

August 17, 2016

The Honourable Suzanne Anton, Q.C.  
Minister of Justice and Attorney General  
Room 232, Parliament Buildings  
Victoria, BC V8V 1X4

Via email [suzanne.anton.MLA@leg.bc.ca](mailto:suzanne.anton.MLA@leg.bc.ca)

Dear Minister Anton,

Re: The Application of Debt Repayment Agent Licensing to Mortgage Brokers in BC

Please know that I write on behalf of the Canadian Mortgage Brokers Association – British Columbia (formerly the Mortgage Brokers Association of British Columbia), which is an association that has represented mortgage brokers and their lender and service partners throughout BC since 1990.

Our association has become aware of recent amendments to the *Business Practices and Consumer Protection Act* (BPCPA), which creates a new licensing regime for “debt repayment agents”. Upon reviewing those amendments, we have found that the authorized activities of debt repayment agents overlap with debt consolidation services performed by mortgage brokers in the course of “arranging mortgages”, mortgage lending and administration. Mortgage brokers are permitted to do these activities as registrants under the *Mortgage Brokers Act* (MBA). We would like to draw your attention to some legislative conflicts which the enactment of the BPCPA amendments appear to have created and ask that steps be taken to address the conflict.

#### Role of Mortgage Brokers in Performing Debt Consolidations

Mortgage brokers in British Columbia have been regulated under the MBA since 1972. The scope of permitted activities under the MBA is captured in the definition of “mortgage broker” which means a person who does any of the following:

- (a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person
- (b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker

- (c) carries on a business of buying and selling mortgages or agreements for sale
- (d) in any one year, receives an amount of \$1000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons
- (e) during any one year, lends money on the security of 10 or more mortgages
- (f) carries on a business of collecting money secured by mortgages

Mortgage brokers, in the course of delivering the above described services to borrowers, often investigate the balance of a borrower's third party debts and make arrangements for those debts to be paid out of the mortgage proceeds received from the lender. These debt payouts form part of the mortgage commitment and become conditions of mortgage funding. Arranging for the debt repayment on behalf of a mortgage borrower is therefore an integral part of the mortgage arranging and lending process.

Typically, brokers will make arrangements to pay out a borrower's debts when arranging consolidation mortgages, which are mortgages specifically intended to be used to payout a collection of a mortgage borrower's debts. In addition, at the time of mortgage renewal, mortgage brokers will often increase the principal amount of the mortgage to accommodate the payout of any accumulated debt unwanted by the borrower. A typical mortgage broker may payout debt belonging to the borrower on approximately 25% of the transactions which they arrange. Other brokers and lenders may specialize in debt consolidations and perform a higher percentage of debt payouts on transactions which they arrange.

#### New Licensing Category of Debt Repayment Agent

Recently, many of our BC mortgage brokers received an email solicitation from an Ontario lawyer who promised to negotiate and resolve outstanding debts belonging to borrowers so that brokers could "stop losing deals". Upon further review it appears that debt settlement services, such as that offered by the Ontario lawyer, are emerging as a relatively new kind of financial services industry. In response, legislatures have acted quickly to enact new legislation which creates licensing regimes for debt settlement/repayment agents. Ontario introduced legislation in 2015, with British Columbia following suit in 2016.

In April of this year, the BC legislature passed amendments to the BPCPA, which created a new licensing category of "debt repayment agent". A debt repayment agent is defined in section 125 as:

"a person who acts for or represents, or offers to act for or represent, a debtor in arrangements or negotiations with the debtor's creditors, which arrangements or negotiations may include receiving money from the debtor for distribution to the

debtor's creditors, in consideration for a fee, commission or other remuneration that is payable by the debtor”.

Section 127 of the new legislative amendments to the BPCPA include numerous restrictions relating to debt repayment agents, such as prohibitions against lending money, providing credit, arranging loans for debtors, or accepting fees for arranging loans for debtors.

### Exemptions from Debt Repayment Agent Licensing

The regulations to the BPCPA recognize that other kinds of professionals in the financial services industry may engage in the debt repayment activity captured by section 125, and exemptions from the application of section 125 have accordingly been carved out.

Specifically, section 3 of the *Debt Collection and Repayment Regulation* (the “Regulation”) provides an extensive list of persons who are exempt from the debt repayment agent licensing requirements; which list includes lawyers, banks, credit unions, real estate brokerages, insurance agents, and others. However, there is no exemption for mortgage brokers in this list. Even if mortgage brokers wishing to provide debt consolidation services complied with the new BPCPA provisions by obtaining licensing as a debt repayment agent, they would be thwarted by the lending restrictions contained in section 127 (which prohibit persons from both arranging mortgage financing and paying out debt in a single transaction).

### Conflict with Part 5 of the BPCPA and Mortgage Brokers Act

I note that section 127 conflicts with other sections of the BPCPA, which contemplate that loan brokers can in fact engage in debt payouts. More specifically, Part 5 of the BPCPA requires that loan brokers disclose the payout of debt in connection with loan agreements by providing cost of borrowing disclosure to borrowers. Mortgage brokers routinely complete cost of borrowing disclosure on every residential mortgage transaction in accordance with the BPCPA. Part 5 of the BPCPA therefore appears to contradict the more specific requirements and prohibitions contained in sections 125 to 127 of the BPCPA.

The concern is that mortgage brokers may be prohibited by section 125 from representing mortgage borrowers who are also debtors and arranging to have debt paid out. In such cases, mortgage brokers would be persons who represent “a debtor in arrangements or negotiations with the debtor's creditors, which arrangements or negotiations may include receiving money from the debtor for distribution to the debtor's creditors, in consideration for a fee, commission”.

Mortgage brokers provide a valuable service to the public by arranging debt consolidation mortgages or by arranging for the payout of debt upon mortgage renewal.

These services enable borrowers to better manage debt, stave off debt collection or foreclosure proceedings, and repair or improve their credit score.

Mortgage brokers are already licensed and have been regulated by the Registrar of Mortgage Brokers since 1972. Prohibiting mortgage brokers from performing services which have been authorized by and regulated under other legislation serves no valuable public protection purpose, and will complicate matters for some borrowers who may then need to engage both a mortgage broker and a debt repayment agent to consolidate debt. This needless additional expense would likely be something a person seeking to consolidate their debts could ill afford.

#### Need for Mortgage Broker Exemption in BPCA

The new legislative amendments to the BPCPA appear to have created unintended restrictions for mortgage brokers arranging debt consolidation mortgages. It may therefore be appropriate and in the public interest to include mortgage brokers in the list of persons exempted from the debt repayment licensing requirements in section 3 of the Regulation.

We ask that you consider such an amendment to the Regulation.

We would be pleased to provide any clarification or elaboration you wish.

Thank you in advance for your attention to this matter.

Sincerely,



Samantha Gale  
CEO, CMBA-BC

cc. the Registrar of Mortgage Brokers,  
Financial and Corporate Sector Policy Branch