



December 14, 2015

The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Attn: Jack Olsen, Ethics Advisor

Dear Mr. Olsen:

Re: Changes to Definition of “Institutional Lender”

Thank you for asking for feedback from the Mortgage Brokers Association of BC on the proposed changes to the definition of “Institutional Lender” in Appendix “C” of the Law Society’s Code of Professional Conduct.

We understand that the Law Society of BC is proposing to permit a single lawyer to act for both borrowers and lenders on simple conveyances involving banks, trust companies, credit unions and insurance companies. In addition, it is considering permitting a single lawyer to act when the lender is defined as a corporation that:

- engages in a minimum of 24 such transactions in the year preceding a transaction where a lawyer proposes to act for both the borrower and lender;
- uses an independent mortgage broker in the negotiation of the financial terms of its mortgages;
- has an office and full-time staff;
- is subject to legislation administered by the Financial Institutions Commission in British Columbia or a similar Federal regulator or regulator in another province or territory; and
- may be required to provide audited financial reports.

Additional criteria might include that the corporation has capital of at least \$30 million.

The criteria is intended to broaden the scope of the rule permitting a lawyer to act for both parties, yet ensure that there are safeguards to avoid hidden conflicts with less sophisticated lenders which would make it unwise for a lawyer to represent two clients at the same time.

We have canvassed this proposal with our members, and have the following recommendations for you:

- the additional criteria that a corporation have capital of at least \$30 million is not necessary, as the bulleted criteria above is sufficient; and
- replace “corporations” with “lending entities”, as there are a variety of business structures which are used to carry out lending activities. These other structures include limited partnerships, general partnerships and unit trusts. We suggest that “lending entity” be defined to specifically include corporations, limited partnerships, general partnerships and unit trusts and “affiliated lending entities”. The expression “affiliated lending entities” would include any entity that is an affiliate (as that term is defined in the Corporations Act BC) of the lending entity and would specifically include limited partnerships that were organized by one general partner that acted as such for all the said limited partnerships.

If you have any questions regarding any of the above recommendations, please do not hesitate to contact me.

Yours truly,

The Mortgage Brokers Association of BC

A handwritten signature in black ink, appearing to read 'S. Gale', written in a cursive style.

Samantha Gale
CEO, MBABC
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