

1975

c 28 The Mortgage Brokers Amendment Act, 1975

Ontario

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CHAPTER 28

An Act to amend The Mortgage Brokers Act*Assented to June 6th, 1975*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 2 of *The Mortgage Brokers Act*, being chapter 278 of the Revised Statutes of Ontario, 1970, is amended by inserting after "Act" in the first line "except sections 11 to 21". s. 2,
amended
2. The said Act is amended by renumbering section 21 as section 10 and by adding thereto the following sections: s. 21,
renumbered,
ss. 11-19,
enacted

11.—(1) In sections 11 to 19,

Interpre-
tation

(a) "mortgage transaction" means the borrowing of money on the security of real property or the assignment of a mortgage for consideration;

(b) "subdivision" means improved or unimproved land divided or proposed to be divided into five or more lots or other units for the purpose of sale or lease and includes land divided or proposed to be divided into condominium units.

(2) Sections 12 to 19 apply to mortgage transactions on the security of lots or units in a subdivision outside Ontario where the mortgagor or assignor is the owner of an interest in five or more such lots or units or has been the owner of such an interest at any time in the preceding five years. Application
of ss. 12 to 19

(3) Sections 12 to 19 do not apply to mortgage transactions in which the mortgagee or assignee is a bank to which the *Bank Act* (Canada) applies or a loan or trust company. Idem
R.S.C. 1970,
c. B-1

R.S.O. 1970,
c. 254, 224

registered under the *Loan and Trust Corporations Act* or an insurance company licensed under the *Insurance Act*.

Mortgage
transactions
where land
outside
Ontario

12.—(1) No person shall enter into or negotiate a mortgage transaction in respect of a lot or unit of land in a subdivision located outside Ontario unless,

- (a) a prospectus containing the prescribed information has been filed with the Registrar and the Registrar has issued a certificate of acceptance;
- (b) he is a registered mortgage broker or the mortgage transaction is negotiated by a registered mortgage broker;
- (c) a copy of the prospectus or such shorter form of the prospectus as the Registrar approves for distribution to the public has been delivered to the prospective lender or assignee;
- (d) the prospective lender or assignee has in writing acknowledged receipt of a copy of a prospectus or shorter form of prospectus and has been afforded an opportunity to read it.

Inspection
of
acknowledg-
ments

(2) Every acknowledgment referred to in subsection 1 shall be retained by the mortgagor, assignor or mortgage broker and be available for inspection by the Registrar for a period of not less than three years.

Rescission

(3) A lender or assignee who has entered into a mortgage transaction to which subsection 1 applies is entitled to rescission of the contract if,

- (a) subsection 1 has not been complied with; and
- (b) written notice of exercising the right of rescission is served on the mortgagor, assignor or mortgage broker within ninety days of the signing of the contract.

Onus

(4) In an action for rescission under subsection 3, the onus of proving compliance with subsection 1 rests upon the mortgagor or assignor.

Rights
reserved

(5) The right of rescission provided in this section is in addition to any other rights that the lender or assignee may have in respect of the contract or arrangement.

13. Each prospectus submitted to the Registrar for filing shall be accompanied by, Material filed with prospectus

- (a) an affidavit of the proposed mortgagor or assignor or, where the proposed mortgagor or assignor is a corporation, any two officers or an officer and a director, as to the correctness of every matter of fact stated in the prospectus;
- (b) a copy of every plan referred to in the prospectus;
- (c) a copy of every form of contract referred to in the prospectus;
- (d) such documents as the Registrar may require to support any statement of fact, proposal or estimate set out in the prospectus;
- (e) such financial particulars of the proposed mortgagor or assignor as the Registrar may require; and
- (f) the prescribed fees.

14.—(1) The Registrar may make such inquiries with respect to a prospectus as are necessary to determine whether a certificate of acceptance should be issued, including, Inquiries by Registrar

- (a) an examination of the subdivision and any of the surrounding circumstances; and
- (b) the obtaining of reports from public authorities or others within or outside Ontario.

(2) The reasonable and proper costs of such inquiries or reports shall be borne by the person on whose behalf the prospectus was filed. Costs

15.—(1) The Registrar shall grant a certificate of acceptance except where it appears that, Refusal of certificate of acceptance

- (a) the prospectus contains any statement, promise or forecast that is misleading, false or deceptive, or has the effect of concealing material facts;
- (b) adequate provision has not been made for the protection of deposits or other funds or for assurance of title or other interest contracted for;

- (c) the prospectus fails to comply in any substantial respect with any of the requirements prescribed;
- (d) the requirements of section 13 have not been complied with in any substantial respect;
- (e) the proposed methods of offering do not accord with standard real estate practices in Ontario.

Application
of s. 7

(2) Where the Registrar proposes to refuse to grant a certificate of acceptance, he shall serve notice of his proposal to refuse on the person on whose behalf the prospectus was filed and section 7 applies *mutatis mutandis* to the proposal in the same manner as to a proposal to refuse to register an applicant.

Revocation
of
certificate
of acceptance

16.—(1) Where it appears to the Registrar, subsequent to the filing of a prospectus and the granting of a certificate of acceptance therefor, that any of the conditions referred to in subsection 1 of section 15 exist or there has been any contravention of the Act or regulations, he may revoke the certificate of acceptance, which thereupon shall be deemed not to be issued.

Application
of s. 7

(2) Subject to subsection 3, the Registrar shall not revoke a certificate of acceptance and make an order under subsection 1 without serving notice of his proposal to revoke the certificate and make the order, together with written reasons therefor, on the person on whose behalf the prospectus was filed, and section 7 applies *mutatis mutandis* to the proposal in the same manner as to a proposal by the Registrar to revoke a registration.

Interim
suspension

(3) Where the Registrar proposes to revoke a certificate of acceptance, the Registrar may, where the Registrar considers it to be necessary in the public interest, by order temporarily suspend the certificate of acceptance and the order shall take effect immediately and where a hearing is required, the order expires fifteen days from the date of the notice requiring the hearing unless the hearing is commenced in which case the Tribunal holding the hearing may extend the time of expiration until the hearing is concluded.

Amendment
of
prospectus

17.—(1) If a change occurs with regard to any of the matters set out in any prospectus,

- (a) that would have the effect of rendering a statement in the prospectus false or misleading; or

- (b) that brings into being a fact or proposal that should have been disclosed in the prospectus if the fact or proposal had existed at the time of filing,

the person who filed the prospectus shall, within twenty days of the change occurring, notify the Registrar in writing of the change and shall file an amendment to the prospectus or a new prospectus as the Registrar may direct.

(2) Sections 13 to 16 apply *mutatis mutandis* where a prospectus is amended or new prospectus filed under subsection 1. Application of ss. 13-16

18. A certificate of acceptance expires twelve months after it is issued and shall thereupon be deemed not to be issued, subject to the right to file a new prospectus and obtain a certificate of acceptance therefor in accordance with this Act. Expiration of certificate of acceptance

19. No person shall publish or cause to be published any advertisement for mortgage transactions on a lot or unit in a subdivision located outside Ontario until the advertisement has been approved by the Registrar. Advertising

3. Section 33 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 103, section 4, is further amended by adding thereto the following clauses: s. 33, amended

(l) prescribing the fees payable upon the filing of a prospectus;

(m) prescribing the information required to be contained in a prospectus.

4. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement
5. This Act may be cited as *The Mortgage Brokers Amendment Act, 1975*. Short title

