

MORTGAGE BROKERAGE IN BC

Answer Guide 1

CHAPTERS 1 & 2: Fundamentals of Law and the Mortgage Brokers Act and Professional Ethics

Marks: 1 mark per question.

1. Answer: 4
Appeals from the small claims level are heard in the BC Supreme Court which is not subject to any monetary limitations. At the BC Court of Appeal level, no evidence is reheard, only matters of law are considered. While Small Claims Courts have jurisdiction to hear cases involving monetary amounts up to \$25,000, the Supreme Court has jurisdiction to hear cases involving any amount, including cases for claims of less than \$25,000.

2. Answer: 4
A writ of execution cannot be issued by the judgment creditor. At the request of the judgment creditor, the court issues a writ of execution to the sheriff, directing the sheriff to seize and sell enough of the debtor's assets to pay the judgment. Where a third person owes money to the judgment debtor, the plaintiff can obtain that money by means of a garnishing order. However, the plaintiff cannot obtain all of an employee's wages. Seventy percent of the wages are exempt from seizure. A judgment creditor can register a judgment in the land title office, but must apply to a court (not the registrar) for a judicial sale.

3. Answer: 4
The British Columbia Mortgage Brokers Act is a provincial statute. It is administered and enforced by the Registrar of Mortgage Brokers and it regulates the conduct of all persons who deal in mortgages in British Columbia.

4. Answer: 4
A judgment creditor may apply to court for a judicial sale of the land. Registering a judgment against land does not prevent the subsequent sale of the land; garnishment is only available against a portion of a judgment debtor's wages; and, seizure and sales is not personally effected by a private judgment creditor, but rather through the sheriff's office.

5. Answer: 1
In order to be subject to the registration requirements of the Mortgage Brokers Act, a person must lend money on the security of ten or more mortgages. A person arranging mortgages on behalf of another party is subject to the Act if that party receives payment in excess of \$1,000 annually. Regardless of whether a party is providing mortgage broker services, if the party holds themselves out as doing so, they must be registered under the Act. The business of buying and selling agreements for sale is subject to the requirements of the Act.

6. Answer: 4
The federal government is responsible for criminal matters. The provincial government is responsible for civil rights. Municipal governments receive their power to legislate from the provincial government, and residual powers not specifically covered in the Constitution are the responsibility of the federal government. To answer a legal question, the courts first look at any relevant legislation. If no legislation exists, the court must then rely on case law alone.
7. Answer: 2
The examination for discovery is part of the pleading process, and therefore would not take place until after the response to civil claim is filed. A judge does not preside over an examination for discovery. Only the parties, their lawyers and the court reporter are present. Each party gives evidence under oath. However, because parties can observe the strength and weaknesses of their respective cases, an offer to settle often results from such proceedings; therefore, Option (2) is the correct choice.
8. Answer: 3
All of options A, B and C are duties imposed on the designated individual of a corporate brokerage. There is no duty imposed by the Mortgage Brokers Act or Regulations requiring the designated individual to inform the employees of the financial status of the brokerage.
9. Answer: 3
For both mortgage brokers and sub-mortgage brokers, registration must be renewed every two years. Thus if Noriko has been working at Cellar for three years without any renewal, her registration would have lapsed. Cellar must provide the Registrar with Noriko's name and address upon her employment with the company ceasing. There is no requirement to obtain permission from the Registrar for employment practices.
10. Answer: 1
Court costs do not automatically get awarded against the losing party, but rather, are awarded at the discretion of the court and may be awarded to either party. Court costs are meant to partially reimburse the legal expenses of the party to whom they are awarded. Where a decision is reversed on appeal, the court costs might be reversed as well, meaning this party might then be required to pay the court costs of both courts. Court costs discourage people from bringing or defending weak cases before the courts.
11. Answer: 3
Option (1) is incorrect because the municipal governments derive their power from the provincial governments, not from the federal government. Option (2) is not applicable as this is a municipal matter governed by the relevant legislation. Finally, and of particular importance to you as a future real estate licensee, ignorance of the law is never a defence.
12. Answer: 4
A decision of the Registrar is appealable to the Financial Services Tribunal, not directly to the Supreme Court of British Columbia. The other options are all true.

13. Answer: 3
A conflict of interest exists when a mortgage broker has a competing interest with another party in a transaction. Arranging a mortgage for a borrower where the lender provides any kind of compensation, including volume bonuses, points and other rewards, to the mortgage broker, would give rise to a conflict of interest. The fact that the compensation is of a non-monetary nature does not change the fact that a conflict of interest has arisen.
14. Answer: 2
In discovery, more specifically, examination for discovery, each party is examined under oath by the opposing party (or his/her counsel).
15. Answer: 1
The function of the disciplinary committee is to protect the interests of the public and to safeguard the integrity of the association's members. This includes deciding upon disciplinary measures and ensuring that members understand the ethical rules and the spirit and intent of their application. It also reports the misconduct of members and in this way has a deterrent effect. The committee does not provide restitution to the public.
16. Answer: 3
If a mortgage broker's membership has been cancelled or suspended from a professional association, the mortgage broker may no longer participate in the activities of that association; however, the mortgage broker may still operate as an independent mortgage broker. While it is not necessary for FICOM to discipline a mortgage broker who has already been disciplined by a professional association, in circumstances where the mortgage broker's actions are in violation of the Mortgage Brokers Act, FICOM may discipline. A professional association can discipline its members for violations of their Code of Ethics: a violation of the law is not necessary.
17. Answer: 3
The Business Practices and Consumer Protection Act's definitions of deceptive and unconscionable acts or practices include oral, visual, as well as written statements that occur before, during or after a transaction. The BPCPA only applies to consumer transactions (i.e., those primarily used for personal, family or household purposes). Mortgage broker customers such as institutional investors would not be protected under the BPCPA provisions. Section 10(2) of the BPCPA gives a court considerably broad powers to reopen any transaction it considers unconscionable and to alter any or part of the arrangement, including relieving obligations, ordering money to be returned, or requiring compensation to be paid.
18. Answer: 1
This question was designed to test the student's understanding of the code of ethics under which a professional must operate. To answer the question the student must understand that the system of ethical obligations is in addition to and above the requirements set by law, but does not replace the law.
19. Answer: 1
All of the options are considered by Bennion to be elements of a profession except working directly in the public interest or as a salaried employee.

20. Answer: 2
Statement D is incorrect, as an undisclosed incentive is contrary to the mortgage broker's fiduciary duties of loyalty and disclosure and is never acceptable, regardless of whether the contracted services are performed adequately. The other statements are all true.

20 Total Marks