
Frequently Asked Questions About Forms 3.0, 3.1 and 3.2

FAQs about Forms 3.0, 3.1 and 3.2 Amended Disclosure Forms for Non-Qualified Syndicated Mortgages

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Questions about all three forms for the website – these are amended based on what is currently posted on the web

1) When do I need to start using the three amended forms to complete Non-Qualified Syndicated Mortgage transactions?

On December 1, 2019, the amended forms will replace the original three forms that became effective on July 1, 2018.

Form 3.0 – Information about Investor/Lender in a Non-Qualified Syndicated Mortgage
(Form 3.0 – Investor/Lender Information)

Form 3.1 – Suitability Assessment for Investor/Lender in a Non-Qualified Syndicated Mortgage
(Form 3.1 – Suitability Assessment)

Form 3.2 – Disclosure Statement for Investor/Lender in a Non-Qualified Syndicated





Mortgage (Form 3.2 – Disclosure Statement)

2) The forms are longer. Doesn't that create more burden?

While the forms may appear longer, the customization and enhancements added to them actually make them less burdensome, as they will be simpler for applicants to complete.

3) Should all mortgage brokerages complete the three amended forms?

With the introduction of the amended forms mortgage brokerages working with sophisticated investors are required to complete shorter versions of Forms 3.0, 3.1 and 3.2 – to complement their own disclosure documents to meet the requirements under O. Reg. 188/08.

However, mortgage brokerages working with non-sophisticated investors must continue to address disclosure requirements by completing the required sections of Forms 3.0, 3.1 and 3.2.

4) What sections of the amended forms are required to be completed by certain mortgage brokerages?

Mortgage brokerages working with **sophisticated investors** are required to complete the following sections of the amended forms:

Form 3.0 – sections 1 to 4

Form 3.1 – sections 1 to 4

Form 3.2 – sections 1 to 5

Brokerages are to rely on their own disclosure documents to address the required regulatory requirements.

Mortgage brokerages working with **non-sophisticated investors** are required to complete the following sections of the amended forms:





Form 3.0 – sections 1 to 3 and 5 to 8

Form 3.1 – sections 1 to 3 and 5 to 8

Form 3.2 – sections 1 to 3 and 6 to 11

5) What forms should I use to complete transactions in all other mortgages that do not meet the definition of a non-qualified mortgage, i.e., qualified syndicated mortgages and mortgages funded by one lender?

The existing Forms 1, 1.1 and 1.2 continue to apply and must be used for mortgages funded by one lender and for qualified syndicated mortgages as defined in subsection 1(2) of O. Reg. 188/08 under the MBLAA. There is no change to the forms that are required for these types of mortgages.

6) I have a non-qualified syndicated mortgage investment that is coming up for renewal. What forms should I use?

Forms 3.0, 3.1 and 3.2 must be used to complete all non-qualified syndicated mortgages as of December 1, 2019.

7) Do the forms need to be completed in any particular order?

Yes. Complete Form 3.0 – Investor/Lender Information and Form 3.2 – Disclosure Statement before completing amended Form 3.1 – Suitability Assessment. Form 3.1 should only be completed after considering information collected in Form 3.0 and amended Form 3.2.

8) How often should the forms be completed?

All three forms must be completed for every transaction relating to a non-qualified syndicated mortgage.

9) What should I do if I have a question about the forms relating to non-qualified syndicated mortgages?





Mortgage brokers should seek direction from their principal broker.

Investors/lenders can ask their mortgage brokerage for assistance and/or seek independent legal advice to better understand their investment.

All parties can also contact FSRA.

10) What should I do if I have a non-qualified syndicated mortgage investment where there are multiple types of investors, one or more of which does not meet the definition of sophisticated investor?

All three forms must be completed for every transaction. If one or more investors does not meet the definition of sophisticated investor, Form 3.2 for all such investors must be completed accordingly and may not rely on the reduction in disclosure requirements that may apply for sophisticated investors.

**Questions about Form 3.0:
Information for Investor/Lender in a Non-Qualified Syndicated Mortgage**

11) What is the purpose of Form 3.0 – Information for Investor/Lender in a Non-qualified Syndicated Mortgage?

Pursuant to subsection 24.1(1) of O. Reg. 188/08, mortgage brokerages are required to take reasonable steps and make all necessary inquiries to establish the identity of prospective investors/lenders and obtain a solid understanding of their financial circumstances, investment needs and objectives, risk tolerance, level of financial knowledge, investment experience, relationship with the mortgage brokerage (if any) and any other relevant factors. Completing Form 3.0 is necessary to ensure that mortgage brokerages have sufficient information to “know their client”.

Mortgage brokerages must know their client in order to be able to perform a meaningful assessment as to whether or not the investor/lender is eligible to invest in or loan money in respect of a non-qualified syndicated mortgage, and to determine if the syndicated





mortgage investment is suitable for the investor/lender.

For mortgage brokerages working with non-sophisticated investors, the completion of Form 3.0 – Investor/Lender Information will assist mortgage brokerages with the collection, understanding and documentation of the required information about the client. Mortgage brokerages must engage in a meaningful dialogue with prospective investors/lenders to complete the information form.

Mortgage brokerages working with sophisticated investors must complete the relevant declaration sections of Form 3.0, and to complement the form with their own disclosure documents to meet the requirements under O. Reg. 188/08.

12) Who should complete Form 3.0 – Information for Investor/Lender in a Non-qualified Syndicated Mortgage?

The mortgage brokerage (i.e., broker) must complete the form with the information provided by the lender/investor. The form must be signed by both the mortgage broker and the investor/lender, who signs to attest to the accuracy and completeness of the information in the form.

Questions about Form 3.1: Suitability Assessment for Investor/Lender in a Non-qualified Syndicated Mortgage

13) What is the purpose of Form 3.1 – Suitability Assessment for Investor/Lender in a Non-qualified Syndicated Mortgage?

The obligation to assess the “suitability” of a mortgage product for a prospective investor/lender is one of the most fundamental legal obligations owed by mortgage brokerages to such persons, and a cornerstone of the consumer protection regime in the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.

Conducting a suitability assessment requires that the mortgage brokerage understands both the product it intends to recommend and the prospective investor/lender. The





suitability obligation requires a mortgage brokerage to “know its client” **before** it can assess whether a proposed investment/loan in a non-qualified syndicated mortgage is “suitable” for the investor/lender. It requires mortgage brokerages to take reasonable steps, make all necessary inquiries and engage in meaningful dialogue with prospective investors/lenders to obtain a detailed understanding of their financial circumstances, investment needs and objectives, risk tolerance, level of financial knowledge, investment experience, relationship with the mortgage brokerage (if any) and any other relevant factors. Assessing suitability is more than a mechanical fact-finding or “tick the box” exercise.

For mortgage brokerages working with non-sophisticated investors, once the mortgage brokerage has obtained sufficient information to “know its client”, and the prospective investor/lender is otherwise eligible, the mortgage brokerage can then form an opinion as to the suitability of the proposed syndicated mortgage investment, as described in Form 3.2, for that investor/lender. The mortgage brokerage must document that opinion, including the basis for it. The mortgage broker should only present a suitable mortgage investment to the investor/lender.

Mortgage brokerages working with sophisticated investors must complete the relevant declaration sections of Form 3.1, and complement the form with their own disclosure documents to meet the requirements under O. Reg. 188/08.

14) Who should complete Form 3.1 – Suitability Assessment for Investor/Lender in a Non-qualified Syndicated Mortgage?

The mortgage brokerage (i.e., broker) must complete Form 3.1 – Suitability Assessment and provide a copy of the form and other relevant documents to a prospective investor/lender who is considering an investment in a syndicated mortgage. The mortgage broker should complete this form based on discussions with the investor/lender. The mortgage broker should review the form thoroughly with the investor/lender before the parties sign/initial the form.

Questions about amended Form 3.2: Disclosure Statement for Investor/Lender in a Non-qualified Syndicated





Mortgage

15) What is the purpose of Form 3.2 – Disclosure Statement for Investor/Lender in a Non-qualified Syndicated Mortgage?

The Form 3.2 – Disclosure Statement provides important information to assist the prospective investor/lender in making a decision about whether to accept the non-qualified syndicated mortgage proposed by the mortgage brokerage. This includes, but not limited to, information regarding the property appraisal and, in the case where the borrower is not an individual, the borrower's financial statements.

Mortgage brokerages working with sophisticated investors must complete the required sections of Form 3.2 and to complement with their own disclosure documents to meet the requirements under O. Reg. 188/08.

The mortgage brokerage is required by law to provide the prospective investor/lender with a completed Form 3.2 - Disclosure Statement with supporting documents at a minimum two business days before the investor/lender commits to invest/lend. Form 3.2 – Disclosure Statement and the supporting documents are not intended to provide a comprehensive list of factors to consider in making a decision concerning this investment.

16) Who should complete Form 3.2 – Disclosure Statement for Investor/Lender in a Non-qualified Syndicated Mortgage?

The mortgage brokerage (i.e., broker) must complete Form 3.2 – Disclosure Statement and provide a copy of the form to the prospective investor/lender who is considering a non-qualified syndicated mortgage investment. The form must be signed by both the mortgage broker and the investor/lender, who signs to acknowledge receipt of the completed form.

17) Does the mortgage brokerage need to complete Form 3.2 – Disclosure Statement for Investor/Lender for each transaction in a non-qualified syndicated mortgage?





Yes, the mortgage brokerage needs to complete Form 3.2 – Disclosure Statement for each transaction in a non-qualified syndicated mortgage. Borrowers/developers may raise funds through non-qualified syndicated mortgages in phases/stages. If this is the case, each phase/stage is considered a separate syndicated mortgage transaction that requires completion of a new or separate Form 3.2 – Disclosure Statement.

If, however, a borrower/developer raises the total amount of funds required in a single syndicated mortgage, but the funds are held in trust or by a mortgage administrator and are advanced to the borrower/developer only as the borrower/developer meets prescribed milestones/requirements, such advances would not be considered separate syndicated mortgages and would not require completion of a new or separate Form 3.2 – Disclosure Statement.

18) What is the definition of a business day?

According to O. Reg. 188/08 under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, a business day is defined as a day that is not a Saturday or a holiday. (Note that Sundays are defined as holidays.) That means that business days are Monday to Friday, with the exception of any statutory holidays.

19) Can the two-day waiting period for disclosures to investors/lenders transacting in non-qualified syndicated mortgages be waived?

No, the two-day waiting period cannot be waived pursuant to subsection 36(3) of O. Reg. 188/08. The waiting period enables the investor/lender to thoroughly review the proposed non-qualified syndicated mortgage and the disclosure statement, and obtain independent legal advice. The information in Form 3.2 – Disclosure Statement must be disclosed to an investor/lender no later than two business days before the investor/lender commits to invest/lend, i.e., two business days before the earliest of the following events:

- The mortgage brokerage receives or enters into an agreement to receive money from the investor/lender





- The investor/lender enters into a mortgage agreement or an agreement to trade in a mortgage
- The money is advanced to the borrower under the mortgage
- The trade completion date.

20) How can the \$200 fee and forms be filed with FSRA?

Effective June 8, 2019, [FSRA Rule 2019-001](#) (“Assessments and Fees”) requires that mortgage brokerages must:

- File with FSRA investor disclosure form 3.2 within five (5) days of providing it to the **first** potential or actual investor in a non-qualified syndicated mortgage.
- Pay a \$200 [fee](#) to defray FSRA’s costs.

The filing of disclosure form 3.2 and the \$200 fee is required for **each non-qualified syndicated mortgage**. When a non-qualified syndicated mortgage is identified as being high-risk, the brokerage may end up submitting to FSRA forms 3.2.1 and 3.2 together along with the \$200 fee.

The fee is payable by cheque to: *Financial Services Regulatory Authority of Ontario* or *FSRA*.

All forms and any applicable documentation should be sent to SMI@fsrao.ca.

A scanned copy of the cheque should accompany the electronic submission of the Form 3.2 prior to it being mailed to FSRA’s attention at:

Financial Services Regulatory Authority of Ontario
Market Conduct, 16th floor
5160 Yonge St
Toronto, ON, M2N 6L9

Please note that the submission will **NOT** be considered complete up until the related cheque has been received via mail.

If you would like to pay by credit card, please submit your Form 3.2 together with a completed [credit card authorization form](#) to smi@fsrao.ca. Please do not provide you





entire credit card number. A FSRA representative will contact you to process the transaction. You may provide an electronic signature on your credit card authorization form. A FSRA representative may reach out to confirm the signature.

