



**2018 Legislative Review of the *Mortgage
Brokerages, Lenders and Administrators Act, 2006***

Date: January 15, 2019

Submitted to: Doug Downey, Parliamentary
Secretary to the Minister of Finance

Submitted by: The Ontario Bar Association



ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien



Contents

Introduction	2
The OBA	2
The MBLAA.....	2
Conclusion and Request for Inclusion in Ongoing Consultation	4



Introduction

The *Mortgage Brokerages, Lenders and Administrators Act, 2006* (the “**MBLAA**”)¹ is the main piece of legislation that regulates the Mortgage Broker sector in Ontario. Section 57 of the MBLAA requires the Minister of Finance to appoint a person every five years for the purposes of a review. It is in this context that this review arises, and the OBA is pleased to provide the following comments.

The OBA

Established in 1907, the OBA is Ontario’s largest legal advocacy organization, representing lawyers, judges, law professors and students from across the province, on the frontlines of our justice system and in no fewer than 40 different sectors. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year - both in the interest of the profession and in the interest of the public.

This submission has been prepared primarily by the OBA’s Real Property Law Section, which includes lawyers who serve as legal counsel to virtually every stakeholder in the real property industry, including lenders, purchasers and others in residential and commercial mortgage transactions.

The MBLAA

The regulatory regime set out under the MBLAA plays a key role in consumer protection. The MBLAA sets out rules for individuals dealing in mortgages in Ontario, trading in mortgages in Ontario, carrying on business as a mortgage lender in Ontario and carrying on the business of administering mortgages in Ontario;² and providing for four types of licences to be issued by the Superintendent of Financial Services for individuals and entities wishing to provide those services.³

¹ S.O. 2006, c. 29.

² Sections 2, 3 and 5 of the MBLAA.

³ We note that the MBLAA has been amended to reflect the creation of the Financial Services Regulatory Authority (“**FSRA**”), and to provide a means by which the authority of the Superintendent will be transferred to the Chief Executive Officer of FSRA (see s. 55.1 of the MBLAA). However, at this time, it is our view that these changes will not materially impact the substance of our submissions.



The MBLAA sets out a “comprehensive regulatory regime that features more rigorous licensing standards, enhanced consumer disclosures, mandatory errors and omissions insurance for brokerages, and modernized enforcement tools.”⁴ Licensees under the MBLAA are required to comply with their licensing conditions and with the standards of practice that are prescribed by regulation.⁵

In our view, the MBLAA is operating as intended to fulfill its main consumer protection mandate. Consumers are entitled to expect that their interests will be protected by the overall statutory and regulatory regime, and by the professionals they engage to act on their behalf in mortgage transactions.

Our submission argues that the MBLAA should continue to operate in its current form, as it has been appropriately crafted to support the MBLAA’s consumer protection mandate. In our view, the MBLAA provides an appropriate balance between the necessary level of consumer protection, and certainty for mortgage professionals and others in the mortgage industry.

Under the MBLAA, lawyers are exempt from the requirement to obtain a licence where they deal in mortgages, trade in mortgages or administer mortgages in Ontario, as long as they act in their professional capacity as a lawyer on behalf of a client and do not hold themselves out as dealing, trading or administering mortgages except in their professional capacity for their clients.⁶ We recommend that this exemption is maintained in the MBLAA. Lawyers provide a range of services to clients that are captured in the exemptions in the course of their work (such as residential real estate transactions), for which they are regulated by the Law Society of Ontario (the “LSO”). In our view, the LSO’s regulatory regime as it relates to lawyers engaging in these transactions appropriately protects consumers.

We note that lawyers are not exempt from the requirement to obtain a licence under the MBLAA where they engage in mortgage lending, as defined in the MBLAA.⁷ Similar to our recommendation above, we recommend maintaining the status quo under the MBLAA. Mortgage lending is not a service that lawyers provide in the normal course, and it is

⁴ Parliamentary Assistant to the Minister of Finance, Steven Del Duca, *Mortgage Brokerages, Lenders and Administrators Act, 2006: Five Year Review Report to the Minister of Finance* (2014, Toronto).

⁵ See, for example, [O. Reg. 189/08](#): Mortgage Administrators: Standards of Practice.

⁶ See MBLAA ss. 2, 3, 5, 6(6), O. Reg 406/07 (the “**Additional Activities Regulation**”), and O. Reg. 407/07 (the “**Licensing Exemption Regulations**”).

⁷ See MBLAA s. 4.



therefore appropriate that the relevant provisions of the MBLAA continue to apply to individuals (including lawyers) who engage in mortgage lending.

Conclusion and Request for Inclusion in Ongoing Consultation

The OBA appreciates the opportunity to comment on these matters. Should the Ministry propose or consider any potential changes to the MBLAA, whether or not these changes appear to affect lawyers directly, the OBA would like to take this opportunity to request the opportunity to review and provide feedback to the Ministry on how any such changes would impact the legal profession and the clients we serve. Please do not hesitate to contact us in this regard.