Sweeping changes to the regulation of mortgage brokers in B.C.

October 12, 2022

On October 4, 2022, the Legislative Assembly of British Columbia introduced Bill 29, the *Mortgage Services Act*, which proposes to replace the *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313 (the *MBA*). In the Commission of Inquiry into Money Laundering in British Columbia, better known as the Cullen Commission, the *MBA* received some of the most scrutiny from the inquiry. Out of 101 recommendations, the Cullen Commission provided 17 recommendations specifically directed at the regulation of mortgage brokers in British Columbia, which included many recommendations aimed at amending and modernizing the MBA. Bill 29, *Mortgage Services Act*, is the province's response to the findings and recommendations of the Cullen Commission.

On October 5, 2022, Bill 29 passed through its second reading in the legislature.

Those engaged in mortgage lending in British Columbia should take steps now to ensure that they are compliant with new laws designed to promote transparency and protect consumers. The new laws broadly address all participants engaged in mortgage lending and create a regime of substantial penalties for non-compliance.

Key aspects of Bill 29

Bill 29 provides the BC Financial Services Authority (BCFSA) with expanded authority and grants it broad rule-making powers, including licensing, conduct, discipline, and penalties. Some of the key highlights include the ability to make rules:

- regulating licensees;
- creating different categories of licenses;
- establishing requirements, conditions, and restrictions on licenses;
- implementing standards of conduct and business practice standards for licensees, including the operation of trust accounts, the form and content of advertising, and establishing and requiring the use of standard forms in providing mortgage services;
- establishing conditions and restrictions on mortgage brokerages;
- providing standard terms to be included in proposed contracts or forms prepared by licensees; and

- making different rules for different levels of licenses, categories of licenses, and classes of mortgages.

Administrative penalties, disciplinary hearings and contravening the *Mortgage Services Act*

The BCFSA may designate contraventions of specified provisions, regulations, or rules as being subject to administrative penalties, and establish an amount or range of up to $100,000 that may be imposed for each contravention. These amounts can differ for different levels or categories of licenses, first or subsequent offences, and on how quickly the administrative penalty is paid. Further, the superintendent may publish the notice of administrative penalty issued.

Licensees may also be subject to disciplinary hearings regarding misconduct or conduct unbecoming of a licensee. After the discipline hearing, if the licensee is found to have committed misconduct or conduct unbecoming of a licensee, the superintendent is required to impose one or more consequences, one of which can include a penalty of up to $500,000 for a mortgage broker or former mortgage broker, or $250,000 for others, for each contravention.

Committing certain offences designated under the *Mortgage Services Act* can result in incurring fines for corporations of up to $1.25 million if it is the first offence and $2.5 million for subsequent convictions. Individuals are subject to the same level of fines as corporations, but may also be subject to imprisonment for up to 2 years.

BCFSA's rule-making powers

Similar to BCFSA's rule-making powers under the *Financial Institutions Act*, R.S.B.C. 1996, c. 141, before making, amending or repealing any rules, the BCFSA must publish any proposed rules for public comment, obtain consent of the minister and comply with any other prescribed procedures or requirements. This provides interested persons the ability to comment on and prepare for any proposed rules prior to their enactment.

Looking ahead

As of the publishing of this article, Bill 29 has yet to pass its third reading and may undergo further changes or amendments.

Our team at BLG can help navigate these sweeping changes to the regulation of mortgage brokers and keep you up to date on this proposed legislation as it develops. For any questions, please reach out to any of the authors or key contacts listed below.

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