Interpretation

Effective Date: May 12, 2020
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Mortgage Administrators – Responses to Market Disruptions

Purpose

This Interpretation Guidance[1] provides the Financial Services Regulatory Authority of Ontario's ("FSRA's") interpretation of mortgage administrators' obligations under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* ("MBLAA"). It addresses requirements for ensuring the protection of investors / lenders in a mortgage / mortgage investment during a significant market disruption, such as a declared emergency under the *Emergency Management and Civil Protection Act* ("Market Disruption").

Mortgage administrators must:

- promptly notify each investor / lender of any potential impacts of the Market Disruption on the performance of the mortgage / mortgage investment being administered; and
- comply with the terms of mortgage administration agreements (the "Agreements") when exercising any discretion permitted in the Agreements.

[1] Interpretation Guidance is one of the four types of guidance that may be issued under FSRA's Guidance Framework. Interpretation Guidance sets out FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules). Non-compliance can lead to enforcement or supervisory action. For more details, see https://www.fsrao.ca/regulation/guidance/fsra-guidance-framework.

Scope

This Interpretation Guidance applies to licensed mortgage administrators under the MBLAA.

Rationale and Context

Mortgage administrators are subject to Ontario Regulation 189/08, Mortgage Administrators: Standards of Practice (the "Standards of Practice"), which establishes prescribed standards of practice for every mortgage administrator in Ontario.

Under the Standards of Practice, a mortgage administrator must, among other things, establish and implement policies and procedures that: (i) are reasonably designed to ensure that the mortgage administrator and every person acting on its behalf in the business of mortgage administration complies with the requirements established under the MBLAA; and (ii) provide for the adequate supervision of every person acting on its behalf in the business of mortgage administration.

Further, in supervising and regulating the mortgage brokerage and administrator sector, FSRA is required to administer and enforce the MBLAA and its regulations, including the Standards of Practice, in a manner that will achieve FSRA's statutory objects[2], in particular, to:

- contribute to public confidence in the regulated sectors;
- monitor and evaluate developments and trends in the regulated sectors;
- promote transparency and the disclosure of information in the regulated sectors;
- promote high standards of business conduct particularly with respect to financial services sectors; and
- protect the rights and interests of consumers particularly with respect to financial services sectors.

A Market Disruption, such as the current declared emergency due to the COVID-19 pandemic, can have an impact on the viability of a project or property that is subject to a mortgage administered by a mortgage administrator.

[2] See *Financial Services Regulatory Authority of Ontario Act, 2016,* s.3

Such a Market Disruption will constitute a significant change in circumstance, where it can reasonably be expected to have a significant effect on the ability of the borrower to continue to make payments under the mortgage. This Interpretation Guidance is intended to provide FSRA's interpretation of a mortgage administrator's obligations under the MBLAA and the Standards of Practice, where Market Disruption constitutes a significant change in circumstance requiring the mortgage administrator to take specific steps.

Interpretation

The MBLAA and its regulations govern mortgage brokering and administration activities in Ontario.

This Interpretation Guidance sets out FSRA's interpretation of how a mortgage administrator is required to meet certain requirements of the Standards of Practice during a Market Disruption.

Duty to Notify Investors / Lenders

As per subsection 18(3) of the Standards of Practice, a mortgage administrator has a duty to promptly notify each investor / lender in a mortgage if the mortgage administrator becomes aware of:

- a subsequent encumbrance on the mortgaged property or any other significant change in circumstances affecting the mortgage; and/or
- a borrower defaulting under the mortgage.

A mortgage administrator must notify each investor / lender as soon as possible after the mortgage administrator becomes aware of a subsequent encumbrance, a significant change in circumstance or a mortgage default. The mortgage administrator must not wait for a situation to be addressed or resolved before notifying the investor / lender.

Where the investor / lender is a Mortgage Investment Corporation (MIC), the administrator is required to notify / deal with the MIC.

Significant changes in circumstances include, but are not limited to:

- borrower’s failure to make scheduled mortgage payments;
- default;
- potential amendments to the mortgage (e.g., mortgage maturity is extended);
- potential forbearance (e.g., payments are allowed to be deferred or capitalized) that could materially impact the performance of the mortgage;
- material delay in development of a project being funded by the mortgage;
- substantial reduction in sales / forecasted sales for the project funded by the mortgage;
- other encumbrances being registered on a mortgaged property (e.g., a tax lien);
- change in value of the underlying property and mortgage-based investments, such as syndicated mortgage investments;
- change in the ability of investors / lenders to redeem prior to the maturity date of the mortgage investment; and
- change in redemption policies.

In order to be able to promptly notify an investor / lender of a significant change in circumstance affecting the mortgage as required by subsection 18(3) of the Standards of Practice, a mortgage administrator is required to:

A. *Keep current on the financial performance of each mortgage in its portfolio and the condition of the underlying property, including:*

- maintaining awareness of significant circumstances that could impact the valuation of the property and the loan-to-value ratio, such as the ability of the borrower to obtain refinancing, pay tax arrears, or remove construction liens on development projects;
- regularly assessing delinquency risk, achieved by contacting the borrower at the first sign of financial difficulty; and
- tracking mortgage arrears and determining the impacts on distributions to the investor / lender.

B. Provide prompt and complete notification to an investor / lender by:

- having and using a communications plan for regular reporting to the mortgage investor / lender about:
  - the performance of their investments and/or borrower performance against loan covenants;
  - potential need for amendments to mortgage terms requiring investor / lender approval; and
  - any changes in redemption policies in light of the Market Disruption (e.g., imposition of temporary suspension of redemptions).[3]

  A good communications plan will keep the investor / lender informed and reduce the volume of calls to the mortgage administrator from the investor / lender.

Exercising Discretion in Accordance with Mortgage Administration Agreements

As per subsection 18(1) of the Standards of Practice, a mortgage administrator cannot administer a mortgage for an investor / lender unless the mortgage administrator and each investor / lender have entered into an Agreement in writing governing the administration of the mortgage. A mortgage administrator must abide by the terms of the Agreement.

During a Market Disruption, a borrower may approach a mortgage administrator to request a loan concession such as payment deferral / waiver and/or mortgage term amendments (e.g., maturity extension).

[3] Redemption policies should be fairly applied to each investor / lender in a manner that ensures that no investor / lender is disadvantaged.

Where an Agreement grants a mortgage administrator discretion to modify the mortgage terms, the mortgage administrator is required to determine the nature and extent of its discretion under the Agreement and document any exercise of discretion, including the basis for its decision-making. At a minimum, the documentation should include:

- an analysis of each option considered, outlining the benefits and risks to investors / lenders, and rationale for the recommended / implemented option; and
- a strategy for implementing the option, including investor / lender communication or notification.

Where an Agreement does not grant a mortgage administrator discretion, a borrower's request to modify the mortgage terms is considered to be a significant change in circumstances under the Standards of Practice that the mortgage administrator is required to promptly communicate to the investor / lender, along with the options available to the investor / lender. A mortgage administrator should obtain prior documented approval for any changes to the terms of the mortgage, and maintain records of the approvals obtained from the investor / lender.

Supervision and Enforcement

Mortgage administrators are required to comply with the MBLAA and its regulations, including the Standards of Practice as outlined in this Interpretation Guidance.

Failure to comply may result in enforcement or supervisory action, including the imposition of licence conditions, suspension, revocation and enforcement proceedings seeking administrative monetary penalties.

Effective Date and Future Review

This Interpretation Guidance becomes effective on May 12, 2020.
The latest possible date for FSRA to initiate a review of this Interpretation Guidance will be May 1, 2025.

About FSRA

FSRA regulates the insurance, credit union, caisse populaire, mortgage brokerage, loan and trust, and pension administration sectors in Ontario in addition to providing deposit insurance for members of provincially-incorporated credit unions and caisses populaires.

FSRA's vision is financial safety, fairness and choice for Ontarians. Our mission is public service through dynamic, principles-based and outcomes-focused regulation.

About this Guidance

This document is consistent with FSRA's Guidance Framework. As Interpretation Guidance, it describes FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.