or the regulations must be prepared in accordance with generally accepted accounting principles published by Chartered Professional Accountants of Canada, as amended from time to time; and

(b) every auditor who makes an examination and prepares a report for the purposes of this Act or the regulations must conduct the examination and prepare the report in accordance with generally accepted auditing standards published by Chartered Professional Accountants of Canada, as amended from time to time.

(2) Any modification established by the superintendent to the principles, standards or practices mentioned in clauses (1)(a) and (b) must be taken into account in the preparation of the documents mentioned in clauses (1)(a) and (b).

2007, c M-20.1, s 52; 2014, c A-3.1, s 68.

PART VIII
Advertising and Communications

Advertising

53(1) No licensee shall advertise, or otherwise indicate that the licensee is a mortgage brokerage, broker, associate or mortgage administrator, using a name other than the name set out on the licensee's licence.

(2) No mortgage brokerage or mortgage administrator shall advertise the business or any products or services offered by that business unless the advertisement:

(a) shows the name of the business as set out on its licence; and

(b) contains the prescribed information.

(3) No broker or associate shall advertise any product or service offered by the broker or associate unless the advertisement:

(a) indicates the name of the mortgage brokerage for which the broker or associate is authorized to act; and

(b) contains the prescribed information.

2007, c M-20.1, s 53.

False or misleading advertisement

54(1) No licensee shall make any false, misleading or deceptive statements in any advertisement, circular, pamphlet or similar material.

(2) If, in the opinion of the superintendent, a licensee has made a false, misleading or deceptive statement in any advertisement, circular, pamphlet or similar material, the superintendent may order that licensee to stop using that material immediately.

(3) No licensee shall fail to comply with an order of the superintendent issued pursuant to subsection (2).

2007, c M-20.1, s 54.

Information to be disclosed in correspondence

55(1) Subject to subsection (2), every licensee shall disclose the prescribed information in all correspondence and other written material prepared or used in the course of the business.

(2) Subsection (1) does not apply to advertisements.

2007, c M-20.1, s 55.

Representations as to financial standing

56 No licensee shall make, print, publish, circulate, authorize or be a party or privy to the making, printing, publishing, circulating or authorizing of a statement or representation that the solvency or financial standing of a licensee is vouched for by the superintendent.

2007, c M-20.1, s 56.

PART IX
Powers of the Superintendent

Proceedings before superintendent

57(1) In this section, **"record"** includes any information that is recorded or stored in any medium or by means of any device, including a computer or electronic media.

(2) For the purpose of carrying out an inspection or investigation pursuant to this Act or of carrying out any proceeding before the superintendent, the superintendent has the same power as is vested in the court for the trial of civil actions:

(a) to summon and enforce the attendance of witnesses;

(b) to compel witnesses to give evidence; and

(c) to compel witnesses to produce records or property.

(3) The superintendent may issue a summons if the superintendent believes that it is necessary in order to determine whether a person is complying with a requirement established pursuant to this Act or the regulations.

(4) If a person summoned as a witness pursuant to subsection (2) fails or refuses to attend, answer questions or produce records or property in that person's custody or possession, the failure or refusal makes that person liable, on application to the court by the superintendent, to be committed for contempt by the court in the same manner as if that person were in breach of an order or judgment of the court.

(5) The superintendent may accept any evidence the superintendent considers appropriate and is not bound by the rules of law concerning evidence.

(6) The superintendent may issue orders prescribing the rules, forms and procedures to be followed in proceedings before the superintendent.

2007, c M-20.1, s 57.

Power to require information or material

58(1) At any time, the superintendent may direct any person to provide the superintendent with any information or material the superintendent reasonably requires for the purposes of this Act and the regulations.

(2) The superintendent may determine a reasonable time within which a person shall provide the information or materials directed to be provided pursuant to subsection (1).

2007, c M-20.1, s 58.

Actions on behalf of persons

59(1) The superintendent may do any of the things mentioned in subsection (2) if:

(a) the superintendent is satisfied that, with respect to a transaction involving the products or services of a licensee, a person has:

(i) a cause of action;

(ii) a defence to an action;

(iii) grounds for setting aside a default judgment; or

(iv) grounds to appeal or contest a judgment;

(b) the superintendent considers that the conduct of the licensee involved or any of its agents or representatives was misleading, unconscionable or deceptive; and

(c) the superintendent obtains the written consent of the person and the consent of the minister.

(2) In the circumstances mentioned in subsection (1), the superintendent, on behalf of a person, may, with a view to enforcing or protecting the person's rights respecting a contravention or suspected contravention of this Act or the regulations:

(a) institute or assume the conduct of any proceedings; or

(b) defend any proceedings.

(3) With respect to proceedings mentioned in subsection (2):

(a) the superintendent, on behalf of the person, has the same rights in and control over the proceedings that the person has, including the right to settle all or part of any action;

(b) the superintendent may conduct the proceedings in any manner that the superintendent considers appropriate, without being required to consult the person or obtain any additional consents;

(c) any money, other than costs, recovered by the superintendent is the property of the person and shall be paid to the person; and

(d) in the case of costs awarded against:

(i) the licensee, the costs are the property of the superintendent and shall be paid to the superintendent; or

(ii) the person or the superintendent, the superintendent shall pay the costs.

(4) If a party to proceedings mentioned in this section files a counterclaim and the counterclaim is not related to the proceedings, the court, on the application of the superintendent:

(a) shall order that the counterclaim be heard separately and that the person be made a party to the counterclaim in the person's own right; and

(b) may make any other order respecting the counterclaim that the court considers appropriate.

2007, c M-20.1, s 59.

Right to receive notices

60(1) Unless exempted from doing so in the regulations, every licensee and former licensee shall immediately inform the superintendent in writing of any action or proceeding brought with respect to the business or activities that the licensee is, or was, or the former licensee was, authorized to carry on under its licence or any endorsement granted pursuant to that licence.

(2) The superintendent is entitled to appear and to be heard, in person or by counsel, in any action or proceeding mentioned in subsection (1).

(3) No licensee or former licensee shall fail to provide the superintendent with a copy of any order or judgment of the court with respect to an action or proceeding mentioned in subsection (1) as soon as is practicable after the order or judgment is made.

2007, c M-20.1, s 60.

Restrictions on access to records

61(1) Any information submitted or provided to the superintendent or obtained by the superintendent as a result of an inspection or investigation pursuant to this Act is not open to inspection or available for access except by:

(a) those members of the public service of Saskatchewan employed in the office of the superintendent whose responsibilities require them to inspect or allow them to have access to the information; and

(b) those persons who are authorized in writing by the superintendent to inspect or to have access to the information.

(2) Unless authorized by this Act or by any other law or with the consent of the person to whom any information relates, no member of the public service of Saskatchewan employed in the office of the superintendent and no person authorized by the superintendent to inspect or have access to the information shall:

(a) communicate or allow to be communicated any information obtained pursuant to this Act to any person who is not legally entitled to the information; or

(b) allow any person who is not legally entitled to the information obtained pursuant to this Act to inspect or have access to it.

(3) Notwithstanding subsections (1) and (2), the superintendent may authorize the release of, inspection of or access to the information mentioned in those subsections to or by any person employed by a government, regulatory authority, law enforcement agency or investigative body inside or outside Canada if:

(a) the information will be used solely for the purpose of administering or enforcing an Act or law of Saskatchewan or Canada or of another jurisdiction inside or outside Canada;

(b) the release, inspection or access is pursuant to an agreement made pursuant to section 62; or

(c) the superintendent believes that it is in the public interest to allow the release, inspection or access.

(4) No person to whom information is provided pursuant to this section is compellable to give evidence concerning that information unless:

(a) the person to whom the information relates consents; or

(b) a court orders the evidence to be given.

(5) Notwithstanding subsections (1) and (2), the superintendent may authorize the publication of, or make available to the public, the following information:

(a) all information appearing on a licence;

(b) the address of the place of business and mailing address and address for service of a licensee;

(c) the name of the principal broker designated by a mortgage brokerage licensed pursuant to this Act;

(d) any other information mentioned in subsection (1) if, in the opinion of the superintendent, it is in the public interest to do so.

(6) On an application for an order pursuant to clause (4)(b):

(a) the superintendent and the person to whom the information relates are entitled to appear before the court and to make submissions; and

(b) the person seeking the order compelling the evidence has the onus of showing why it is in the public interest that the order be made.

2007, c M-20.1, s 61.

Agreements with other jurisdictions

62 Subject to the approval of the Lieutenant Governor in Council, the superintendent may enter into an agreement with any other government, regulatory authority, law enforcement agency, investigative body or person inside or outside Canada:

(a) for the purpose of administering or enforcing this Act or any Act or law of the other jurisdiction that is similar to this Act, including an agreement authorizing the superintendent to perform responsibilities and exercise powers on behalf of the other government, regulatory authority, law enforcement agency, investigative body or person and authorizing the other government, regulatory authority, law enforcement agency, investigative body or person to perform responsibilities and exercise powers on behalf of the superintendent; or

(b) for any other purpose that the superintendent believes is in the public interest.

2007, c M-20.1, s 62.

Experts

63(1) The superintendent may retain any person the superintendent considers to be an expert in a field of knowledge to assist the superintendent in carrying out the superintendent's responsibilities or in exercising the superintendent's powers pursuant to this Act.

(2) The superintendent may apply to the court for an order directing any licensee to pay the costs, fees and other expenses of an expert retained pursuant to subsection (1).

(3) On an application pursuant to subsection (2), the court may make any order respecting the payment of costs, fees and expenses that it considers appropriate.

2007, c M-20.1, s 63.

Orders respecting the preparation of reports

64(1) The superintendent may issue orders respecting the preparation of reports, statements and records required by this Act and, for that purpose, may direct that the reports, statements and records be prepared in accordance with standards or principles that the superintendent considers appropriate.

(2) No person responsible for preparing, auditing or delivering a report, statement or record shall fail to comply with an order of the superintendent issued pursuant to this section.

2007, c M-20.1, s 64.

PART X
Inspections, Investigations and Enforcement

DIVISION 1
Interpretation of Part

Interpretation of Part

65 In this Part:

(a) **"Act"** includes the regulations and any orders or directions of the superintendent issued pursuant to this Act;

(b) **"property"** includes computer software;

(c) **"record"** includes any information that is recorded or stored in any medium or by means of any device, including a computer or electronic media.

2007, c M-20.1, s 65.

DIVISION 2
Inspections and Investigations

Inspections

66(1) The superintendent may make inquiries and conduct examinations of the business and activities of each licensee to ensure that the licensee is complying with the requirements established pursuant to this Act.

(2) If, in the superintendent's opinion, a person who is not a licensee is or was required to have a licence, the superintendent may make such inquiries and conduct such examinations of the business and activities of the person as the superintendent considers appropriate in the circumstances.

(3) Subject to subsection 67(4), the superintendent may do all or any of the following things in the course of making an inquiry or conducting an examination:

(a) enter at any reasonable time and inspect any commercial premises used by a person required to be licensed pursuant to this Act;

(b) enter at any reasonable time premises containing any records or property required to be kept pursuant to this Act or related to the administration of this Act and inspect those records or that property;

(c) require the person and any agent, representative, partner, director, officer or employee of the person to:

(i) answer any questions that may be relevant to the inspection; and

(ii) provide the superintendent with all reasonable assistance, including using any computer hardware or software or any other data storage, processing or retrieval device or system to produce information;

(d) in order to produce information, use any computer hardware or software or any other data storage, processing or retrieval device or system that is used in connection with the business or activities of any person required to be licensed pursuant to this Act;

(e) remove for examination and copying anything that may be relevant to the inquiry or examination, including removing any computer hardware or software or any other data storage, processing or retrieval device or system in order to produce information.

(4) The superintendent may serve a written demand on any person requiring that person to produce any records or property:

(a) required to be kept pursuant to this Act; or

(b) related to the administration of this Act.

(5) No person on whom a written demand is served pursuant to this section shall fail to produce the records or property mentioned in the written demand within the time specified in the written demand.

(6) If the superintendent demands any records or property pursuant to this section, the superintendent may examine the records or property and make copies of the records with reasonable dispatch and promptly return the originals of the records to the person who produced them.

(7) If the superintendent requires a person to answer questions, to produce a record or other property or to provide assistance in accordance with this section, the person shall do so in the manner and within the period specified by the superintendent.

(8) The superintendent shall:

(a) give a receipt for anything that he or she removes for examination and copying;

(b) promptly return anything removed pursuant to this section to the place from which it was removed or any other place agreed to by the superintendent and the person who furnished it; and

(c) take all reasonable steps to ensure that, if a record is taken, a copy of the record is left at the premises to allow business to be carried on.

2007, c M-20.1, s 66.

Investigations

67(1) If a justice or a provincial court judge is satisfied by information under oath that there are reasonable grounds to believe that an offence against this Act has occurred and that evidence of that offence is likely to be found, the justice or the provincial court judge may issue a warrant to do all or any of the following:

(a) enter and search any place or premises named in the warrant;

(b) stop and search any vehicle described in the warrant;

(c) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Act.

(2) With a warrant issued pursuant to subsection (1), the superintendent may:

(a) enter at any time and search any place or premises named in the warrant;

(b) stop and search any vehicle described in the warrant;

(c) open and examine the contents within any trunk, box, bag, parcel, closet, cupboard or other receptacle that the superintendent finds in the place, premises or vehicle;

(d) require the production of and examine any records or property that the superintendent believes, on reasonable grounds, may contain information related to an offence against this Act;

(e) remove, for the purpose of making copies, any records examined pursuant to this section; and

(f) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Act.

(3) Subject to subsection (4), the superintendent may exercise all or any of the powers mentioned in subsection (2) without a warrant issued pursuant to this section if:

(a) the conditions for obtaining a warrant exist; and

(b) the superintendent has reasonable grounds to believe that the delay necessary to obtain a warrant would result:

(i) in danger to human life or safety; or

(ii) in the loss, removal or destruction of evidence.

(4) The superintendent shall not enter any premises that are a private dwelling without the consent of the occupier or a warrant issued pursuant to this section.

2007, c M-20.1, s 67.

Travel costs

68(1) If the superintendent or any person engaged, appointed or retained by the superintendent for the purpose of assisting the superintendent in carrying out an inspection or investigation is required to travel outside Saskatchewan to conduct an inspection or investigation of a person, the superintendent may direct the person being inspected or investigated to pay all of the reasonable costs associated with the inspection or investigation.

(2) No person shall fail to pay an amount that the person is directed to pay pursuant to subsection (1).

2007, c M-20.1, s 68.

Receiver or receiver manager

69(1) The superintendent may do any of the things mentioned in subsection (2) if any of the following circumstances exists:

(a) the superintendent is about to commence or has commenced an inspection or investigation;

(b) the superintendent has reasonable grounds to believe that a contravention of this Act or any other Act may have been committed;

(c) the superintendent believes that it is in the public interest.

(2) In the circumstances mentioned in subsection (1), the superintendent may do all or any of the following:

(a) apply to the court to appoint a receiver, custodian, receiver manager, trustee or liquidator to manage all or any part of the records or property of a person governed by this Act;

(b) order, in writing, a person having on deposit, under control or for safekeeping any funds, securities or other property of any other person to hold those funds, securities or other property;

(c) order, in writing, any person to refrain from withdrawing any funds, securities or other property from any other person that has any of those funds, securities or property on deposit, under control or for safekeeping;

(d) order, in writing, any person to hold all funds, securities or other property that belong to other persons and that are in that person's possession or control in trust for any receiver, custodian, receiver manager, trustee or liquidator appointed pursuant to:

(i) the *Bankruptcy and Insolvency Act* (Canada);

(ii) *The Business Corporations Act, 2021*;

(iii) *The Co-operatives Act, 1996*;

(iv) the *Insurance Companies Act* (Canada);

(v) *The King's Bench Act*;

(vi) the *Winding-up and Restructuring Act* (Canada); or

(vii) this section.

(3) A person who is the subject of an order of the superintendent pursuant to this section may apply to the superintendent for an order of clarification.

(4) As soon as is practicable, and in no case more than 15 days after making an order pursuant to this section, the superintendent shall apply to the court for an order continuing the superintendent's order or for any other order that the court may consider appropriate.

(5) On an application pursuant to clause (2)(a), the court may appoint a receiver, custodian, receiver manager, trustee or liquidator of the records or property of the person if the court is satisfied that the appointment of a receiver, custodian, receiver manager, trustee or liquidator of all or any part of the records or property of the person is in the best interests of:

(a) the creditors of the person;

(b) any other persons who have any funds, securities or other property in the possession or under the control of the person; or

(c) any persons the court considers interested in the matter.

(6) On an application without notice made by the superintendent, the court may make an order pursuant to subsection (5) appointing a receiver, custodian, receiver manager, trustee or liquidator for a period not exceeding 15 days.

(7) A receiver, custodian, receiver manager, trustee or liquidator of the property appointed pursuant to this section:

(a) is the receiver, custodian, receiver manager, trustee or liquidator of all or any part of the property belonging to the person or held by the person on behalf of or in trust for any other person; and

(b) when directed by the court, has authority to wind up or manage the business and affairs of the person and has all the powers necessary or incidental to that function.

(8) An order made by the court pursuant to this section may be varied or discharged on an application to the court made on notice to all parties the court considers interested in the matter.

(9) A person against whom an order is made pursuant to this section shall pay any costs associated with carrying out or administering the order.

2007, c M-20.1, s 69; 2015, c 21, s 26; 2018, c 42, s 65; 2021, c 6, s 23-26; 2024, c 4, s 18.

DIVISION 3
Offences, Penalties and Enforcement

Offences and penalties

70(1) No person shall contravene any provision of this Act.

(2) No person shall make a false or misleading statement in any application or in any proceeding or in response to any inspection or investigation.

(3) Every person who contravenes any provision of this Act is guilty of an offence.

(4) Every person who is guilty of an offence is liable on summary conviction:

(a) in the case of an individual, to a fine not exceeding $500,000, to imprisonment for a term not exceeding one year or to both; or

(b) in the case of a corporation, to a fine not exceeding $1,000,000.

(5) If a corporation commits an offence pursuant to this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable on summary conviction to the penalties mentioned in this section whether or not the corporation has been prosecuted or convicted.

2007, c M-20.1, s 70.

Special penalties

71(1) A licensee that defaults in making, delivering or filing a report, return or statement required pursuant to this Act is liable to a penalty of $500, plus $10 for each day or part of a day after the first 10 days during which the default continues.

(2) On receipt of a notice from the superintendent demanding payment of a penalty pursuant to this section, the licensee shall immediately pay the penalty to the superintendent.

(3) A penalty payable pursuant to this section is a debt due to and recoverable by the Crown in right of Saskatchewan and may be recovered in the manner authorized by *The Financial Administration Act, 1993* or in any other manner authorized by law.

2007, c M-20.1, s 71.

Compliance orders and restitution

72 If the court convicts a person of an offence, the court may, in addition to any penalty it may impose, do all or any of the following:

(a) order that person to comply with the provision of this Act with respect to which that person was convicted;

(b) if the court is satisfied that the convicted person has acquired any monetary benefits or that monetary benefits have accrued to the convicted person or to another person associated with or related to the convicted person:

(i) order the convicted person to pay an additional fine in an amount equal to the amount of the monetary benefits;

(ii) order the convicted person to pay compensation or make restitution to any person to whom the monetary benefits should be paid.

2007, c M-20.1, s 72.

Offence - destruction, etc., of evidence

73(1) No person shall, or shall attempt to, destroy, alter, conceal or withhold any information, property or thing reasonably required for an inspection, investigation or proceeding pursuant to this Act.

(2) No person shall hinder or interfere with the superintendent, or any employee, appointee or agent of the superintendent, in the performance of his or her powers, functions and duties pursuant to this Act.

(3) A person contravenes subsection (1) if the person knows or ought reasonably to know that an inspection, investigation or proceeding is to be conducted and takes any action mentioned in subsection (1) before the inspection, investigation or proceeding.

2007, c M-20.1, s 73.

Limitation on prosecution

74 No prosecution for a contravention of this Act is to be commenced more than three years after the facts on which the alleged contravention is based first came to the knowledge of the superintendent.

2007, c M-20.1, s 74.

Administrative penalties

75(1) Subject to subsection (4) and section 21, if the superintendent is satisfied that a person has contravened a provision of this Act, the superintendent may make an order imposing all or any of the following penalties:

(a) an administrative penalty of up to $100,000;

(b) a private or public reprimand;

(c) a penalty obliging the person to pay the cost, to a maximum of $100,000, of producing material specified by the superintendent to promote education or knowledge in areas related to activities of mortgage brokerages, brokers, associates or mortgage administrators.

(2) The superintendent may make an order pursuant to this section notwithstanding the imposition of any other penalty on the person or the making of any other order by the superintendent related to the same matter.

(3) No penalty is to be assessed by the superintendent more than three years after the date the facts on which the alleged contravention is based first came to the knowledge of the superintendent.

(4) The written notice required to be provided to the person pursuant to subsection 21(2) must, in addition to the requirements set out in that subsection:

(a) set out the facts and circumstances that, in the superintendent's opinion, render the person liable to a penalty; and

(b) specify the amount of the penalty that the superintendent considers appropriate in the circumstances.

(5) On holding a hearing or receiving a person's written representations pursuant to section 21, the superintendent shall, in addition to the requirements set out in subsection 21(10), provide a notice to the person who is the subject of the order that sets out a date by which the penalty is to be paid in full.

(6) Any penalty imposed pursuant to this section is a debt due to and recoverable by the Crown in right of Saskatchewan and may be recovered in the manner authorized by *The Financial Administration Act, 1993* or in any other manner authorized by law.

(7) After the time for filing an appeal of the superintendent's order pursuant to this section has passed and if there is no appeal or if an appeal has been made but dismissed, the superintendent may file a certificate with the court certifying the amount of the penalty imposed pursuant to this section.

(8) A certificate filed with the court pursuant to subsection (7) has the same force and effect as if it were a judgment of that court for the recovery of a debt in the amount specified in the certificate, together with the costs of filing.

2007, c M-20.1, s 75.

Power of superintendent to order compliance

76(1) The superintendent may issue an order pursuant to subsection (2) if the superintendent is satisfied that it is in the public interest or that any of the following circumstances exists:

(a) a person is not complying with this Act;

(b) a person's activities or failure or neglect to undertake any activities will result in that person not complying with this Act;

(c) a person's activities or failure or neglect to undertake any activities may harm the interests of borrowers or investors.

(2) Subject to section 21, in any of the circumstances mentioned in subsection (1), the superintendent may order a person to do all or any of the following:

(a) cease doing an act or cease failing or neglecting to do an act;

(b) comply with this Act;

(c) do or refrain from doing any other thing that the superintendent considers necessary.

2007, c M-20.1, s 76.

Power of court to order compliance

77(1) If the superintendent is of the opinion that a person has failed to comply with this Act, the superintendent may apply to the court for all or any of the following:

(a) an order directing the person to comply with this Act or restraining that person from contravening this Act;

(b) an order directing the directors and officers of a corporation or the partners of a partnership to comply with this Act or restraining those directors and officers or partners from contravening this Act;

(c) any other order, relief or remedy that the superintendent may request or that the court may consider necessary.

(2) On an application pursuant to subsection (1), the court may make any order that the court considers necessary.

2007, c M-20.1, s 77.

Costs

78(1) Subject to section 21, after conducting a proceeding respecting a person, including an inspection or investigation pursuant to this Act, the superintendent may order the person to pay the costs of or related to the proceeding if the superintendent is satisfied that the person whose affairs were the subject of the proceeding has not complied with a provision of this Act.

(2) For the purposes of subsection (1), the costs that the superintendent may order the person to pay include all or any of the following:

(a) costs incurred with respect to services provided by a person engaged, appointed or retained by the superintendent for the purposes of the proceeding;

(b) costs of obtaining a warrant;

(c) costs of matters preliminary to the proceeding;

(d) costs for time spent by the superintendent, by any members of the public service of Saskatchewan employed in the office of the superintendent or by any persons engaged, appointed or retained by the superintendent;

(e) fees paid to a witness;

(f) costs of legal services provided to the superintendent.

(3) If a person is convicted of an offence pursuant to this Act, the superintendent may, subject to section 21, order the person to pay the costs of any investigation carried out with respect to that offence, including any costs incurred with respect to either or both of the following:

(a) the provision of services by persons engaged, appointed or retained by the superintendent;

(b) the appearance of any witnesses.

(4) The superintendent may file a certificate with the court certifying the amount of the costs that the person is required to pay pursuant to subsections (1) to (3).

(5) A certificate filed pursuant to subsection (4) with the court has the same force and effect as if it were a judgment of that court for the recovery of a debt in the amount specified in the certificate, together with the costs of filing.

(6) *The King's Bench Rules* respecting costs and the taxation of costs do not apply to costs mentioned in this section.

(7) No provision of this Act is to be interpreted as precluding the court from ordering costs payable to the superintendent.

(8) If costs are awarded to the superintendent in any proceeding, the costs of the superintendent are not to be disallowed or reduced because the lawyer representing the superintendent was a member of the public service of Saskatchewan.

2007, c M-20.1, s 78; 2024, c 4, s 32.

PART XI
Appeals

Appeal to court

79(1) Any person who is directly affected by an order or decision of the superintendent pursuant to this Act may appeal the order or decision to the court on a question of law only.

(2) An appeal must be made within 30 days after a decision or order of the superintendent.

(3) An appellant shall serve a notice of appeal on the superintendent and any other person that the court may order.

2007, c M-20.1, s 79.

Documents to be filed with the court for purposes of appeal

80 On receipt of a notice of an appeal pursuant to section 79, the superintendent shall file with the court true copies of:

(a) all documents and materials that were before the superintendent when the superintendent made his or her decision or order;

(b) the superintendent's decision or order; and

(c) the superintendent's written reasons for the decision or order.

2007, c M-20.1, s 80.

Decision by court

81(1) On hearing an appeal pursuant to section 79, the court may:

(a) dismiss the appeal;

(b) allow the appeal;

(c) allow the appeal subject to terms and conditions;

(d) vary the decision or order of the superintendent;

(e) refer the matter back to the superintendent for:

(i) further consideration; and

(ii) a decision or order; or

(f) make any other order that the court considers appropriate.

(2) The court may make any order as to costs on an appeal that the court considers appropriate.

(3) Except where otherwise specifically provided, every order or decision of the superintendent is final, and no order or decision of the superintendent shall be questioned or reviewed, restrained or removed by prohibition, injunction, *certiorari*, mandamus or any other process or proceeding in any court.

2007, c M-20.1, s 81.

Application for stay

82 The commencement of an appeal pursuant to section 79 does not stay the effect of the decision or order appealed from, unless a judge of the court orders otherwise.

2007, c M-20.1, s 82.

PART XII
General Provisions

Power of superintendent to review, rescind, amend or vary orders

83(1) On the request of any person directly affected by an order of the superintendent or on the superintendent's own initiative, the superintendent may review any order made by the superintendent, and, if the superintendent considers that it would not be prejudicial to the public interest, the superintendent may rescind or amend the order or make additional orders for the purpose of:

(a) correcting the original order;

(b) ensuring compliance with the original order;

(c) dealing with any material change in circumstances since the original order was issued; or

(d) interpreting the original order.

(2) Before rescinding or amending an order or making an additional order pursuant to subsection (1), the superintendent shall serve a written notice on persons directly affected by the original order and on any other persons the superintendent considers interested in the original order.

2007, c M-20.1, s 83.

Publication of decisions and orders

84 Notwithstanding any other provision of this Act, if the superintendent has made a decision or order pursuant to this Act, the superintendent may:

(a) disclose the decision or order to any person, including the superintendent's written reasons for making the decision or order; and

(b) publish the decision or order, including the superintendent's written reasons for making the decision or order.

2007, c M-20.1, s 84.

Immunity

85 No action or other proceeding lies or shall be instituted against:

(a) the Crown in right of Saskatchewan, the minister, the superintendent or any member of the public service of Saskatchewan employed in the office of the superintendent;

(b) any representative of the superintendent; or

(c) any person engaged, appointed or retained by the superintendent to make or conduct any inspection or investigation or to do any other thing pursuant to this Act;

if the person mentioned in clause (a), (b) or (c) is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any responsibility imposed by this Act or the regulations.

2007, cM-20.1, s85.

Superintendent and others not compellable to give evidence

86 Except in the case of a prosecution respecting a contravention of this Act or the regulations, the superintendent, any member of the public service employed in the office of the superintendent, any representative of the superintendent, and any person engaged, appointed or retained by the superintendent to make or conduct any inspection or investigation or to do any other thing pursuant to this Act are not compellable to give evidence in a court or in a proceeding of a judicial nature to which the superintendent is not a party concerning any information obtained by them or that came to their attention in the exercise of the powers, carrying out of the responsibilities or carrying out of the functions of the superintendent pursuant to this Act.

2007, cM-20.1, s86.

Evidence re certificate of superintendent

87(1) A certificate of the superintendent certifying all or any of the following facts is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate without proof of the signature or official position of the person purporting to have signed the certificate:

(a) that a person named in the certificate was or was not licensed or had or had not been granted an endorsement;

(b) that a licence was issued, or an endorsement granted, to a person on a date set out in the certificate;

(c) that the licence or endorsement of a person was suspended, cancelled or reinstated at a particular time;

(d) that a licence issued, or an endorsement granted, to a person was made subject to terms and conditions.

(2) A record certified by the superintendent to be a copy made pursuant to Part X:

(a) is admissible in evidence without proof of the office or signature of the person making the certificate; and

(b) has the same probative force as the original record.

2007, cM-20.1, s87.

Evidence of carrying on business without a licence

88 If, in a prosecution for an alleged contravention of this Act, it is alleged that the accused carried on business as a mortgage brokerage or mortgage administrator without a licence, evidence of one transaction involving products or services of a type normally offered or provided by a mortgage brokerage or mortgage administrator is proof, in the absence of evidence to the contrary, that the accused carried on business as a mortgage brokerage or mortgage administrator without a licence.

2007, c M-20.1, s 88.

Action for money

89(1) No action may be brought for a fee, commission or other remuneration for services rendered in relation to mortgage brokering or mortgage administration unless, at the time of rendering the services, the person bringing the action was:

(a) the holder of a licence; or

(b) exempt from the requirement to hold a licence.

(2) The court may, on summary application, stay an action mentioned in subsection (1) at any time.

2007, c M-20.1, s 89.

Service

90(1) Any notice or other document that is required to be served pursuant to this Act or the regulations or in any proceeding or matter under the jurisdiction of the superintendent may be served:

(a) by personal service made:

(i) in the case of an individual, on that individual;

(ii) in the case of a partnership, on any partner; or

(iii) in the case of a corporation, on any officer or director of the corporation;

(b) by registered mail addressed to the last address of the person to be served known to the superintendent;

(c) in the case of a notice to the public, or to persons who are too numerous to be served individually, by publishing the notice in any manner that the superintendent may direct; or

(d) by any other prescribed means.

(2) A notice or document sent by registered mail is deemed to have been served on the seventh day following the date of its mailing unless the person to whom it was mailed establishes that, through no fault of his or her own, the person did not receive the notice or document or received it at a later date.

(3) Service of a notice or document to be sent by any other prescribed means is to be proved in the prescribed manner.

(4) A notice or other document required to be served on the superintendent may be served:

(a) by leaving it at the office of the superintendent with any person appearing to have authority to accept the notice or document;

(b) by registered mail addressed to the address of the office of the superintendent; or

(c) by any other prescribed means.

(5) Any person entitled to be served a notice or a document may at any time waive, in writing, service of the notice or document.

(6) Service of any notice or document may be proved by affidavit or oral evidence of the person claiming to have served it.

2007, cM-20.1, s90.

Regulations

91 The Lieutenant Governor in Council may make regulations:

(a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;

(b) for the purposes of clause 2(4)(d), prescribing any other activity;

(c) for the purposes of clause 2(5)(c), prescribing any other activity;

(d) for the purposes of clause 3(1)(b), prescribing the circumstances that must be met;

(e) exempting any person or any class of persons from all or any prescribed portion of any provision of this Act and, as a condition of the exemption, requiring any exempted person or class of exempted persons to comply with any prescribed term or condition, and prescribing any circumstance in which all or any portion of any provision of this Act does not apply;

(f) respecting errors and omissions insurance, including prescribing the minimum amount of errors and omissions insurance and the scope of that insurance that must be obtained by an applicant, requiring that the errors and omissions insurance be maintained at all times while the person is a licensee, and requiring proof of that insurance at the time of licensing, or at any time after;

(g) respecting capital requirements, including prescribing the manner of determining the amount of capital of an applicant or licensee, including prescribing:

(i) the various classes of capital;

(ii) the amounts of each class of capital that an applicant or licensee is required to have for various purposes; and

(iii) the manner of determining the amount of each class of capital;

(h) prescribing the fees to be paid for the issuance of licences or endorsements, the reinstatement of licences or endorsements that have been suspended and any other fees for services in connection with the administration of this Act and the regulations including prescribing and requiring the payment of annual fees for continuous licences;

(i) prescribing requirements that must be met and criteria that must be satisfied respecting applicants for licences including establishing, with respect to persons or categories of persons to whom the superintendent has issued a licence, standards of conduct, competence and proficiency and standards of training and education, including additional and continuing training and education requirements;

(j) prescribing requirements and criteria respecting applicants for an endorsement;

(k) respecting the forfeiture of financial security, including prescribing the conditions under which and the manner in which a bond or other financial security may be forfeited;

(l) prescribing the circumstances that must be met before the superintendent may reinstate a licence or endorsement pursuant to section 15, including prescribing the period within which a licence or endorsement may be reinstated;

(m) prescribing changes in circumstances for the purposes of section 20;

(n) prescribing the criteria that must be met by a principal broker and prescribing the powers and duties of a principal broker;

(o) for the purposes of section 27, prescribing:

(i) information that must be provided to a borrower, including prescribing the manner in which that information is to be provided and the time within which the information is to be provided;

(ii) the process by which a mortgage brokerage is to determine the mortgage loan that is most suitable for a borrower; and

(iii) the information that must be contained in the written assessment, including prescribing the manner in which the written assessment is to be provided to the borrower;

(p) for the purposes of section 28, prescribing:

(i) the investor disclosure form, or the contents of the investor disclosure form, including prescribing the manner and time within which the form must be provided; and

(ii) the information and documentation that must be provided to a private investor by a mortgage brokerage, including prescribing the manner and time within which the information and documentation must be provided;

(q) prescribing terms and conditions and other information that must be included in an agreement mentioned in section 31;

(r) prescribing information that must be disclosed to a private investor pursuant to section 33, including prescribing:

(i) the manner in which that information must be disclosed; and

(ii) the time within which any changes to that information must be provided to the investor;

(s) for the purposes of section 35:

(i) prescribing information to be included in financial records pursuant to clause 35(2)(a);

(ii) requiring that certain records be kept; and

(iii) prescribing periods for keeping records;

(t) prescribing any other requirements or other prohibitions that a licensee must comply with including prescribing various classes of licensees or activities and prescribing different requirements or prohibitions for those classes of licensees or activities;

(u) requiring that certain records be kept with respect to transactions relating to trust property and respecting the process for making, reviewing and reconciling those records, including requiring that a person or class of persons conduct the review and reconciliation of those records at prescribed intervals;

(v) for the purposes of section 43, prescribing information and terms and conditions that must be contained in a trust agreement;

(w) for the purposes of section 45, prescribing:

(i) the period within which a licensee shall deposit trust money into a trust account; and

(ii) the financial institutions in which a licensee is permitted to hold a trust account;

(x) prescribing the information that must be contained in an annual return, including prescribing the time within which a licensee must provide the annual return to the superintendent;

(y) for the purposes of section 49, prescribing:

(i) the information to be included in a statutory declaration; and

(ii) the period within which the statutory declaration must be delivered to the superintendent;

(z) prescribing the information and documentation that must be contained in, or accompany, a financial statement, including prescribing the period within which that information must be provided;

(aa) for the purposes of section 53, prescribing the information that must be contained in any advertisement;

(bb) prescribing information that must be disclosed in all correspondence and other written material prepared or used by a licensee;

(cc) respecting the service of documents;

(dd) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;

(ee) respecting any other matter or thing the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2007, c M-20.1, s 91.

PART XIII
Repeal, Consequential and Coming into Force

RSS 1978, c M-21 repealed

92 *The Mortgage Brokers Act* is repealed.

2007, c M-20.1, s 92.

93 **Dispensed.** This section makes consequential amendments to another Act. The amendments have been incorporated into the corresponding Act.

Coming into force

94 This Act comes into force on proclamation.

2007, c M-20.1, s 94.

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