

Mortgage Brokers, Insurance & the LAW

What is it ?

First and foremost, it's a book about you.

It's about the risk you take every time you sit down to set up a new mortgage and fail to offer mortgage protection.

It's also about the risks you face every time that you do offer it.

Most importantly of all, it's about how to avoid all those risks by taking a few simple steps.

Mortgage Brokers, Insurance and the Law examines both the formal legislation with which you must comply and the case law that demonstrates in a very real way what can happen when people pass away without having mortgage protection.

8. The Mortgage Broker's Duty of Care in Tort

8.1 Defining the Duty of Care

All mortgage brokers should assume that they owe a duty of care under the law of tort to every one of their borrowers:

... individuals or corporations, whose business involves the providing of information or advice to others, owe a duty of care in communicating that information or advice to those they know will reasonably rely on it." (Source: *Gowanlock v. Bank of Nova Scotia* (2001), 28 C.C.L.I. (3d) 89 (Man. Q.B.)) [emphasis added]

Clearly the job of every mortgage broker is to provide information and advice on the subject of mortgages to their borrowers. Equally clearly, those borrowers reasonably assume that they should be able to rely on that advice. Therefore mortgage brokers owe a duty of care in communicating that information or advice to borrowers.

Take a page from
our book.

Learn how to protect
yourself *and* earn five
AMP CE credits.

For more information call
1-866-677-4677

If you are a mortgage broker, you have only one viable option.

Offer mortgage protection and have proof.

Your Option	Your Risks	Risk Management Tactic
Offer mortgage protection	<ul style="list-style-type: none"> You must get a signed insurance form each and every time and not allow any “take-aways.” Say enough, but not too much. You must try to ensure your clients are able to make an informed decision, without illegally giving insurance advice. You must make sure that people understand when they are not protected. Having a waiver is good but, according to the recommendations of a CAAMP Ethics Investigator, it is probably not enough. 	<ul style="list-style-type: none"> Don’t discuss the relative merits of different protection options. Just offer one. Have a rigorous follow-up program to make sure that applications don’t go astray, and that clients understand the choice they have made.
Refer to a licensed insurance professional	<p>There is no evidence that referring clients to an insurance agent eliminates the risks associated with an unprotected mortgage. You still need to deal with mortgage protection in your office.</p> <p>Once you have fulfilled that obligation, your client is still free to shop around and compare different options with the help of a professional advisor.</p>	<p>Look for a mortgage protection option that offers a generous “Free Look” period. That way, your clients can apply for protection right away and if they later find something they like better, they can probably cancel without paying a dime.</p>
Let the clients figure it out for themselves.	<p>These days, mortgage protection is readily available from numerous sources. It’s generally viewed by consumers and the law to be an integral part of any mortgage transaction. If you choose not to offer protection, and are then accused of being negligent, how will you defend your decision to turn a blind eye? History shows you probably can’t.</p>	

Protect yourself! Don’t end up in our legal case files.

- FACT: Mortgage broker sued for failing to get a signed mortgage protection form. Lender released from the lawsuit – NO liability !**
- FACT: Client’s wife says the mortgage broker failed to submit an insurance application. Broker said he didn’t have it. In the legal battle of his-word-against-mine, the client won, hands-down.**
- FACT: Mortgage broker sued because clients felt they were protected when they weren’t. Judge calls the broker “negligent.”**

