

**3.4-13** In rules 3.4-14 to 3.4-16 "lending client" means: ~~a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business.~~

a) a bank, trust company, insurance company, or credit union;

b) a finance company that is a corporation or partnership:

i) whose material business involves making or refinancing loans, or entering into other similar arrangements for advancing funds or credit; and

ii) whose shares or ownership interests (or another person or entity with which it is affiliated) are listed on a stock exchange within or outside Canada that is a Designated Stock exchange for the purposes of the *Income Tax Act* (Canada);

including any subsidiaries of such finance companies;

c) a corporation or partnership designated as an approved lender under the *National Housing Act* (Canada); or

d) a Community Futures Development Corporation, a federal or provincial crown corporation or a corporation or agency affiliated with or funded by such a corporation, a municipality or an agency affiliated with or funded by a municipality.

#### Commentary

[1] A mortgage investment company is not considered a finance company unless it satisfies the criteria in Rule 3.4-13.

**3.4-14** Provided there is compliance with this rule and rules 3.4-15 to 3.4-19, a lawyer may act for or otherwise represent both lender and borrower in a mortgage or loan transaction in any of the following situations:

(a) the lender is a lending client;

(b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price;

(c) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction;

(c.1) the consideration for the mortgage or loan does not exceed ~~\$50,000~~ \$75,000; or

(d) the lender and borrower are not at "arm's length" as defined in section 251 of the *Income Tax Act* (Canada).

#### Commentary

[1] There is an increased risk that conflicts of interest may arise where a lawyer acts for both borrower and lender. Lawyers should review rules 3.4-5 to 3.4-9 (Joint Retainers) and should exercise the appropriate degree of formality with respect to these retainers, including making contemporaneous notes, obtaining a signed acknowledgment of the joint retainer from lender and borrower, and retaining copies of other relevant documents.