

Mortgage broker exclusion amended

LAWPRO has amended the mortgage broker exclusion under the LAWPRO policy to allow coverage for specific mortgage brokering-related services provided by lawyers on or after July 1, 2008.

The changes coincide with key provisions of the Ontario government's *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c.29, which came into force on July 1, 2008. This legislation introduces licensing, insurance and other requirements for those dealing, trading, lending and administering mortgages in Ontario, but exempts lawyers acting in their professional capacity in specific instances in respect of some of these activities.

Those whose activities as a lawyer fall within the prescribed exemptions for lawyers or constitute a "simple referral" under the new *Act* will not be excluded from program coverage by virtue of the mortgage broker exclusion, for services performed on or after July 1, 2008.

Similarly, circumstances in which a lawyer's professional services under the policy are provided in conjunction with a lawyer acting as a mortgage broker or as an intermediary arranging any financial transaction usual to mortgage lending, will no longer be subject to the mortgage broker exclusion, for services performed on or after July 1, 2008.

Since changes were made to the insurance program in 1995, the policy has expressly excluded coverage for claims arising out of lawyers acting as a mortgage broker or as an intermediary arranging any financial transaction usual to mortgage lending, and for claims

arising out of lawyers' legal services provided in conjunction with the same.

Effective July 1, 2008, under the *Act*, those dealing or trading in mortgages in Ontario for remuneration, and those carrying on the business of dealing in mortgages, trading in mortgages, acting as a mortgage lender or administering mortgages in Ontario, may only do so where licensed or exempt from the requirement to be licensed, pursuant to the *Act*.

Mortgage brokerages, mortgage brokers, mortgage agents and mortgage administrators will all be subject to the regulatory oversight of the Superintendent of Financial Institutions. By regulation, mortgage brokerages will be required to maintain errors and omissions insurance (or other approved form of financial assurance) for claims against the brokerage, its brokers and agents. Similar provisions apply to those licensed as mortgage administrators.

Specific exemption is made for lawyers acting in their professional capacity in certain instances of dealing in mortgages, trading in mortgages and administering mortgages. Provision is also made for "simple referrals" in certain instances of dealing in mortgages. For further information on the scope of these exemptions, lawyers should refer to the specific language of the *Act* and its regulations.

As mortgage brokers will be regulated and insured by others, the modified mortgage broker exclusion under the Law Society program will continue to exclude coverage for claims arising out of an insured lawyer acting as a mortgage broker.

In respect of services performed on or after July 1, 2008, "mortgage broker" will mean a person performing services for which a licence is required under the *Act*, thereby allowing coverage to apply in respect of lawyers' activities falling within the prescribed exemptions.

In respect of services performed before July 1, 2008, in keeping with the earlier scope of the exclusion, "mortgage broker" will mean a person who lends money on the security of real estate, whether the money is the person's money or that of another person, or holds himself, herself or itself out as or who by an advertisement, notice or sign indicates that the person is a mortgage broker, or a person who carries on the business of dealing in mortgages, or who acts as an intermediary arranging any financial transaction usual to mortgage lending.

As well, lawyer's professional services under the policy that are provided in conjunction with a lawyer acting as a mortgage broker or as an intermediary arranging any financial transaction usual to mortgage lending, will no longer be subject to the exclusion, for services performed on or after July 1, 2008.

A copy of the 2008 program policy (LAWPRO Policy no. 2008-001) and Modified Mortgage Broker Exclusion Endorsement are available online at: lawpro.ca/insurance/insurance_type/standard_policies.asp.

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