

# BANK EMPLOYEES ARE NOT MORTGAGE BROKERS

A letter to the Financial Consumer Agency regarding misrepresentation by some mortgage specialists

**CMBA-BC** wrote to the commissioner of the Financial Consumer Agency of Canada in August to ask the agency to consider the subject of bank mortgage specialists in their review of the retail sales practices of banks. In particular, we explained the following:

As I am sure you know, employees of federally regulated financial institutions who are hired to place mortgages with their financial institution are commonly referred to as “mortgage specialists.” Mortgage specialists are essentially salespeople for the financial institution and operate under a “mortgage shop” model of serving the public by providing mortgage products, which a prospective borrower can either accept or reject. As bank employees, mortgage specialists always owe a duty of loyalty to their employer and not to the mortgage borrower. Mortgage specialists are therefore fundamentally different from licensed mortgage brokers, who work on behalf of clients as agents or quasi-fiduciaries to get borrowers the best mortgage deal

possible. This requires sourcing terms from a selection of independent mortgage lenders and not just one, where there is no independence. Licensed mortgage brokers must also comply with specific consumer protection rules, including disclosure of conflicts and remuneration, which explains who the broker represents and how they are paid.

However, while these fundamental differences exist, it can often be difficult for the public to distinguish between mortgage specialists and mortgage brokers, as in many ways specialists can look more like independent commissioned contractors than employees. For example, specialists often meet with clients outside of their branch office, such as in coffee shops or their homes, and earn deal commissions. In addition, we observe that many specialists verbally refer to themselves as “brokers,” likely because the term “broker” resonates with the public much better than the term “specialist.”

While it is not inordinately common for specialists to describe themselves in written

advertising material as brokers, there are such instances. Attached is an example of both print and electronic advertising where a mortgage specialist has identified herself as a mortgage broker housed within a realty office. I note that the prominent logo of the real estate company makes it look like the specialist is actually a mortgage broker employed by that company and not a financial institution. These advertisements are therefore misleading the public on some very critical points:

- 1)** The specialist will not be acting as a broker for borrowers to find the best possible mortgage terms from an array of lenders;
- 2)** The specialist is employed by a bank and owes a duty of loyalty to the bank and not the borrower; and
- 3)** The specialist is not connected to the realty company in any way.

We are aware that your office is currently reviewing the retail sales practices of banks, and is looking to implement measures to protect the public. We ask that you consider this issue in the scope of your review. **M**

