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MORTGAGE SERVICES ACT

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HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PART 1 – INTRODUCTORY PROVISIONS

Definitions

1 In this Act:

“**administering mortgages**” means performing, on behalf of another person, any of the following activities or holding oneself out as doing so:

- (a) receiving from a borrower payments under a mortgage and remitting those payments;
- (b) monitoring the performance of a borrower with respect to the borrower’s obligations under a mortgage;
- (c) enforcing or taking steps to enforce payment by a borrower under a mortgage;
- (d) any other prescribed activities;

“**Authority**” means the BC Financial Services Authority established under section 2 of the *Financial Services Authority Act*;

“**dealing in mortgages**” means performing any of the following activities or holding oneself out as doing so:

- (a) soliciting another person to borrow or lend money on the security of real property;
- (b) providing advice to a prospective borrower or lender about entering into a particular mortgage contract;
- (c) providing information about a prospective borrower to a prospective lender of a mortgage, whether or not the lender is subject to this Act;
- (d) assessing a prospective borrower on behalf of a prospective lender of a mortgage, whether or not the lender is subject to this Act;
- (e) negotiating or arranging, or attempting to negotiate or arrange, a mortgage on behalf of another person;
- (f) any other prescribed activities;

“**engaged**”, in relation to a mortgage brokerage, means

- (a) employed by the mortgage brokerage to provide mortgage services on its behalf, or
- (b) acting in an independent contractor relationship with the mortgage brokerage to provide mortgage services on its behalf;

“**false or misleading statement**” includes an omission in relation to information that is required or authorized to be provided under this Act;

“**issue**”, in relation to a licence, includes renew;

“**licence**” means a licence issued under Part 2 [*Licensing*];

“**licensee**” means a person who holds a licence;

“mortgage” means

- (a) any charge on real property or on an interest in real property for the purpose of securing the repayment of money or other consideration, or
- (b) a mortgage, as defined in paragraph (a), of a mortgage, as defined in paragraph (a);

“mortgage broker” means an individual licensed as a mortgage broker;

“mortgage brokerage” means a person licensed as a mortgage brokerage;

“mortgage lender” means a person licensed as a mortgage lender;

“mortgage lending” means performing any of the following activities or holding oneself out as doing so:

- (a) lending money on the security of real property;
- (b) any other prescribed activities;

“mortgage services” means

- (a) dealing in mortgages,
- (b) trading in mortgages,
- (c) mortgage lending, or
- (d) administering mortgages;

“person” includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust or fund,
- (d) an association, syndicate, organization or other organized group of persons, and
- (e) an individual or other person in that person’s capacity as a trustee, executor, administrator or personal or other legal representative;

“prescribed” means prescribed by regulation of the Lieutenant Governor in Council;

“principal broker” means an individual licensed as a principal broker;

“related” means,

- (a) in relation to a mortgage brokerage, a principal broker or mortgage broker who is licensed in relation to the mortgage brokerage, and
- (b) in relation to a principal broker or mortgage broker, the mortgage brokerage in relation to which the principal broker or mortgage broker is licensed;

“remuneration” includes any form of remuneration, including any commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly;

“**rules**” means rules made by the Authority under section 63;

“**superintendent**” means the Superintendent of Mortgage Services appointed under section 2 (1);

“**trading in mortgages**” means performing any of the following activities or holding oneself out as doing so:

- (a) soliciting another person to buy, sell or exchange mortgages;
- (b) buying, selling or exchanging mortgages on behalf of another person;
- (c) buying, selling or exchanging mortgages on the person’s own behalf;
- (d) any other prescribed activities.

Superintendent of Mortgage Services

- 2 (1) The board of directors of the Authority must appoint a Superintendent of Mortgage Services in accordance with section 10 [*statutory decision makers*] of the *Financial Services Authority Act*.
- (2) The superintendent may exercise the powers and must perform the duties vested in or imposed on the superintendent under this Act.
- (3) The superintendent may, in writing, delegate any of the superintendent’s powers or duties under this Act.
- (4) The superintendent may impose conditions or restrictions on any delegation made under subsection (3).

PART 2 – LICENSING

Division 1 – Licence Requirements

Requirement for licence to provide mortgage services

- 3 (1) A person must not carry on the business of providing mortgage services unless the person is
 - (a) licensed under this Part as a mortgage brokerage to carry on the business of providing those mortgage services, or
 - (b) exempted by section 4 or the regulations from the requirement to be licensed under this Part as a mortgage brokerage.
- (2) An individual must not provide mortgage services for direct or indirect remuneration, as an employee or otherwise, unless the individual is
 - (a) licensed under this Part as a principal broker or mortgage broker to provide those mortgage services and is acting on behalf of a mortgage brokerage, or
 - (b) exempted by section 4 or the regulations from the requirement to be licensed under this Part as a principal broker or mortgage broker.

- (3) A person must not provide the mortgage service of mortgage lending unless the person is
- (a) licensed under this Part as a mortgage lender,
 - (b) licensed under this Part as a mortgage brokerage to carry on the business of providing that mortgage service,
 - (c) licensed under this Part as a principal broker or mortgage broker to provide that mortgage service and is acting on behalf of a mortgage brokerage, or
 - (d) exempted by section 4 or the regulations from the requirement to be licensed under this Part as a mortgage lender.

Exemptions

- 4 In addition to any exemption provided by regulation, the following persons are exempted from the requirements to be licensed under this Part:
- (a) insurance companies;
 - (b) savings institutions;
 - (c) a director, officer or employee of a person referred to in paragraph (a) or (b), in respect of mortgage services provided on behalf of that person;
 - (d) any person acting for the government of Canada or the government of a province or for an agency of any of those governments, in respect of mortgage services provided on behalf of that government or agency;
 - (e) a lawyer in respect of mortgage services that are incidental to legal services provided by the lawyer;
 - (f) a person acting under the authority of a court;
 - (g) a trustee in bankruptcy, custodian, receiver, receiver manager or liquidator who is appointed under a federal or provincial enactment, in respect of mortgage services provided by the person in that capacity;
 - (h) an executor or administrator of an estate, in respect of mortgage services provided by the person to the estate in the person's capacity as executor or administrator;
 - (i) a trustee, in respect of mortgage services provided under the terms of a will or marriage settlement.

No recovery of remuneration by person required to be licensed

- 5 No action may be brought or continued for remuneration in relation to mortgage services unless, at the time the mortgage services were provided, the person claiming the remuneration was
- (a) licensed under this Part to provide those mortgage services, or
 - (b) not required to be licensed under this Part to provide those mortgage services.

Effect of failure to be licensed

- 6 A mortgage is not rendered void, voidable or unenforceable solely because of the failure of any person to be licensed under this Part or because of any defect or irregularity in
- (a) an application for a new licence, or
 - (b) an application for renewal, amendment or reinstatement of an existing licence.

Effect of failure to provide disclosure statement or information statement

- 7 A mortgage is not rendered void, voidable or unenforceable solely because of
- (a) a failure to provide a disclosure statement or information statement in accordance with the rules, or
 - (b) a defect, omission or irregularity in a disclosure statement or information statement.

Effect of failure to provide information statement – certain transactions

- 8 (1) Subsection (2) applies if a licensee
- (a) does any of the following:
 - (i) arranges a mortgage in which another person is to be the mortgagee;
 - (ii) arranges the sale of a mortgagee's interest in a mortgage from one person to another;
 - (iii) sells the licensee's own interest as mortgagee under a mortgage to another person, and
 - (b) is required by the rules to provide the other person with an information statement in respect of the mortgage transaction.
- (2) Despite any applicable agreement, an intended mortgagee or purchaser of a mortgage is not obligated to advance funds under the mortgage transaction unless the licensee provides the information statement in accordance with the rules.

Division 2 – Licence Levels, Categories and Relationships

Licence levels and categories

- 9 (1) The following licence levels are established for the purposes of this Act:
- (a) a mortgage brokerage licence, which authorizes a mortgage brokerage to carry on the business of providing mortgage services through a principal broker or mortgage broker;

- (b) a principal broker licence, which authorizes a principal broker to act for a mortgage brokerage for all purposes under this Act and to carry out the responsibilities referred to in section 10 (2) [*mortgage brokerage must have principal broker*];
 - (c) a mortgage broker licence, which authorizes a mortgage broker to provide mortgage services under the supervision of a principal broker;
 - (d) a mortgage lender licence, which authorizes a mortgage lender to provide the mortgage service of mortgage lending.
- (2) An individual may be licensed at any licence level.
 - (3) Unless permitted by the regulations, a person who is not an individual may be licensed only as
 - (a) a mortgage brokerage, or
 - (b) a mortgage lender.
 - (4) Subject to the rules, a mortgage brokerage must have a mortgage brokerage licence for each branch office from which it operates.
 - (5) Within the licence levels under subsection (1), a person may be licensed within a category that is established by the rules on the basis of the mortgage services permitted to be provided under the licence.

Mortgage brokerage must have principal broker

- 10** (1) Subject to the rules, a mortgage brokerage
 - (a) must have one or more principal brokers licensed in relation to the mortgage brokerage, and
 - (b) may only provide mortgage services that are permitted by the licence of a principal broker who is licensed in relation to the mortgage brokerage.
- (2) A principal broker licensed in relation to a mortgage brokerage acts for the mortgage brokerage for all purposes under this Act, and is responsible for
 - (a) the exercise of the rights conferred on the mortgage brokerage by its licence,
 - (b) the performance of the duties imposed on the mortgage brokerage by its licence, and
 - (c) the control and conduct of the mortgage brokerage's mortgage business, including supervision of the mortgage brokers who are licensed in relation to the mortgage brokerage.

**Relationships between mortgage brokerages,
principal brokers and mortgage brokers**

- 11** (1) Subject to subsection (2), a principal broker or mortgage broker must be
 - (a) licensed in relation to a single mortgage brokerage, and
 - (b) engaged by that mortgage brokerage.

- (2) If permitted by the rules, a principal broker may be licensed in relation to more than one mortgage brokerage if the mortgage brokerages are affiliated within the meaning of the rules.
- (3) A principal broker or mortgage broker
 - (a) must not provide mortgage services other than on behalf of the mortgage brokerage in relation to which the principal broker or mortgage broker is licensed, and
 - (b) is not entitled to and must not accept remuneration in relation to mortgage services from any person other than the mortgage brokerage in relation to which the principal broker or mortgage broker is licensed.
- (4) A related licensee of a mortgage brokerage is, when acting for the mortgage brokerage, subject to any restrictions and conditions applicable to the mortgage brokerage licence in relation to which the related licensee is acting.
- (5) A mortgage brokerage
 - (a) must not provide mortgage services unless the services are provided on behalf of the mortgage brokerage by a principal broker or mortgage broker who is licensed in relation to and engaged by the mortgage brokerage, and
 - (b) must not engage or allow a licensee to provide mortgage services on behalf of the mortgage brokerage if the licensee is licensed in relation to another mortgage brokerage unless the licensee is a principal broker licensed under subsection (2) in relation to both mortgage brokerages and engaged by both mortgage brokerages.

Mortgage brokerage responsibility for training and supervision

- 12**
- (1) In this section, “**train or supervise**” means to train or supervise in respect of mortgage services or the provision of mortgage services.
 - (2) A mortgage brokerage must ensure that the following individuals do not train or supervise principal brokers and mortgage brokers who are licensed in relation to the mortgage brokerage, unless the individual is licensed in relation to that mortgage brokerage:
 - (a) a partner, or a director, officer or shareholder of a corporation that is a partner, in the case of a mortgage brokerage that is a partnership;
 - (b) a director, officer or shareholder of the corporation, in the case of a mortgage brokerage that is a corporation;
 - (c) a sole proprietor, in the case of a sole proprietorship;
 - (d) an individual who directly or indirectly controls the mortgage brokerage, in any other case.

Division 3 – Licensing Process

Applications in relation to licences

- 13** In this Division, unless otherwise provided, an application for a licence includes
- (a) an application for a new licence, and
 - (b) an application for renewal, amendment or reinstatement of an existing licence.

How to make an application

- 14**
- (1) A person may apply for a new licence, or for the renewal, amendment or reinstatement of a licence, by submitting to the superintendent an application
 - (a) in the form and manner required by the superintendent, and
 - (b) containing the information required by the superintendent.
 - (2) The application must be accompanied by the following:
 - (a) any other information or records required by the superintendent;
 - (b) any prescribed fee in relation to the application;
 - (c) any prescribed fee in relation to a licence.
 - (3) The superintendent may, on behalf of the Authority, refund all or part of a fee referred to in subsection (2) (c) if the licence in respect of which the application is made is not issued, amended or reinstated, as the case may be.
 - (4) In addition to any other information required by the superintendent,
 - (a) an application for a mortgage brokerage licence must identify the individuals proposed to act as principal brokers in relation to the mortgage brokerage, and
 - (b) an application for a principal broker or mortgage broker licence must identify the mortgage brokerage in relation to which the applicant proposes to be licensed.
 - (5) An individual who is licensed as a mortgage brokerage and qualified to be licensed as a principal broker is deemed to be licensed as a principal broker in relation to the mortgage brokerage unless an application under subsection (1) in relation to the mortgage brokerage licence indicates that the individual will not be acting in that capacity.
 - (6) The superintendent may refuse to accept an application until any amount owed to the Authority by the applicant is paid.

- (7) If a person submits an application for the renewal of the person's licence on or after the earlier of the dates referred to in section 17 (1) (a) and (b) [*continuance of licence during renewal application process*], the superintendent may accept the application for renewal instead of requiring the person to submit an application for a new licence.
- (8) If a person's licence is inoperative or suspended, the superintendent may authorize the person to apply for the renewal of the licence instead of applying for the reinstatement of the licence or for a new licence.

Qualifications for obtaining licence

- 15** (1) An applicant for a new mortgage brokerage licence, principal broker licence or mortgage broker licence or for the renewal of one of those licences must satisfy the superintendent that the applicant meets the following applicable requirements:
- (a) the applicant is of good reputation and suitable to hold the licence for which the applicant is applying;
 - (b) in the case of an applicant for a new licence who is an individual, the applicant
 - (i) is at least 19 years of age, and
 - (ii) meets the educational and experience requirements established by the rules;
 - (c) in the case of an applicant for a licence renewal who is an individual, the applicant meets the educational requirements specified by the superintendent;
 - (d) in the case of an applicant who is not an individual, the following individuals, as applicable, are of good reputation:
 - (i) if the applicant is a partnership or corporation, the applicant's partners or directors and officers;
 - (ii) if a partner of the applicant is a corporation, the corporation's directors and officers;
 - (iii) if the applicant is not a partnership or corporation, the individuals who directly or indirectly control the applicant;
 - (e) in all cases, the applicant has not, for a reason that reveals the applicant as unfit to be a licensee,
 - (i) been refused a licence under mortgage services, real estate, insurance or securities legislation in British Columbia or another jurisdiction,
 - (ii) held a licence that was suspended or cancelled under mortgage services, real estate, insurance or securities legislation in British Columbia or another jurisdiction,

- (iii) been disciplined by a professional body, or
 - (iv) been convicted of an offence;
 - (f) in all cases, the applicant meets any other qualification requirements established by the rules.
- (2) An applicant for a new mortgage lender licence or for the renewal of such a licence must satisfy the superintendent that the applicant meets the qualification requirements established by the rules.

Superintendent’s powers respecting evaluation of applications

- 16 The superintendent may, to the extent the superintendent considers necessary for the evaluation of an application under section 14 [*how to make an application*],
- (a) conduct an investigation, or
 - (b) require the applicant to provide the superintendent with additional information, documents or verification.

Continuance of licence during renewal application process

- 17 (1) A licence continues in effect beyond the end of its term if a licensee has applied for the renewal of the licence in accordance with section 14 [*how to make an application*] before the earlier of
- (a) the end of the licence term, and
 - (b) if applicable, a date established under the rules.
- (2) The licence continues in effect until the superintendent notifies the licensee of the superintendent’s decision with respect to the application.

Refusal to issue or renew licence

- 18 (1) If an applicant does not satisfy the superintendent respecting the qualification requirements under section 15 [*qualifications for obtaining licence*], the superintendent may refuse to issue the licence.
- (2) In addition, in the case of an applicant for a new mortgage brokerage licence, the superintendent may refuse to issue the licence if the superintendent considers that the applicant has a legal name or trade name that is likely to confuse or mislead the public.
- (3) Before refusing to issue a licence, the superintendent must give notice to the applicant and provide the applicant with an opportunity to be heard respecting the matter.
- (4) If the superintendent refuses to issue a licence, the superintendent must
- (a) provide the applicant with written notice of the refusal and the reasons for it, and
 - (b) advise the applicant of the right to appeal under Division 6 [*Appeals to Financial Services Tribunal*] of Part 3.

- (5) The superintendent may, by order, require the applicant to pay the expenses, or part of the expenses, incurred by the Authority in relation to the applicant's opportunity to be heard under subsection (3).
- (6) Amounts required to be paid under subsection (5)
 - (a) must be for the matters, and must not exceed the amounts, set out in the regulations, and
 - (b) may include remuneration expenses for employees, officers or agents of the Authority engaged in providing the opportunity to be heard.

Temporary licences

- 19** The superintendent may issue a temporary licence that
- (a) requires the licensee to meet one or more specified conditions within a specified period of time or by a specified date, and
 - (b) is cancelled, effective at the end of that specified period or on that specified date, if the conditions are not met by that time.

Conditions and restrictions in relation to specific licence

- 20** (1) Subject to this section, the superintendent may, as the superintendent considers necessary or desirable in relation to a specific licence,
- (a) impose conditions and restrictions on the licence,
 - (b) vary a condition or restriction applicable to the licence, or
 - (c) remove a condition or restriction applicable to the licence.
- (2) The powers under subsection (1) (a) or (b) to impose or vary a condition or restriction may be exercised only
- (a) on or before the date on which the licence is issued or reinstated, with effect on and after that date, or
 - (b) on the written application or with the written consent of the licensee.
- (3) Before imposing or varying a condition or restriction as referred to in subsection (2) (a), the superintendent must give notice to the applicant and provide the applicant with an opportunity to be heard respecting the matter.
- (4) If the superintendent imposes or varies a condition or restriction as referred to in subsection (2) (a), the superintendent must
- (a) provide the applicant with written notice of the condition or restriction and the reasons for it, and
 - (b) advise the applicant of the right to appeal under Division 6 [*Appeals to Financial Services Tribunal*] of Part 3.
- (5) The power under subsection (1) (c) to remove a condition or restriction may be exercised at any time on the superintendent's own initiative or on the written application of the licensee.

- (6) The superintendent may, by order, require the applicant to pay the expenses, or part of the expenses, incurred by the Authority in relation to the applicant's opportunity to be heard under subsection (3).
- (7) Amounts required to be paid under subsection (6)
 - (a) must be for the matters, and must not exceed the amounts, set out in the regulations, and
 - (b) may include remuneration expenses for employees, officers or agents of the Authority engaged in providing the opportunity to be heard.

**Amendments to reflect conditions
and restrictions on related licences**

- 21 (1) The superintendent may amend the licences of the related licensees of a mortgage brokerage to reflect the conditions and restrictions applicable to the mortgage brokerage licence if
 - (a) new licence conditions or restrictions are applied to the mortgage brokerage licence, or
 - (b) existing conditions or restrictions on the mortgage brokerage licence are varied or removed.
- (2) The superintendent may amend the licence of a mortgage brokerage related to a principal broker to reflect the conditions and restrictions applicable to the principal broker licence if
 - (a) new licence conditions or restrictions are applied to the principal broker licence, or
 - (b) existing conditions or restrictions on the principal broker licence are varied or removed.

Conditions and restrictions are part of licence

- 22 A condition or restriction that applies to a licence is part of the licence in respect of which the condition or restriction applies, whether included in the licence, attached to it or contained in a separate document.

Licence amendments

- 23 The superintendent may amend a licence in any of the following circumstances:
 - (a) on the written application or with the written consent of the licensee;
 - (b) as provided in section 20 [*conditions and restrictions in relation to specific licence*];
 - (c) as provided in section 21 [*conditions and restrictions on related licences*];

- (d) to give effect to an order under Division 2 [*Discipline Proceedings Relating to Licensees*] or Division 3 [*Complaints, Investigations and Proceedings Relating to Unlicensed Persons*] of Part 3;
- (e) to give effect to a rule under section 63 (2) (b) [*conditions and restrictions applicable to licences*].

Register of licensees

- 24** (1) The superintendent must maintain a register of licensees that contains the following information for each licensee:
- (a) the name and contact information of the licensee;
 - (b) the level and category of licence held by the licensee;
 - (c) any other information specified by the superintendent.
- (2) The superintendent must make publicly accessible
- (a) the register of mortgage brokerages, principal brokers and mortgage brokers, and
 - (b) subject to the rules, the register of mortgage lenders.

Division 4 – Inoperative, Suspended and Cancelled Licences

When licences may become inoperative, suspended or cancelled

- 25** (1) A licence is subject to automatically becoming inoperative in accordance with
- (a) section 28 (1) [*licensee ceases to be engaged by mortgage brokerage*], or
 - (b) section 29 (1) or (3) [*effect on related licensees if licence becomes inoperative, suspended or cancelled*].
- (2) A licence is subject to being suspended or cancelled
- (a) automatically, in accordance with section 19 (b) [*cancellation of temporary licences*], or
 - (b) by order of the superintendent under
 - (i) section 30 [*cancellation or suspension of licence if qualification not met*], or
 - (ii) Division 2 [*Discipline Proceedings Relating to Licensees*] of Part 3.

Restriction on licensee if licence inoperative or suspended

- 26** A licensee must not provide mortgage services at any time that the licensee's licence is inoperative or suspended.

Effects if licence inoperative, suspended or cancelled

- 27 (1) A person whose licence becomes inoperative or is suspended or cancelled must immediately cease to hold themselves out as a licensee.
- (2) The superintendent may
- (a) impound the records of a mortgage brokerage whose licence has become inoperative or has been suspended or cancelled, and
 - (b) retain those records for a period of 6 years or until the licence is reinstated, whichever is earlier.

Licence inoperative if licensee ceases to be engaged by mortgage brokerage

- 28 (1) If a principal broker or mortgage broker ceases to be engaged by the mortgage brokerage in relation to which the individual is licensed, both of the following occur, effective as of the time that the individual ceases to be engaged by the mortgage brokerage:
- (a) the individual's licence becomes inoperative;
 - (b) the individual ceases to be licensed in relation to the mortgage brokerage.
- (2) On the application of an individual whose licence has become inoperative under subsection (1), the superintendent may, if satisfied that the individual continues to be otherwise qualified for the licence,
- (a) reinstate the licence in its previous form if the individual is engaged again by the same mortgage brokerage, subject to any applicable amendments under section 21 [*conditions and restrictions on related licences*], or
 - (b) reinstate the licence with necessary amendment if the individual is engaged by another mortgage brokerage.

Effect on related licensees if licence inoperative, suspended or cancelled

- 29 (1) If a mortgage brokerage licence becomes inoperative or is suspended or cancelled, the licence of any related licensee becomes inoperative, effective as of the time that the mortgage brokerage licence becomes inoperative or is suspended or cancelled.
- (2) The licence of a related licensee that becomes inoperative under subsection (1) is automatically reinstated if
- (a) the related mortgage brokerage licence is reinstated, and
 - (b) the related licensee is licensed in relation to, and engaged by, the mortgage brokerage at the time of that reinstatement.

- (3) Subject to the rules, if the licence of the only principal broker for a mortgage brokerage becomes inoperative or is suspended or cancelled, the licences of the mortgage brokerage and its related mortgage brokers become inoperative, effective as of the time that the principal broker licence becomes inoperative or is suspended or cancelled.
- (4) If the principal broker licence referred to in subsection (3) is reinstated in relation to the same mortgage brokerage, the following licences are automatically reinstated:
 - (a) the mortgage brokerage licence;
 - (b) the licences of the related mortgage brokers who are licensed in relation to, and engaged by, the mortgage brokerage at the time of that reinstatement.
- (5) For certainty, a licence that is reinstated under this section is subject to section 11 (4) [*licensee is subject to restrictions and conditions applicable to mortgage brokerage licence*].

Cancellation or suspension of licence if qualification not met

- 30**
- (1) If an applicant for a new licence or a licence renewal made a false or misleading statement in or in relation to their application, respecting a matter referred to in section 15 [*qualifications for obtaining licence*], the superintendent may, by order,
 - (a) cancel the licence, or
 - (b) suspend the licence until satisfied that the licensee is qualified to hold the licence.
 - (2) Before cancelling or suspending a licence under this section, the superintendent must give notice to the licensee and provide the licensee with an opportunity to be heard respecting the matter.
 - (3) If the superintendent makes an order under this section, the superintendent must
 - (a) provide the licensee with written notice of the cancellation or suspension and the reasons for it, and
 - (b) advise the licensee of the right to appeal under Division 6 [*Appeals to Financial Services Tribunal*] of Part 3.
 - (4) The superintendent may, by order, require the applicant to pay the expenses, or part of the expenses, incurred by the Authority in relation to the applicant's opportunity to be heard under subsection (2).

- (5) Amounts required to be paid under subsection (4)
 - (a) must be for the matters, and must not exceed the amounts, set out in the regulations, and
 - (b) may include remuneration expenses for employees, officers or agents of the Authority engaged in providing the opportunity to be heard.

Division 5 – Duties

Duty to act in good faith

- 31** A licensee must act fairly, honestly and in good faith when providing mortgage services.

Records

- 32** A mortgage brokerage must maintain proper books, accounts and other records in accordance with the rules and must keep those records in British Columbia.

Trust accounts

- 33** (1) A licensee must not maintain a trust account unless authorized by the superintendent.
- (2) If a licensee is authorized under subsection (1) to maintain a trust account, the licensee
 - (a) may maintain one or more interest bearing trust accounts with one or more savings institutions in British Columbia, and
 - (b) must maintain those trust accounts in accordance with the rules.
- (3) A trust account referred to in subsection (2) must be designated as a trust account both in the licensee's records and in the records of the savings institution holding the account.

Wrongful taking

- 34** A licensee, or an unlicensed person who is providing mortgage services despite not being licensed as required by section 3 and who is not exempted from that requirement, must not do any of the following when providing mortgage services:
 - (a) misappropriate or wrongfully convert money or other property that was received by the licensee or the unlicensed person in relation to the mortgage services;
 - (b) intentionally fail to account for or pay over, within a reasonable time, any money or other property that, in relation to the mortgage services,
 - (i) was received by the licensee or the unlicensed person, and
 - (ii) belongs to one or more other persons.

Deceptive dealing

- 35** A licensee, or an unlicensed person who is providing mortgage services despite not being licensed as required by section 3 and who is not exempted from that requirement, must not do any of the following when providing mortgage services:
- (a) make an intentional misrepresentation, by word or conduct or in any other manner, of a material fact in relation to mortgage services, or make an intentional omission to disclose such a material fact;
 - (b) engage in a course of conduct or business that is intended to deceive another person about the nature of the mortgage services;
 - (c) make a representation or engage in any conduct that has the capability, tendency or effect of deceiving or misleading another person in relation to mortgage services;
 - (d) make a promise or representation about the future that is beyond reasonable expectation and not made in good faith.

**PART 3 – DISCIPLINE PROCEEDINGS AND OTHER
REGULATORY ENFORCEMENT**

Division 1 – Conduct, Complaints and Investigations Relating to Licensees

Definition

- 36** In this Part, “licensee” includes a former licensee in relation to matters that occurred while the person was a licensee.

Misconduct by licensee

- 37** (1) A licensee commits misconduct if the licensee does one or more of the following:
- (a) contravenes this Act, the regulations or the rules;
 - (b) breaches a restriction or condition of the licence;
 - (c) demonstrates incompetence in performing any activity for which a licence is required;
 - (d) fails or refuses to cooperate with an investigation under section 39 *[investigations of licensees]*;
 - (e) fails to comply with an order of the superintendent;
 - (f) fails to comply with an undertaking that the licensee gave under section 56 *[undertakings]*;
 - (g) makes or allows to be made a false or misleading statement in a record that is required or authorized to be provided, submitted, filed, delivered or produced under this Act.

- (2) A licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgment of the superintendent,
 - (a) is contrary to the best interests of the public,
 - (b) undermines public confidence in the mortgage industry, or
 - (c) brings the mortgage industry into disrepute.
- (3) A licensee who is not an individual may be found to have committed misconduct or conduct unbecoming a licensee if any of the following individuals, whether or not the individual is a licensee, do one or more of the things referred to in subsection (1) or (2):
 - (a) in the case of a licensee who is a partnership or corporation, a partner, officer, director or controlling shareholder of the licensee;
 - (b) in any other case, an individual who directly or indirectly controls the licensee.

Complaints against licensee

- 38**
- (1) A person may make a complaint to the superintendent if the person believes that a licensee may have committed misconduct or conduct unbecoming a licensee.
 - (2) A complaint must be made in writing and must include particulars.
 - (3) Unless a complaint is made anonymously, the superintendent must
 - (a) acknowledge receipt of the complaint, and
 - (b) on disposition of the matter, inform the complainant of the disposition.

Investigations of licensees

- 39**
- (1) The superintendent may conduct an investigation to determine whether a licensee may have committed misconduct or conduct unbecoming a licensee.
 - (2) For the purposes of an investigation, the superintendent may investigate
 - (a) the affairs of the licensee,
 - (b) the records, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to the licensee,
 - (c) the property, assets or things owned, acquired or alienated in whole or in part by the licensee or by any person acting on behalf of or as agent for the licensee,
 - (d) the liabilities, debts, undertakings and obligations, and the financial or other conditions, of or related to the licensee, and
 - (e) the relationship that may at any time exist or have existed between the licensee and any other person because of
 - (i) investments, purchases or commissions promised, secured or paid,

- (ii) interests held or acquired,
 - (iii) the loaning or borrowing of money, security instruments or other property,
 - (iv) the purchase or sale of security instruments or other property,
 - (v) the transfer, negotiation or holding of security instruments, interlocking directorates, common control or undue influence or control, or
 - (vi) any other reason.
- (3) For the purposes of an investigation, the superintendent may do one or more of the following:
- (a) at any time during business hours, inspect and remove or copy records that are located on the business premises of any of the following persons:
 - (i) a licensee or former licensee;
 - (ii) in the case of a licensee or former licensee who is a partnership or corporation, a partner, officer, director or controlling shareholder of the licensee or former licensee;
 - (iii) in the case of a licensee or former licensee who is not an individual, partnership or corporation, an individual who directly or indirectly controls or controlled the licensee or former licensee;
 - (b) require a person referred to in paragraph (a) to
 - (i) answer, or meet with the superintendent to answer, inquiries relating to the investigation, and
 - (ii) produce information, records or other things in the person's possession or control for examination by the superintendent.
- (4) A person referred to in subsection (3) (a) must not withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purposes of an investigation under this section.

Witnesses in investigations

- 40**
- (1) In this section “**investigation**” means an investigation under section 39.
 - (2) For the purposes of an investigation, the superintendent has the same power that the Supreme Court has for the trial of civil actions
 - (a) to summon and enforce the attendance of witnesses,
 - (b) to compel witnesses to give evidence on oath or in any other manner, and
 - (c) to compel witnesses to produce records and things.

- (3) On application to the Supreme Court, a person is liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court if the person fails or refuses
 - (a) to attend,
 - (b) to take an oath,
 - (c) to answer questions, or
 - (d) to produce the records or things in that person's custody or possession.
- (4) Section 34 (5) [*financial institution records*] of the *Evidence Act* does not apply for the purposes of an investigation.
- (5) A person giving evidence in an investigation may be represented by legal counsel.

Order by justice for search and seizure

- 41**
- (1) The superintendent may apply to a justice for an order authorizing the seizure of records or other evidence, wherever located, belonging or relating to a licensee from the person named in the order, if there are reasonable grounds to believe that the licensee may have committed misconduct or conduct unbecoming a licensee.
 - (2) An application under subsection (1) may be made without notice to any other person unless otherwise ordered by the justice.
 - (3) An application under subsection (1) must be supported by an affidavit stating
 - (a) the grounds for believing that the licensee may have committed misconduct or conduct unbecoming a licensee, and
 - (b) the grounds for believing that the seizure will produce evidence relevant to that matter.
 - (4) On an application under subsection (1), the justice may make an order
 - (a) designating the person who will conduct the seizure and authorizing that person to conduct it,
 - (b) setting the time and place the seizure will take place, and
 - (c) giving any other directions necessary to carry out the seizure.
 - (5) This section does not apply to records or other evidence subject to solicitor-client privilege.

Division 2 – Discipline Proceedings Relating to Licensees

Notice of discipline hearing

- 42** (1) Following an investigation under section 39 [*investigations of licensees*] or the cancellation of an administrative penalty under section 59 (4) (b) [*administrative penalties*], the superintendent may issue a notice to the affected licensee and conduct a discipline hearing.
- (2) The notice must
- (a) describe the nature of the complaint or other matter that is to be the subject of the discipline hearing,
 - (b) specify the time and place set for commencement of the hearing, and
 - (c) advise the licensee that the superintendent is entitled to proceed with the hearing in the absence of the licensee.
- (3) The notice must be given to the licensee, at least 21 days before the date set for the discipline hearing, as follows:
- (a) in the case of notice to a current licensee, by personal service or by delivery in accordance with the rules;
 - (b) in the case of notice to a former licensee, by personal service;
 - (c) as an alternative in any case, in accordance with an order under section 74 [*substituted service*].
- (4) Subject to the regulations, the superintendent may publish each notice issued under subsection (1).
- (5) The superintendent must provide a copy of a notice published under subsection (4) to any person requesting the copy, on payment of the prescribed fee.

Consent orders

- 43** (1) At any time before the time set for the discipline hearing, the licensee who received a notice under section 42 may deliver to the superintendent a written proposal that includes the licensee's consent to the superintendent making a specified order under section 45 [*discipline orders*] without conducting a hearing.
- (2) If a proposal under subsection (1) is received, the superintendent
- (a) may postpone the time set for commencing the hearing until the proposal has been dealt with in accordance with this section, and
 - (b) if the hearing is to be conducted after the postponement, must give notice of the time and place of the hearing in accordance with section 42 (3).
- (3) The superintendent may accept or reject the proposal.

- (4) If the superintendent accepts the proposal,
 - (a) the superintendent may make the proposed order, and
 - (b) no further proceedings may be taken under this Division or Division 7 *[Administrative Penalties]* with respect to the matter, other than to enforce the terms of the order as proposed or to deal with a contravention of the order.
- (5) Regardless of whether a proposal has been accepted or rejected, the proposal may not be used, without the consent of the licensee who made the proposal,
 - (a) in any proceeding under this Act with respect to the matter, other than as referred to in subsection (4) (b), or
 - (b) in any civil proceeding with respect to the matter.

Discipline hearings

- 44 (1) If notice of a discipline hearing has been given in accordance with section 42 (3), the superintendent may proceed with the discipline hearing, whether or not the licensee appears in person and whether or not the licensee is represented by legal counsel at the hearing.
- (2) For the purposes of a discipline hearing, sections 34 (3) and (4) *[power to compel witnesses and order disclosure]*, 48 *[maintenance of order at hearings]* and 49 *[contempt proceeding for uncooperative witness or other person]* of the *Administrative Tribunals Act* apply to the superintendent.
- (3) The superintendent may conduct a discipline hearing by way of written submissions or oral hearing, or a combination of both.

Discipline orders

- 45 (1) In this section, “**contravention**” means an act or omission that is the subject of the determination under subsection (2) (a) that the licensee has committed misconduct or conduct unbecoming a licensee.
- (2) After a discipline hearing, the superintendent must
 - (a) act under this section if the superintendent determines that the licensee has committed misconduct or conduct unbecoming a licensee, or
 - (b) in any other case, dismiss the matter.
- (3) If subsection (2) (a) applies, the superintendent must, by order, do one or more of the following:
 - (a) reprimand the licensee;
 - (b) suspend the licensee’s licence for the period of time the superintendent considers appropriate or until specified conditions are fulfilled;
 - (c) cancel the licensee’s licence;
 - (d) impose restrictions or conditions on the licensee’s licence or vary any restrictions or conditions applicable to the licence;

- (e) require the licensee to cease or to carry out any specified activity related to the licensee's mortgage business;
 - (f) require the licensee to enrol in and complete a course of studies or training specified in the order;
 - (g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;
 - (h) require the licensee to pay amounts in accordance with section 46 (1) and (2) [*recovery of enforcement expenses*];
 - (i) require the licensee to pay a discipline penalty in an amount of
 - (i) not more than \$500 000, in the case of a mortgage brokerage or former mortgage brokerage, or
 - (ii) not more than \$250 000, in any other case;
 - (j) require the licensee to pay an additional penalty up to the amount of the remuneration accepted by the licensee for the mortgage services in respect of which the contravention occurred.
- (4) A discipline penalty imposed under subsection (3) (i) may be imposed for each contravention.
- (5) Despite subsections (3) (i) and (j) and (4), if the discipline hearing was conducted following the cancellation of an administrative penalty under section 59 (4) (b) [*administrative penalties*], the sum of the discipline penalty and any additional penalty for a contravention must not be more than the highest amount of the administrative penalty indicated for the contravention in the notice of administrative penalty under section 59 (1).
- (6) An order under subsection (3) may provide that the superintendent may suspend or cancel the licence under subsection (7) if
- (a) the licensee fails to comply with the order, or
 - (b) the licensee fails to comply with one or more specified restrictions or conditions of the licensee's licence.
- (7) If the licensee fails to comply as specified by a provision under subsection (6), the superintendent may, by order, suspend or cancel the licensee's licence without giving the licensee further notice or the opportunity to be heard.
- (8) The superintendent may, by order, on the application of or with the consent of the licensee subject to the order, vary or rescind an order made under this section.

Enforcement expenses and discipline penalties

- 46** (1) The superintendent may, by an order under section 45 (3) (h), require the licensee to pay the expenses, or part of the expenses, incurred by the Authority in relation to either or both of the investigation and the discipline hearing to which the order relates.

- (2) Amounts required to be paid under subsection (1)
 - (a) must be for the matters, and must not exceed the amounts, set out in the regulations, and
 - (b) may include remuneration expenses for employees, officers or agents of the Authority engaged in the investigation or discipline hearing.
- (3) Money received by the Authority on account of a discipline penalty under section 45 (3) (i) or, subject to the regulations, an additional penalty under section 45 (3) (j) may be expended by the Authority only for the purpose of educating the public, and licensees and other participants in the mortgage industry in British Columbia, about
 - (a) the operation and regulation of the industry, and
 - (b) issues related to mortgages and mortgage services.
- (4) An amount ordered to be paid under section 45 (3) (h), (i) or (j) is a debt owing to the Authority and may be recovered as such.

Orders in urgent circumstances relating to licensees

- 47**
- (1) The superintendent may act under this section if
 - (a) the superintendent believes on reasonable grounds that there has been conduct in respect of which the superintendent could make an order under section 45 [*discipline orders*] against a licensee, and
 - (b) the superintendent considers that
 - (i) the length of time that would be required to complete an investigation or hold a discipline hearing, or both, in order to make such an order would be detrimental to the public interest, and
 - (ii) it is in the public interest to make an order under this section against the licensee.
 - (2) If the circumstances referred to in subsection (1) apply, the superintendent may, by order, do one or more of the following:
 - (a) suspend the licensee's licence;
 - (b) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
 - (c) require the licensee to cease or to carry out any specified activity related to the licensee's mortgage business.
 - (3) Despite any other provision of this Division, the superintendent may make an order under subsection (2)
 - (a) whether or not notice of a discipline hearing has been issued under section 42 [*notice of discipline hearing*],
 - (b) without giving notice to the licensee, and
 - (c) without providing the licensee an opportunity to be heard.

- (4) The superintendent may, by order,
 - (a) on the superintendent's own initiative, rescind an order made under this section, or
 - (b) on the application of or with the consent of the licensee subject to the order, vary or rescind an order made under this section.
- (5) Promptly after an order under subsection (2) is made, the superintendent must give to the licensee
 - (a) a copy of the order and written reasons for it, and
 - (b) written notice that a discipline hearing may be held respecting the matter.
- (6) Without affecting the authority of the superintendent to initiate a discipline hearing, a licensee who is the subject of an order under subsection (2) may require a discipline hearing to be held by delivering written notice to the superintendent.
- (7) Within a reasonable time after receiving a written notice under subsection (6), the superintendent must issue a notice under section 42, subject to the difference that the notice must be issued at least 14 days before the date set for the discipline hearing, rather than 21 days, unless the licensee agrees to a shorter period.
- (8) After a discipline hearing respecting a licensee who is subject to an order under this section, the superintendent must
 - (a) rescind the order under this section and make an order under section 45, if the superintendent determines that the licensee has committed misconduct or conduct unbecoming a licensee, or
 - (b) in any other case, rescind the order under this section.

Orders to freeze property

- 48**
- (1) The superintendent may make an order under this section if the superintendent believes on reasonable grounds that a licensee has contravened this Act, the regulations or the rules in a way that is contrary to the public interest.
 - (2) If subsection (1) applies, the superintendent may, by order directed to the licensee, do either or both of the following:
 - (a) prohibit the licensee from withdrawing any of the licensee's property, or any of it identified in the order, from the possession of another person named in the order who has the property on deposit, under control or for safekeeping;
 - (b) require the licensee to hold all property, or any of it identified in the order, that is in the licensee's possession or control in trust for
 - (i) a receiver or receiver manager who has been appointed, or whose appointment has been or is to be applied for, under section 62 [*court order for appointment of receiver*], or

- (ii) a custodian, trustee, receiver manager, receiver or liquidator who has been appointed, or whose appointment has been applied for, under any other enactment.
- (3) If subsection (1) applies, the superintendent may, by order, require a person who has in British Columbia, on deposit, under control or for safekeeping, any property of the licensee to hold all of that property, or any of it identified in the order.
- (4) An order under this section may be made without advance notice to a person affected by the order but, promptly after making the order, the superintendent must give a copy of the order to the person to whom it is directed.
- (5) The superintendent may, by order, vary or rescind an order under this section on the superintendent's own initiative or on the application of a person affected by the order.
- (6) Property affected by an order under this section continues to be affected by the order and remains frozen as provided in the order until the property is released under subsection (5) or is dealt with in accordance with a court order.
- (7) If a savings institution is the holder of property described in subsection (3), the order applies only to the offices, branches or agencies of the savings institution that are specified in the order.
- (8) A person may, on giving notice to the superintendent, apply to the Supreme Court for an order under subsection (9) if
 - (a) an order under subsection (3) is directed to the person and the person is uncertain respecting the application of the order to any property, or
 - (b) the person is not named in an order under subsection (3) and makes a claim to property affected by the order.
- (9) On an application under subsection (8), the court may order the disposition of the property as the court considers appropriate.

Notice filed in land title office

- 49**
- (1) If the superintendent makes an order under section 48 in respect of a licensee, the superintendent may
 - (a) file in a land title office a notice that proceedings are being or are about to be taken that may affect land belonging to the licensee, and
 - (b) revoke or amend the notice by filing the revocation or amendment in the land title office.
 - (2) The registrar under the *Land Title Act* must register a notice, revocation or amendment filed under subsection (1) of this section against the land described in the notice.
 - (3) A registered notice has the same effect as a registered certificate of pending litigation.

- (4) A person who has an interest in land described in a registered notice may, on giving notice to the superintendent, apply to the Supreme Court for an order cancelling or varying the registered notice.
- (5) On an application under subsection (4), the court may cancel or vary the registered notice as the court considers appropriate.

Division 3 – Complaints, Investigations and Proceedings Relating to Unlicensed Persons

Complaints against unlicensed person

- 50**
- (1) A person may make a complaint to the superintendent if the person believes that an unlicensed person may have
 - (a) done anything for which a licence is required, or
 - (b) failed to comply with an undertaking that the unlicensed person gave under section 56 *[undertakings]*.
 - (2) A complaint must be in writing and must include particulars.
 - (3) Unless a complaint is made anonymously, the superintendent must
 - (a) acknowledge receipt of the complaint, and
 - (b) on disposition of the matter, inform the complainant of the disposition.

Investigations, hearings and other authority relating to unlicensed persons

- 51**
- (1) The superintendent may conduct an investigation to determine whether an unlicensed person has
 - (a) done anything for which a licence is required, or
 - (b) failed to comply with an undertaking that the unlicensed person gave under section 56 *[undertakings]*.
 - (2) The superintendent may issue a notice of hearing and conduct a hearing following an investigation under subsection (1) or the cancellation of an administrative penalty under section 59 (4) (b) *[administrative penalties]*.
 - (3) The following provisions apply in relation to an unlicensed person as if the unlicensed person were a licensee:
 - (a) section 39 (2) to (4) *[investigations of licensees]*;
 - (b) section 40 *[witnesses in investigations]*;
 - (c) subject to subsection (4) of this section, section 41 *[order by justice for search and seizure]*;
 - (d) section 42 (2) to (5) *[notice of discipline hearing]*, in relation to notices of hearing issued by the superintendent under subsection (2) of this section;

- (e) section 43 [*consent orders*], in relation to orders that the superintendent may make under section 52 [*orders relating to unlicensed persons*];
 - (f) section 44 [*discipline hearings*], in relation to hearings conducted by the superintendent under subsection (2) of this section;
 - (g) section 48 [*orders to freeze property*];
 - (h) section 49 [*notice filed in land title office*].
- (4) For the purposes of subsection (3) (c), the superintendent may make an application under section 41 (1) if there are reasonable grounds to believe that an unlicensed person has
- (a) done anything for which a licence is required, or
 - (b) failed to comply with an undertaking that the unlicensed person gave under section 56.

Orders relating to unlicensed persons

- 52** (1) In this section, “**contravention**” means an act or omission that is the subject of a determination under subsection (2).
- (2) This section applies if, after a hearing under section 51 (2), the superintendent determines that the person subject to the hearing
- (a) did not hold a licence at a time when the person did anything for which such a licence was required, or
 - (b) failed to comply with an undertaking that the person gave under section 56 [*undertakings*].
- (3) The superintendent may, by order, do one or more of the following with respect to a person referred to in subsection (2):
- (a) require the person to cease doing the thing referred to in subsection (2) (a);
 - (b) require the person to carry out specified actions that the superintendent considers necessary to remedy the situation;
 - (c) subject to subsection (4), require the person to pay the expenses, or part of the expenses, incurred by the Authority in relation to either or both of the investigation and the hearing to which the order relates;
 - (d) require the person to pay a penalty in an amount of
 - (i) not more than \$500 000, in the case of a person who is not an individual, or
 - (ii) not more than \$250 000, in the case of an individual;
 - (e) require the person to pay an additional penalty up to the amount of the remuneration accepted by the person for the mortgage services in respect of which the contravention occurred.

- (4) Amounts required to be paid under subsection (3) (c)
 - (a) must be for the matters, and must not exceed the amounts, set out in the regulations, and
 - (b) may include remuneration expenses for employees, officers or agents of the Authority engaged in the investigation or hearing.
- (5) A penalty imposed under subsection (3) (d) may be imposed for each contravention.
- (6) Despite subsections (3) (d) and (e) and (5), if the hearing was conducted following the cancellation of an administrative penalty under section 59 (4) (b) [*administrative penalties*], the sum of the penalty and any additional penalty for a contravention must not be more than the highest amount of the administrative penalty indicated in the notice of administrative penalty for the contravention.
- (7) Money received by the Authority on account of a penalty under subsection (3) (d) or, subject to the regulations, an additional penalty under subsection (3) (e) may be expended by the Authority only for the purpose referred to in section 46 (3) [*educational purpose*].
- (8) An amount ordered to be paid under subsection (3) (c), (d) or (e) is a debt owing to the Authority and may be recovered as such.
- (9) The superintendent may, by order, on the application of or with the consent of the person subject to the order, vary or rescind an order made under this section.

Orders in urgent circumstances relating to unlicensed persons

- 53**
- (1) The superintendent may act under this section if
 - (a) the superintendent believes on reasonable grounds that there has been conduct in respect of which the superintendent could make an order under section 52 against a person, and
 - (b) the superintendent considers that
 - (i) the length of time that would be required to complete an investigation or hold a hearing, or both, in order to make such an order would be detrimental to the public interest, and
 - (ii) it is in the public interest to make an order under this section against the person.
 - (2) If the circumstances referred to in subsection (1) apply, the superintendent may, by order, do either or both of the following:
 - (a) require the person to cease doing the thing referred to in section 52 (2) (a);
 - (b) require the person to carry out specified actions that the superintendent considers necessary to remedy the situation.

- (3) Despite any other provision of this Division, the superintendent may make an order under subsection (2)
 - (a) whether or not a notice of hearing has been issued under section 51 (2) [*superintendent hearings*],
 - (b) without giving notice to the person, and
 - (c) without providing the person with an opportunity to be heard.
- (4) The superintendent may, by order,
 - (a) on the superintendent's own initiative, rescind an order made under this section, or
 - (b) on the application of or with the consent of the person subject to the order, vary or rescind an order made under this section.
- (5) Promptly after an order under subsection (2) is made, the superintendent must give to the person
 - (a) a copy of the order and written reasons for it, and
 - (b) written notice that a hearing may be held respecting the matter.
- (6) Without affecting the authority of the superintendent to initiate a hearing, a person who is the subject of an order under subsection (2) may require a hearing to be held by delivering written notice to the superintendent.
- (7) Within a reasonable time after receiving a written notice under subsection (6), the superintendent must issue a notice under section 51 (2), subject to the difference that the notice must be issued at least 14 days before the date set for the hearing, rather than 21 days, unless the person agrees to a shorter period.
- (8) After a hearing respecting a person who is subject to an order under this section, the superintendent must
 - (a) rescind the order under this section and make an order under section 52, if the superintendent determines that the person
 - (i) did not hold a licence at a time when the person did anything for which such a licence was required, or
 - (ii) failed to comply with an undertaking that the person gave under section 56 [*undertakings*], or
 - (b) in any other case, rescind the order under this section.

Division 4 – Court Filing and Publication of Orders

Court filing of superintendent's orders

- 54** (1) If the superintendent considers that a person has failed to comply with an order of the superintendent under Division 2 [*Discipline Proceedings Relating to Licensees*] or Division 3 [*Complaints, Investigations and Proceedings Relating to Unlicensed Persons*], the superintendent may file a certified copy of the order with the Supreme Court.
- (2) An order filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were an order of the Supreme Court.

Publication of superintendent's orders

- 55** (1) As soon as practicable, the superintendent must, subject to the regulations, publish each order made by the superintendent under Division 2 [*Discipline Proceedings Relating to Licensees*] or Division 3 [*Complaints, Investigations and Proceedings Relating to Unlicensed Persons*].
- (2) The superintendent must provide a copy of an order required to be published under subsection (1) to any person requesting the copy, on payment of the prescribed fee.

Division 5 – Undertakings

Undertakings

- 56** (1) This section applies to a licensee or an unlicensed person if the superintendent has reason to believe that
- (a) the licensee or the unlicensed person has contravened this Act, the regulations or the rules, or
 - (b) the licensee has breached a restriction or condition of the licence.
- (2) In the circumstances referred to in subsection (1), the superintendent may, with or without an investigation or a hearing under this Part,
- (a) give notice to the licensee or the unlicensed person of the superintendent's reason for believing that this section applies to the licensee or the unlicensed person, and
 - (b) accept a written undertaking from the licensee or the unlicensed person to do one or more of the following:
 - (i) comply with terms or conditions set by the superintendent, which may include a condition that the licensee or the unlicensed person pay the expenses, or part of the expenses, incurred by the Authority in relation to the undertaking;

- (ii) do anything that the licensee or the unlicensed person is required to do under this Act;
 - (iii) cease or refrain from doing anything that the licensee or the unlicensed person is prohibited from doing under this Act.
- (3) Amounts required to be paid under subsection (2) (b) (i)
 - (a) must be for the matters, and must not exceed the amounts, set out in the regulations, and
 - (b) may include remuneration expenses for employees, officers or agents of the Authority engaged in matters related to the undertaking.
- (4) An undertaking given by a licensee or an unlicensed person under this section is binding on the licensee or unlicensed person.

Division 6 – Appeals to Financial Services Tribunal

Appeals

- 57** (1) In this section, “**tribunal**” means the Financial Services Tribunal under the *Financial Institutions Act*.
- (2) Appeals to the tribunal may be made as follows:
- (a) the applicant may appeal a refusal to issue a licence;
 - (b) the licensee affected may appeal the imposition of conditions and restrictions on a licence under section 20 [*conditions and restrictions in relation to specific licence*];
 - (c) the licensee affected may appeal the cancellation or suspension of a licence under section 30 [*cancellation or suspension if qualification not met*];
 - (d) the person subject to the order may appeal an order of the superintendent under Division 2 [*Discipline Proceedings Relating to Licensees*] or Division 3 [*Complaints, Investigations and Proceedings Relating to Unlicensed Persons*].
- (3) Sections 242.2 [*practice and procedure*] and 242.3 [*judicial review*] of the *Financial Institutions Act* apply in relation to an appeal under this section.

Division 7 – Administrative Penalties

Designated contraventions and penalty amounts

- 58** (1) The Authority may, by rule,
- (a) designate contraventions of specified provisions of this Act, the regulations or the rules as being subject to administrative penalties under this Division, and

- (b) establish the amount, or range of amounts, of administrative penalty that may be imposed in respect of each contravention of a specified provision of this Act, the regulations or the rules.
- (2) The amounts or range of amounts established under subsection (1) may be
 - (a) different for different levels or categories of licences,
 - (b) different for first and subsequent contraventions, and
 - (c) different depending on whether the administrative penalty is paid
 - (i) no more than 30 days after the date the notice of the administrative penalty is served or delivered under section 59 (3),
 - (ii) more than 30 days after the date of service or delivery,
 - (iii) no more than 30 days after the date the opportunity to be heard is provided under section 59 (4), or
 - (iv) more than 30 days after the date of the opportunity to be heard.
- (3) The maximum amount of administrative penalty that may be established under subsection (1) is \$100 000.

Superintendent may impose administrative penalties

- 59**
- (1) If the superintendent is satisfied that a person has contravened a provision of this Act, the regulations or the rules that has been designated under section 58 (1) (a), the superintendent may issue a notice imposing on the person an administrative penalty that consists of one or more of the following:
 - (a) an amount permitted by the rules;
 - (b) a requirement to complete a specified course of studies or training;
 - (c) if the person is a licensee, restrictions or conditions on the licence.
 - (2) The notice under subsection (1) must do the following:
 - (a) indicate the provision of this Act, the regulations or the rules that has been contravened;
 - (b) indicate the administrative penalty that is imposed;
 - (c) advise the person of the person's right to be heard respecting the matter;
 - (d) advise the person that, if the person does not, within 30 days or a longer period allowed by the superintendent, request such an opportunity to be heard,
 - (i) the person is deemed to have acknowledged contravening the provision of this Act, the regulations or the rules, and
 - (ii) the administrative penalty becomes due and payable to the Authority.

- (3) Notice under subsection (1) must be given as follows:
 - (a) in the case of notice to a current licensee, by personal service or by delivery in accordance with the rules;
 - (b) in the case of notice to a former licensee or other person, by personal service;
 - (c) as an alternative in any case, in accordance with an order under section 74 [*substituted service*].
- (4) The superintendent must provide the person with an opportunity to be heard if this is requested and, following the opportunity, may
 - (a) cancel the administrative penalty,
 - (b) cancel the administrative penalty and issue a notice to the person under section 42 (1) [*discipline hearing*] or 51 (2) [*hearing relating to unlicensed person*], if the superintendent is satisfied that issuing the notice is more appropriate than imposing the administrative penalty, or
 - (c) confirm the administrative penalty, in which case it becomes due and payable to the Authority.
- (5) The amount of an administrative penalty imposed under this section is a debt owing to the Authority and may be recovered as such.
- (6) Money received by the Authority on account of administrative penalties under this section may be expended by the Authority only for the purpose referred to in section 46 (3) [*educational purpose*].
- (7) If an administrative penalty has been imposed under this section,
 - (a) no further proceedings may be taken under this Part in respect of the matter, other than to enforce the terms of the penalty, and
 - (b) without the consent of the person subject to the penalty, the fact that the penalty has been imposed may not be used
 - (i) in any proceeding under this Act with respect to the matter, other than as referred to in paragraph (a), or
 - (ii) in any civil proceeding with respect to the matter.

Publication

- 60**
- (1) Subject to the regulations, the superintendent may publish
 - (a) each notice of administrative penalty issued under section 59 (1), and
 - (b) each decision made under section 59 (4) to confirm or cancel an administrative penalty.
 - (2) The superintendent must provide a copy of a notice or a decision published under subsection (1) to any person requesting the copy, on payment of the prescribed fee.

Division 8 – Applications to Court

Application for injunction

- 61**
- (1) The superintendent may apply to the Supreme Court for an injunction restraining a person from contravening, or requiring a person to comply with,
 - (a) this Act, the regulations or the rules, or
 - (b) an order of the superintendent under this Part.
 - (2) The court may grant an injunction sought under subsection (1) if the court is satisfied that there is reason to believe there has been or will be a contravention of this Act, the regulations, the rules or an order referred to in that subsection.
 - (3) The court may grant an interim injunction until the outcome of an application under subsection (1).

Court order for appointment of receiver

- 62**
- (1) The superintendent may apply to the Supreme Court for the appointment of a receiver or receiver manager of all or any part of the property of a licensee or unlicensed person if
 - (a) in the case of a licensee, the superintendent makes an order under section 45 [*discipline orders*] or 47 [*orders in urgent circumstances relating to licensees*] cancelling or suspending the licence, or
 - (b) the superintendent makes an order under section 48 [*orders to freeze property*] directed to the licensee or unlicensed person.
 - (2) On an application under subsection (1), the court may, by order, appoint a receiver or receiver manager of all or any part of the property of the licensee or unlicensed person if the court is satisfied that the appointment of a receiver or receiver manager is in the best interests of
 - (a) the creditors of the licensee or unlicensed person,
 - (b) persons from, for or on whose behalf the licensee or unlicensed person has received money or other property in respect of mortgage services, or
 - (c) other persons, any of whose property is in the possession or under the control of the licensee or unlicensed person.
 - (3) An application under subsection (1) may be made without notice to any other person, in which case the court may make a temporary order under subsection (2) appointing a receiver or receiver manager for a period not longer than 15 days.
 - (4) A receiver or receiver manager appointed under this section
 - (a) is the receiver or receiver manager of all or any part of the property that is subject to the court order, and

- (b) if authorized by the court, may wind up or manage the business and affairs of the licensee or unlicensed person and exercise powers necessary or incidental to the winding up or management.

PART 4 – BC FINANCIAL SERVICES AUTHORITY

Rules of the Authority

- 63** (1) Subject to section 64, the Authority may make rules that the Authority considers necessary or advisable
- (a) respecting licensing, or
 - (b) regulating licensees in relation to the provision of mortgage services.
- (2) Without limiting subsection (1) but subject to section 64, the Authority may make rules as follows:
- (a) respecting licences and the issuing of licences, including rules
 - (i) establishing, within a licence level, different categories of licences that are restricted to particular mortgage services as identified by the rules,
 - (ii) respecting the term of licences,
 - (iii) respecting the education, experience or other qualifications for a person to obtain or renew a licence, including rules conferring discretion to determine equivalent qualifications,
 - (iv) respecting licensing in relation to branch offices of a mortgage brokerage,
 - (v) providing for the issuing of temporary licences under section 19 [*temporary licences*] to personal representatives of deceased licensees, including rules conferring discretion to establish conditions and restrictions applicable to a specific temporary licence, and
 - (vi) providing that the Act does not apply to a licensee in specified circumstances;
 - (b) establishing conditions and restrictions applicable to licences;
 - (c) respecting the relationships between and among mortgage brokerages and their related licensees, including rules
 - (i) respecting the supervision of mortgage brokers by principal brokers, and
 - (ii) providing for a related licensee of a mortgage brokerage to act as a principal broker for the mortgage brokerage in the temporary absence of a principal broker for the mortgage brokerage;

- (d) establishing requirements for licensees, including requirements
 - (i) respecting capital and liquidity to be maintained by licensees,
 - (ii) respecting errors and omissions insurance to be maintained by licensees, and
 - (iii) respecting continuing professional education to be undertaken by licensees;
- (e) establishing standards of conduct and business practice standards for licensees, including rules
 - (i) respecting the keeping and operation of trust accounts by licensees,
 - (ii) regulating the operation of offices by licensees,
 - (iii) respecting the use of business names by licensees,
 - (iv) respecting the form and content of advertising carried out by licensees,
 - (v) establishing or providing for the establishment of standard forms for use in providing mortgage services, and requiring their use by licensees, and
 - (vi) respecting the making of disclosures by licensees in relation to the provision of mortgage services;
- (f) requiring licensees to comply with specified provisions of Part 2 [*Unfair Practices*] and Part 5 [*Disclosure of the Cost of Consumer Credit*] of the *Business Practices and Consumer Protection Act* and the regulations relating to those Parts;
- (g) applying specified provisions of Parts 2 and 5 of the *Business Practices and Consumer Protection Act* and the regulations relating to those Parts to classes of mortgage transactions and requiring licensees to comply with those provisions in relation to those transactions;
- (h) requiring licensees to
 - (i) provide reports, returns and other information to the superintendent, and
 - (ii) allow the inspection and auditing of their books of account and other records by the superintendent;
- (i) requiring licensees to acquire, maintain or provide a bond or other form of security and, in relation to this,
 - (i) respecting the amount and form of such security and the terms and conditions under which it is to be provided, and
 - (ii) respecting the forfeiture of the security and the payment of claims against the security;
- (j) conferring additional powers and imposing additional duties on the superintendent;

- (k) respecting any other matters for which rules are contemplated by this Act, including the designation of contraventions for the purposes of section 58 [*designated contraventions and penalty amounts*];
 - (l) respecting any other matters provided in the regulations.
- (3) Without limiting subsection (1) or (2) but subject to section 64, the Authority may make rules as follows:
- (a) establishing conditions and restrictions applicable to mortgage brokerages respecting the involvement of the following individuals in the mortgage brokerage's operations:
 - (i) a partner, or a director, officer or shareholder of a corporation that is a partner, in the case of a mortgage brokerage that is a partnership;
 - (ii) a director, officer or shareholder of the corporation, in the case of a mortgage brokerage that is a corporation;
 - (iii) a sole proprietor, in the case of a sole proprietorship;
 - (iv) an individual who directly or indirectly controls the mortgage brokerage, in any other case;
 - (b) establishing a code of ethics for licensees;
 - (c) establishing or providing for the establishment of standard terms to be included in proposed contracts or forms prepared by licensees for consideration by a person to whom or on whose behalf a licensee is providing mortgage services;
 - (d) respecting the provision of mortgage services to more than one person, including conditions and restrictions applicable to the provision of mortgage services to or on behalf of different parties to a mortgage transaction;
 - (e) respecting agreements for the payment of remuneration to licensees, including information that must be included in agreements, and establishing conditions and restrictions for payment of the remuneration;
 - (f) establishing a register of information based on data obtained from licensees about mortgage services and providing for the publication of all or part of the register;
 - (g) respecting the winding up of a mortgage brokerage or the transfer of the business of a mortgage brokerage, including requiring the appointment of a principal broker or other person to direct the winding up or transfer.
- (4) The Authority may make different rules under this section in relation to
- (a) different levels of licences,
 - (b) different categories of licences,
 - (c) different classes of mortgages, and
 - (d) different circumstances as described in the rules.

- (5) The Authority may make different rules under subsection (2) (a) respecting the issuing, renewal, amendment and reinstatement of licences.
- (6) For the purposes of subsection (2) (e), the Authority may adopt by reference, in whole, in part or with any changes considered appropriate, a regulation, code, standard or rule
 - (a) enacted as or under a law of another jurisdiction in or outside Canada, or
 - (b) set by a provincial, national or international body or any other code-, standard- or rule-making bodyas the regulation, code, standard or rule stands at a specific date, as it stands at the time of adoption or as amended from time to time.
- (7) If, under the rules, a licensee is required to file with or submit to the superintendent a report, or another record in place of a report, the report or record must
 - (a) be filed or submitted in the form and manner required by the superintendent,
 - (b) include the information required by the superintendent, and
 - (c) be accompanied by any information or records required by the superintendent.
- (8) The Lieutenant Governor in Council may, by regulation,
 - (a) make rules or repeal or amend rules made by the Authority under this section, and
 - (b) specify powers of the Lieutenant Governor in Council to make regulations under this Act and authorize the Authority to make rules under those specified powers.
- (9) A regulation made under subsection (8) (a) is deemed to be a rule made by the Authority.

Procedures for rules

- 64** Before making, amending or repealing a rule, the Authority must do the following:
- (a) publish the proposed rule for public comment in accordance with the regulations unless the regulations provide otherwise;
 - (b) obtain the consent of the minister in accordance with the regulations;
 - (c) comply with any other prescribed procedures and requirements.

Regulation prevails over rule

- 65** If a rule made by the Authority conflicts with a regulation made by the Lieutenant Governor in Council, the regulation prevails.

PART 5 – GENERAL

Division 1 – Offences

Offences

- 66** (1) A person who does any of the following commits an offence:
- (a) contravenes section 3 (1) [*licence required – carrying on the business of providing mortgage services*];
 - (b) contravenes section 3 (2) [*licence required – individual providing mortgage services for remuneration*];
 - (c) contravenes section 3 (3) [*licence required – mortgage lending*];
 - (d) contravenes section 33 (1) [*maintaining trust account without authorization*];
 - (e) contravenes section 34 [*wrongful taking*];
 - (f) contravenes section 35 [*deceptive dealing*];
 - (g) contravenes section 39 (4) [*interference with investigation*];
 - (h) fails to comply with an order of the superintendent;
 - (i) makes or allows to be made a false or misleading statement in a record that is required or authorized to be provided, submitted, filed, delivered or produced under this Act;
 - (j) contravenes a provision of the rules, the contravention of which is prescribed to be an offence.
- (2) A person who authorizes, permits or acquiesces in the commission of an offence also commits that offence.
- (3) Section 5 [*offence to contravene any enactment*] of the *Offence Act* does not apply to this Act, the regulations or the rules.

Penalties for committing offences

- 67** (1) A corporation that commits an offence under section 66 is liable,
- (a) on a first conviction, to a fine of not more than \$1.25 million, and
 - (b) on each subsequent conviction, to a fine of not more than \$2.5 million.
- (2) An individual who commits an offence under section 66 is liable,
- (a) on a first conviction, to a fine of not more than \$1.25 million or to imprisonment for not more than 2 years, or to both, and
 - (b) on each subsequent conviction, to a fine of not more than \$2.5 million or to imprisonment for not more than 2 years, or to both.

Limitation period for commencing prosecution

- 68** (1) A prosecution under this Act must not commence later than 6 years after the date that the superintendent first had knowledge of the facts on which the prosecution is based.
- (2) A statement by the superintendent as to the date that the superintendent first had knowledge of the facts on which the prosecution is based is admissible in evidence in respect of the prosecution as proof of the facts in the statement without proof of the appointment or signature of the superintendent.

Other remedies preserved

- 69** A proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

Division 2 – Other Matters

Information sharing and confidentiality

- 70** (1) If a person, in the course of exercising powers and performing duties under this Act, obtains information or records that are submitted in accordance with a request or obligation under this Act or under an agreement referred to in section 71, the person must not disclose the information or records to any person other than
- (a) for the purposes of administering or enforcing this Act, the regulations or the rules,
 - (b) for the purposes of administering or enforcing the *Securities Act* or the *Civil Forfeiture Act* or the regulations under those Acts,
 - (c) for the purposes of a proceeding for an offence,
 - (d) as permitted under an agreement referred to in section 71, or
 - (e) for a purpose authorized under the *Freedom of Information and Protection of Privacy Act* or as required by law.
- (2) Except in respect of a proceeding under this Act, a person to whom subsection (1) applies may not be compelled in a civil proceeding to disclose or give evidence respecting any information or records obtained in the course of exercising the person's powers or performing the person's duties under this Act.

Agreements with other jurisdictions

- 71** (1) Subject to the regulations, the Authority and the superintendent may each enter into an agreement with a regulatory authority of another jurisdiction within or outside Canada respecting the administration and enforcement of this Act or of comparable legislation of the other jurisdiction.

- (2) Without limiting subsection (1), the agreement may provide for the provision and exchange of information.

Communications privileged

- 72 (1) Subject to subsection (2), all information supplied and all records and things produced to the superintendent with respect to a licensee, a former licensee or an applicant for a licence are privileged to the same extent as if they were supplied or produced in proceedings in a court, and no action may be brought against a person as a consequence of the person having supplied or produced them.
- (2) Subsection (1) does not apply to a person who supplied information or produced records or things maliciously.

Fees for educational courses

- 73 The superintendent may establish fees for educational courses provided by the Authority or the superintendent regarding
- (a) the operation and regulation of the mortgage services industry, and
 - (b) issues related to mortgages and mortgage services.

Substituted service

- 74 (1) In relation to any requirement or authorization established under this Act that a notice or other document be served on a person, that service may be done by substituted service in accordance with an order under subsection (2).
- (2) On application, the Supreme Court may order that a document referred to in subsection (1) may be served by substituted service in accordance with the order.

Deemed delivery if notice given in accordance with rules

- 75 If a notice or other record is required or authorized to be given to a person in accordance with the rules, it is deemed to have been received by the person at the end of the period established by regulation.

Opportunities to be heard

- 76 An opportunity to be heard under this Act may be provided by receiving written submissions or conducting an oral hearing, or a combination of both, as specified by the superintendent.

Evidence of licence

- 77 A statement as to the existence, nonexistence or status of a licence purporting to be certified by the superintendent is proof, in the absence of evidence to the contrary, of the fact so certified, without proof of the signature or official position of the superintendent.

Personal liability protection

- 78** (1) In this section, “**protected individual**” means an individual who is or was any of the following:
- (a) the superintendent;
 - (b) an individual acting on behalf of or under the direction of the superintendent.
- (2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a protected individual because of anything done or omitted
- (a) in the exercise or intended exercise of any power under this Act, or
 - (b) in the performance or intended performance of any duty under this Act.
- (3) Subsection (2) does not apply to a protected individual in relation to anything done or omitted in bad faith.
- (4) Subsection (2) does not absolve the Authority from vicarious liability arising out of anything done or omitted by a protected individual for which the Authority would be vicariously liable if this section were not in force.

Regulations

- 79** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations that it considers necessary or advisable to carry out the purposes of this Act, including regulations as follows:
- (a) defining a word or expression used but not defined in this Act;
 - (b) exempting persons, or classes of persons, from any or all of the requirements to be licensed under Part 2 [*Licensing*] and establishing restrictions and conditions in relation to an exemption;
 - (c) exempting persons, or classes of persons, from one or more provisions of this Act and prescribing circumstances in which an exemption applies;
 - (d) exempting prescribed classes of mortgages from the application of one or more provisions of this Act and prescribing circumstances in which an exemption applies;
 - (e) conferring additional powers and imposing additional duties and restrictions on the superintendent;
 - (f) respecting fees to be paid by applicants or licensees in relation to the issuing, renewal, amendment or reinstatement of a licence, which fees may be different
 - (i) for different levels or categories of licences, and
 - (ii) for different circumstances of applicants or licensees;

- (g) respecting fees to be paid by licensees in relation to the amendment of the register of licensees, which fees may be different for different amendments and different levels or categories of licences;
- (h) establishing penalties and interest charges to be paid on the late payment of a fee referred to in paragraph (f) or (g) or of any other debt owing to the Authority;
- (i) respecting the manner in which orders, reports and other records that are required to be published under this Act must be published;
- (j) allowing individuals to provide mortgage services through a corporation of which the individual is the sole voting shareholder, the sole director and the president and, in relation to this,
 - (i) establishing restrictions and conditions, including establishing conditions under which such an individual is deemed to be engaged by a mortgage brokerage, and
 - (ii) providing any exceptions, modifications or additional provisions to this Act that the Lieutenant Governor in Council considers advisable for the purposes of applying this Act to licensees who are providing mortgage services through such a corporation;
- (k) respecting any other matter for which regulations of the Lieutenant Governor in Council are contemplated by this Act.

Review of Act

- 80** Within 5 years after the coming into force of this section, the government must initiate a review of this Act to determine what changes, if any, should be made.

**PART 6 – TRANSITIONAL PROVISIONS, REPEAL AND
CONSEQUENTIAL AND RELATED AMENDMENTS**

Division 1 – Transitional Provisions

Definitions

- 81** In this Part:
- “**former Act**” means the *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313, as it read immediately before its repeal by this Act;
 - “**registrar**” means the Registrar of Mortgage Brokers appointed under section 1.1 of the former Act.

Transition – former Act

- 82** (1) Sections 5 to 9 and 10 of the former Act continue to apply in respect of any matter into which the registrar commenced an investigation under that Act before its repeal.

- (2) For the purposes of subsection (1), any reference in the former Act to the registrar is to be read as a reference to the superintendent.

Transition – Credit Union Incorporation Act

- 83** Section 84.12 (1) (f) of the *Credit Union Incorporation Act*, as it read immediately before the coming into force of section 87 (a) of this Act, continues to apply to a person whose registration in any capacity has been cancelled under the former Act.

Transition – Financial Institutions Act

- 84** Section 97 (5) of the *Financial Institutions Act*, as it read immediately before the coming into force of section 89 (a) of this Act, continues to apply to an individual whose registration in any capacity has been cancelled under the former Act.

Transition – regulations

- 85** (1) The Lieutenant Governor in Council may make regulations that it considers necessary or advisable to
- (a) more effectively bring this Act into operation, or
 - (b) remedy any transitional difficulties, in respect of any matter, encountered in the transition
 - (i) from the registrar to the superintendent, or
 - (ii) from registration under the former Act to licensing under this Act.
- (2) A regulation under subsection (1) may be made retroactive to a specified date that is not earlier than the date this section comes into force and, if made retroactive, is deemed to have come into force on the specified date.
- (3) This section and any regulations made under it are repealed 3 years after the date this section comes into force.

Division 2 – Repeal

Repeal of former Act

- 86** The *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313, is repealed.

Division 3 – Consequential and Related Amendments

Credit Union Incorporation Act

- 87** *Section 84.12 of the Credit Union Incorporation Act, R.S.B.C. 1996, c. 82, is amended*

(a) by repealing subsection (1) (f) and substituting the following:

- (f) subject to subsection (1.1), a person

- (i) whose registration in any capacity has been cancelled under the *Securities Act* by the British Columbia Securities Commission or the executive director, or
- (ii) whose licence under the *Mortgage Services Act* has been cancelled by the Superintendent of Mortgage Services. ,

(b) by adding the following subsection:

(1.1) Subsection (1) (f) does not apply in any of the following circumstances:

- (a) the person or body that cancelled the registration or the licence makes an order to that effect at the time of cancellation;
- (b) the cancellation is reversed;
- (c) 5 years have elapsed since the cancellation. , **and**

(c) in subsection (2) by striking out “subsection (1) (e) and (f)” and substituting “subsection (1) (e) or (1.1) (a)”.

Financial Institutions Act

88 Section 1 (1) of the *Financial Institutions Act*, R.S.B.C. 1996, c. 141, is amended in the definition of “financial services” by striking out “mortgage brokerage” and substituting “mortgage services”.

89 Section 97 is amended

(a) by repealing subsection (5) and substituting the following:

(5) Subject to subsection (5.1) and without limiting section 124 of the *Business Corporations Act*, an individual is not qualified to become or act as a director of a trust company or an insurance company if

- (a) the individual’s registration in any capacity has been cancelled under the *Securities Act* by the British Columbia Securities Commission or the executive director, or
- (b) the individual’s licence under the *Mortgage Services Act* has been cancelled by the Superintendent of Mortgage Services.

(5.1) Subsection (5) does not apply in any of the following circumstances:

- (a) the person or body that cancelled the registration or the licence makes an order to that effect at the time of cancellation;
- (b) the cancellation is reversed;
- (c) 5 years have elapsed since the cancellation. , **and**

(b) in subsection (6) by striking out “subsection (5) of this section” and substituting “subsection (5.1) (a)”.

90 *Section 201.1 (6) is repealed.*

Financial Services Authority Act

91 *Section 4 (f) of the Financial Services Authority Act, S.B.C. 2019, c. 14, is repealed and the following substituted:*

(f) *Mortgage Services Act*; .

92 *Section 8 (5) (d) is amended by striking out “Registrar of Mortgage Brokers” and substituting “Superintendent of Mortgage Services”.*

93 *Section 10 (c) is repealed and the following substituted:*

(c) the Superintendent of Mortgage Services appointed under section 2 of the *Mortgage Services Act*; .

94 *Section 12 (5) is repealed and the following substituted:*

(4.1) Money received by the Authority under section 45 (3) (i) or (j) [*discipline orders*] or 52 (3) (d) or (e) [*orders relating to unlicensed persons*] of the *Mortgage Services Act* may be expended only for the purpose referred to in section 46 (3) [*enforcement expenses and discipline penalties*] of that Act.

(5) Money received by the Authority under section 59 [*administrative penalties*] of the *Mortgage Services Act* may be expended only for the purpose referred to in section 59 (6) of that Act.

Real Estate Services Act

95 *Section 10 (d) of the Real Estate Services Act, S.B.C. 2004, c. 42, is amended*

(a) *in subparagraph (i) by striking out “mortgage broker” and substituting “mortgage services”, and*

(b) *in subparagraph (ii) by striking out “mortgage broker,” and substituting “mortgage services”.*

96 *Section 12 is amended by striking out “its decision” and substituting “the superintendent’s decision”.*

97 *Section 15 (1) is amended by striking out “it considers necessary” and substituting “the superintendent considers necessary”.*

98 *Sections 45 (4) (a) and 46 (5) are amended by striking out “on its own initiative” and substituting “on the superintendent’s own initiative”.*

- 99** *Section 53 (2) is amended by striking out “subsection (1) (a)” and substituting “subsection (1)”.*
- 100** *Section 57 is amended*
- (a) in subsection (2) (a) by striking out “the rule” and substituting “the provision of this Act, the regulations or the rules”, and*
- (b) in subsection (7) (a) by striking out “payment of the penalty” and substituting “the terms of the penalty”.*
- 101** *Section 63 (1) (b) is amended by striking out “it considers the matter” and substituting “the superintendent considers the matter”.*
- 102** *Section 72.1 (2) is amended by striking out “it is satisfied” and substituting “the superintendent is satisfied”.*
- 103** *Section 89.2 (8) is repealed.*

Regulations Act

- 104** *The Schedule to the Regulations Act, R.S.B.C. 1996, c. 402, is amended by adding “, the Mortgage Services Act” after “the Financial Institutions Act”.*

Commencement

- 105** This Act comes into force by regulation of the Lieutenant Governor in Council.