

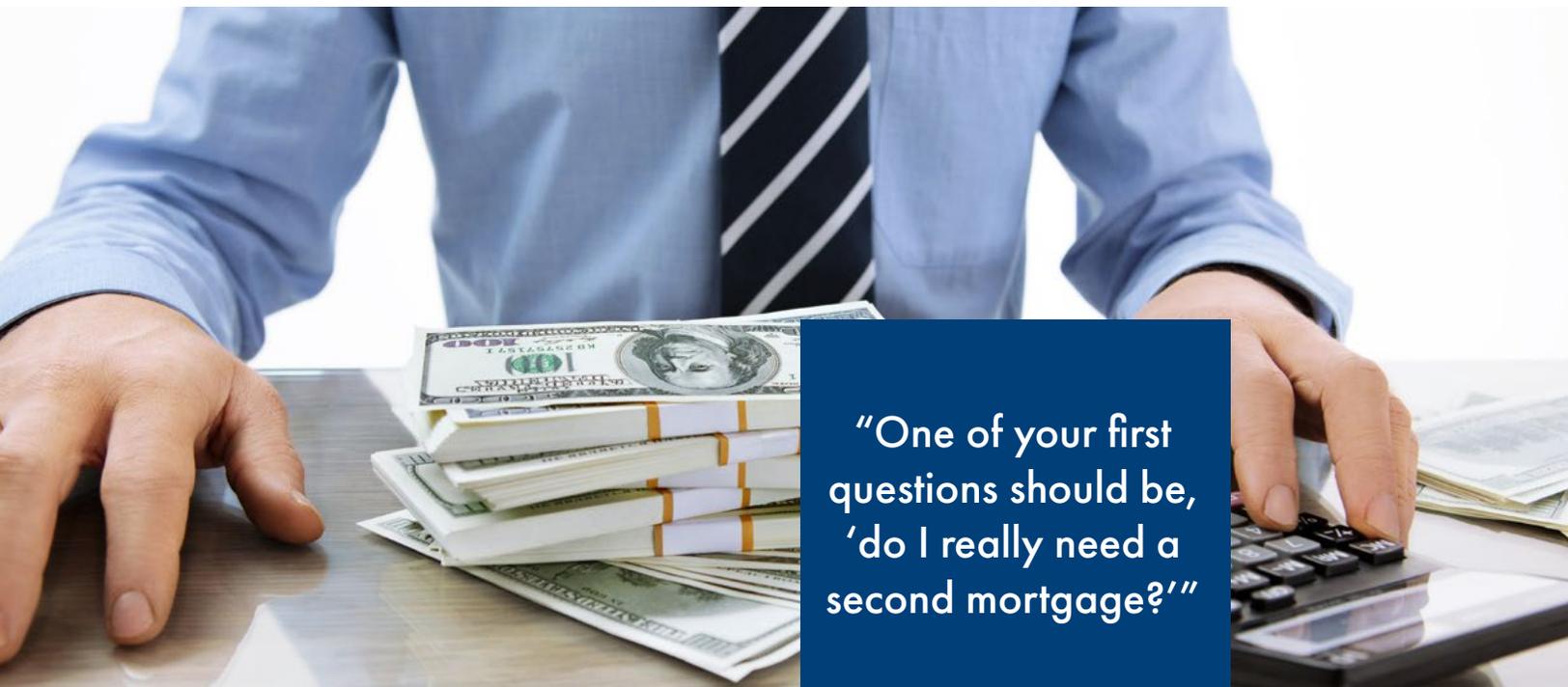
SIX FACTORS TO CONSIDER BEFORE CONTACTING A PRIVATE LENDER



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INTRODUCTION



“One of your first questions should be, ‘do I really need a second mortgage?’”

If you are reading this document then you may be considering a refinancing transaction and borrowing against your home’s equity, or researching a second or even a third mortgage from a private lender. This document focuses on individuals who have been turned away from traditional lending organizations, and have few options to borrow funds.

We understand that you may have already exhausted bank lending alternatives, and your only option to buy a new home or to keep the home you are living in now is to secure lending from alternative means, specifically private lending or a mortgage investment company.

Our intention is not to persuade you in one direction or another, just to provide you with observations and insights that will help you approach a private lending arrangement with more clarity and a reasonable level of awareness.

INTRODUCTION (CONTINUED)

Private lending for second and third mortgages can be very convenient short-term borrowing alternatives and may be viable for the well informed and proactive borrower.

A second or third mortgage works much differently than a traditional mortgage. Second mortgages are usually interest-only payments for the very short term, usually 12 months. Keep in mind, that if you default on your private lending second mortgage payments, even if you are up-to-date with your first mortgage, the private lender has the ability to force a sale of your home or foreclose on your property.

“Private lending for second and third mortgages can be very convenient short-term borrowing alternatives and may be viable for the well informed and proactive borrower.”



“One of your first questions should be, ‘do I really need a second mortgage?’ Have you considered other options for financing your requirements? Can you borrow from the banks at a lower rate? Will a family member lend you the money? ” ~ Huffington Post “Is a Second Mortgage Right for You?”

INTRODUCTION (CONTINUED)

Although we have endeavoured to provide valuable insights to help you with your research, this whitepaper should not be considered legal advice. Contact a lawyer to help you navigate the private lending process.

Private lending is included in Section Four of the Province of Ontario's Mortgage Brokerages, Lenders and Administrators Act . The province of Ontario has included private lending regulations to protect consumers, however, private lending differs from traditional lending. Due to the serious potential risks involved, consumers entering contractual agreements with a private lender should only do so with legal counsel. If you are considering private lending funding, retain a lawyer as soon as possible.

"Tighter government regulations have opened things up for alternative lenders to fill an important void. They provide options for a range of potential borrowers, from people saddled with wobbly credit, to the recently divorced, to the self-employed who draw a smaller income from their business for tax purposes." ~ Financial Post "Why more Canadians are turning to non-traditional lenders for mortgages. "

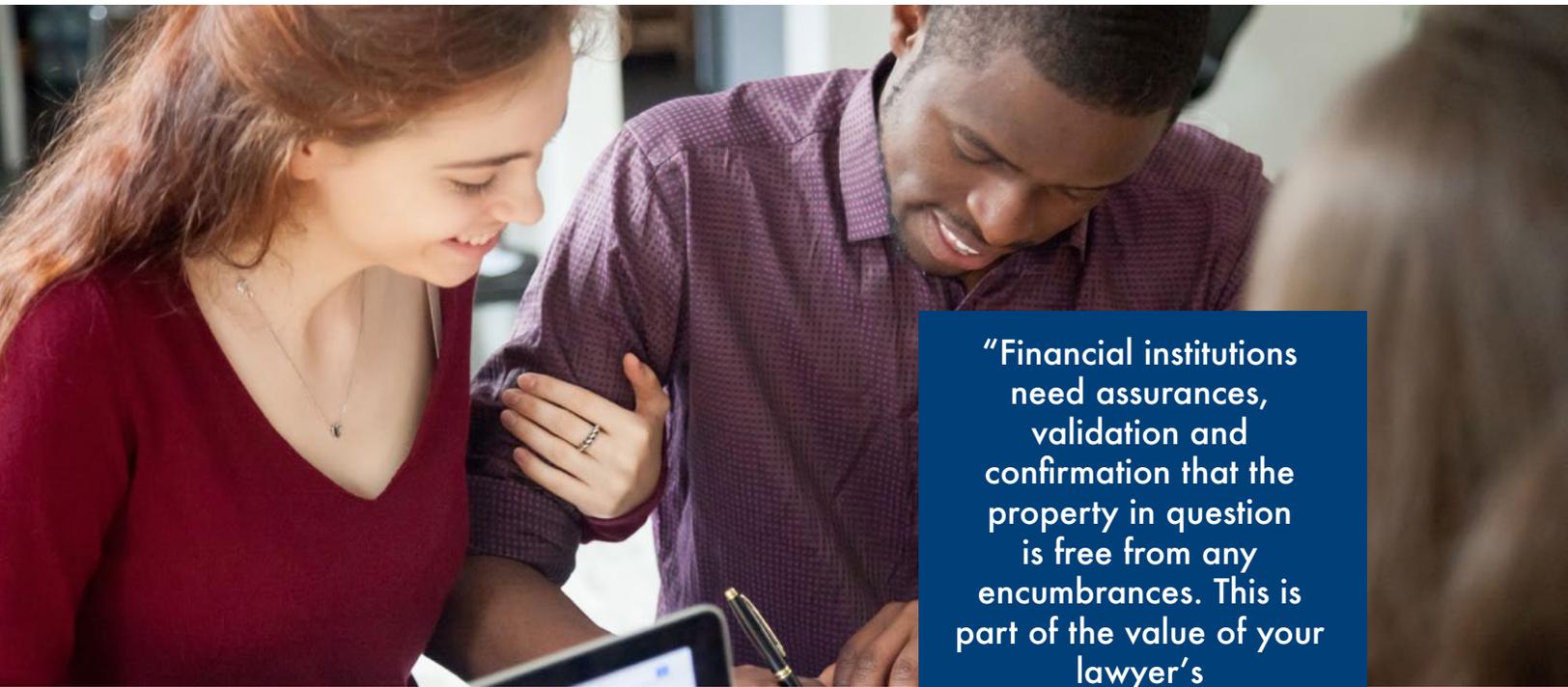
"When entering a private lending transaction, it is prudent and wise to prepare an exit strategy well in advance of the renewal date."

When entering a private lending transaction, it is prudent and wise to prepare an exit strategy well in advance of the renewal date. In fact, we would suggest you begin creating that strategy prior to signing any form of lending agreement.

Based upon the fees, higher interest rates, the tangible and intangible costs, and the potential stress and effort on the borrower's part, having a proactive plan when the private mortgage renewal approaches, is vital.

Before contacting a private lender, we would recommend that you give your bank another chance, which we will talk about next.

GIVE YOUR BANK ANOTHER CHANCE



“Financial institutions need assurances, validation and confirmation that the property in question is free from any encumbrances. This is part of the value of your lawyer’s involvement.”

Banks are accustomed to working with clients whose economic situations have changed. Perhaps your finances are getting tighter and you need to reduce your monthly financial commitments, or you may want to take advantage of lower interest rates, pay off debt, or you have other reasons for needing additional funds. If so, your bank may have a solution or a viable recommendation for you.

Prior to reaching out to a private lending broker or mortgage investment company, contact your bank again, even if they declined your application previously. Sometimes things change and your circumstances may have a different effect on the bank loan or mortgage application. If your bank declines your application, then try again at a different bank before contacting a private lending alternative. However, you should be aware that every time you submit a mortgage application, your overall credit score decreases slightly. To ensure that your credit rating is not affected by submitting multiple mortgage applications, you should have a preliminary discussion with a bank representative to see if submitting a mortgage application is appropriate.

GIVE YOUR BANK ANOTHER CHANCE (CONTINUED)

Canadian banks understand their customers have many alternatives for borrowing. If a bank customer gets declined for mortgage or refinance, the banks have other options for their clients. Many of these options are similar to private lending mortgage loans, and may be separate from your bank, but your bank may help in facilitating and coordinating the private lending introduction and may be able to help reduce some of your private lending fees. Just make sure that the bank is adding some value and not just another level of fees to the private lending option.

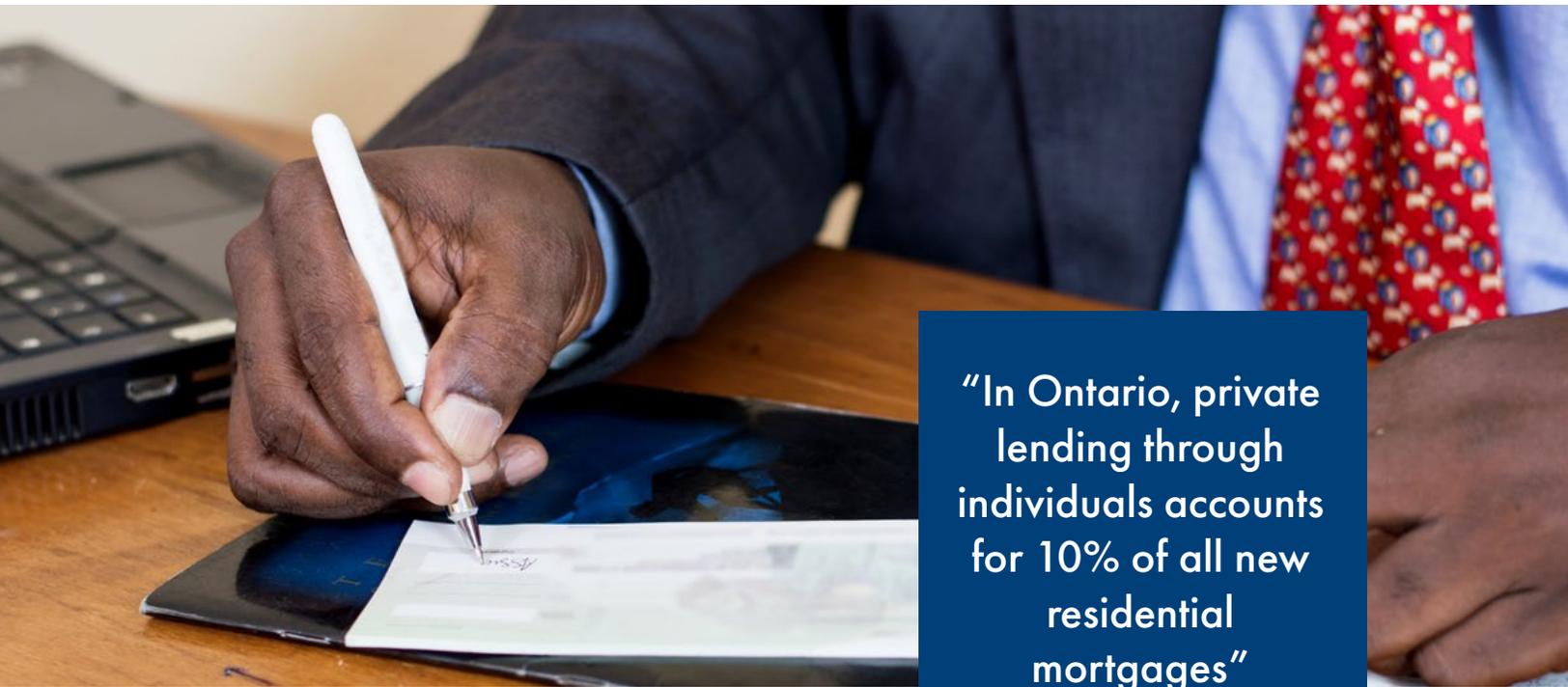
Having a lawyer to help you navigate through this research and provide advice and oversight is crucial. In most cases, if not all, financial institutions expect you to have your own lawyer involved with your mortgage transaction. It's in your best interest to have your lawyer involved at the very early stages of your research and decision-making stages, as your lawyer may assist you in reviewing the lending agreement and explain the effects and consequences of certain terms, before you sign anything.

In addition to understanding your needs and reading agreements to make sure your interests are protected, lawyers also perform many other important activities. These activities include searches on your property title, ensuring there are no liens on your property, and identifying outstanding taxes.

Financial institutions need assurances, validation and confirmation that the property in question is free from any encumbrances. This is part of the value of your lawyer's involvement.

“Having a lawyer to help you navigate through this research and provide advice and oversight is crucial.”

WHAT IS PRIVATE LENDING?



“In Ontario, private lending through individuals accounts for 10% of all new residential mortgages”

Private lending refers to non-traditional sources for money. Banks can be considered traditional sources for lending. Individuals or companies that lend money outside of the traditional sources are considered private lenders. They also have non-traditional guidelines for lending and are not subject to the same rigorous regulations that traditional banks must abide by.

Private lending by individuals and MIC's (mortgage investment corporations, the ones you hear on the radio about using the equity in your home for loans) is on the rise. In Ontario, private lending through individuals accounts for 10% of all new residential mortgages, including purchase and refinancing .

The changes that were made by the Office of the Superintendent of Financial Institutions (OSFI) on January 1st, 2018, made it more difficult for borrowers to borrow funds from traditional sources, like banks, and has opened an alternative source of funds; private lending.

WHAT IS PRIVATE LENDING (CONTINUED)

“Bank of Canada Governor Stephen Poloz believes that ‘people might also look for a lender that is not bound by these new mortgage rules so they can avoid facing the stress test.’ This is where private lending comes in.”

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Now that we have reviewed private lending, let's learn more about why people use private lending.

WHY DO PEOPLE USE PRIVATE LENDING?



“Securing a second or third mortgage from a private lender can serve a purpose and may be your only solution in the short term”

You probably have good reasons for securing these funds: an emergency, paying off debt, starting a business, or maybe your kids are heading to university.

At this point, you should consider whether there are alternatives available to you, other than obtaining a private mortgage. If there are alternatives or options you can pursue to obtain funds elsewhere, like family, friends or approaching the bank again, now is the time to pursue them. Dig deep, you may be surprised at the alternatives available if you ask your closest friends and trusted family members. You may also find ways to reduce expenses and get by until additional opportunities or funds arise.

Securing a second or third mortgage from a private lender can serve a purpose and may be your only solution in the short term, but it can also be very expensive, as well as add additional financial strain to yourself in the long run. There are many advance fees, higher interest charges, hidden charges, and additional fees outside of the transaction itself. Having a lawyer involved who is familiar with second and third mortgage transactions is a must.

WHY DO PEOPLE USE PRIVATE LENDING? (CONTINUED)

From a negotiation perspective, you may feel you do not have a position of strength in this private lending process or negotiation power – but you do. You can walk away and find another private lending source or reduce expenses, like selling your home, rather than becoming more indebted and having to sell your home on a private lender's terms. Your lawyer can offer counsel with your decision process.

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Before getting into the details of securing funds from private lenders, we should understand private lending in more detail.

As you read this document you will soon understand the importance and value of having an experienced lawyer guide you through the second or third mortgage process.

Prior to reviewing the 'reasons why you want to reconsider private lending', we should go into greater detail about private lenders and private lending.

WHO ARE PRIVATE LENDERS?



“Private lending refers to non-traditional sources for money.”

Knowing who is lending you money is critical to helping you understand all the fees and costs. Although it may help you understand the process, it won't comfort you much, since private lending can be high risk for both the lender and the borrower.

A mortgage broker is the individual who negotiates the loan agreement between the borrower and the lender. The mortgage broker most often represents both the borrower and the private lenders(s), during the negotiation process. In most cases, a mortgage broker is fulfilling a worthwhile need for the borrower, whether it is buying a new home when traditional lenders wouldn't approve a mortgage, or perhaps keeping you in your own home if you are short on funds, or experiencing a financial crisis and need to access your home's equity. Many brokers can help you when other financial institutions cannot. Just keep in mind that, while the mortgage broker, although helpful and convenient, represents both the borrower and the private lenders and their interests. It is therefore prudent to retain a lawyer that represents only your interests, as the borrower, to examine the loan agreement prepared by the mortgage broker, before signing.

WHO ARE PRIVATE LENDERS? (CONTINUED)

Private lenders are individuals (usually non-institutional/non-bank) from varying income levels that are looking for a higher return and secured alternatives for their savings with the minimum amount of risk. They are looking for higher returns for their investments.

In many cases, private lenders can earn up to 18% or more on their investments. But with higher returns come increased risks. Each private lender has different levels of risk tolerance, which motivates their selection of whom they lend to, and at what rate they lend their money.

Provided that your home has available equity, private lenders will use regulated tolerances of how much you owe on your home versus how much your house value is, and usually won't go beyond regulated thresholds. They will also need assurances that you can service the additional payments. The interest rates are market based, so if you live in an area that has surplus capital, the rates will be more competitive and lower. Conversely, for areas with less capital available, interest rates are higher. In some cases, private lenders lend from their pension, RRSP or non-registered investment portfolio.

Private lenders will have their own lawyer and they may also have their own broker. You will most likely be working directly with their broker, however you will definitely need your own lawyer. In fact, you will be paying for the private lender's legal and administration fees related to your specific loan transaction, in addition to paying your own.

Private lenders must be very selective with whom they lend money to, and who they lend money 'through', namely the mortgage broker they work with. They must have explicit trust with their mortgage broker. A good rule of thumb is whether the mortgage broker would lend money to a borrower themselves. If not, then you should consider an alternative borrower to lend money to.

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WHO ARE PRIVATE LENDERS? (CONTINUED)

Understanding the persona of a private lender will assist you in understanding the loan fees. Private lenders are usually regular people just looking for a higher return on their savings and don't mind lending it out to select, responsible borrowers who abide by the private lending agreement and pay their contractual obligations.

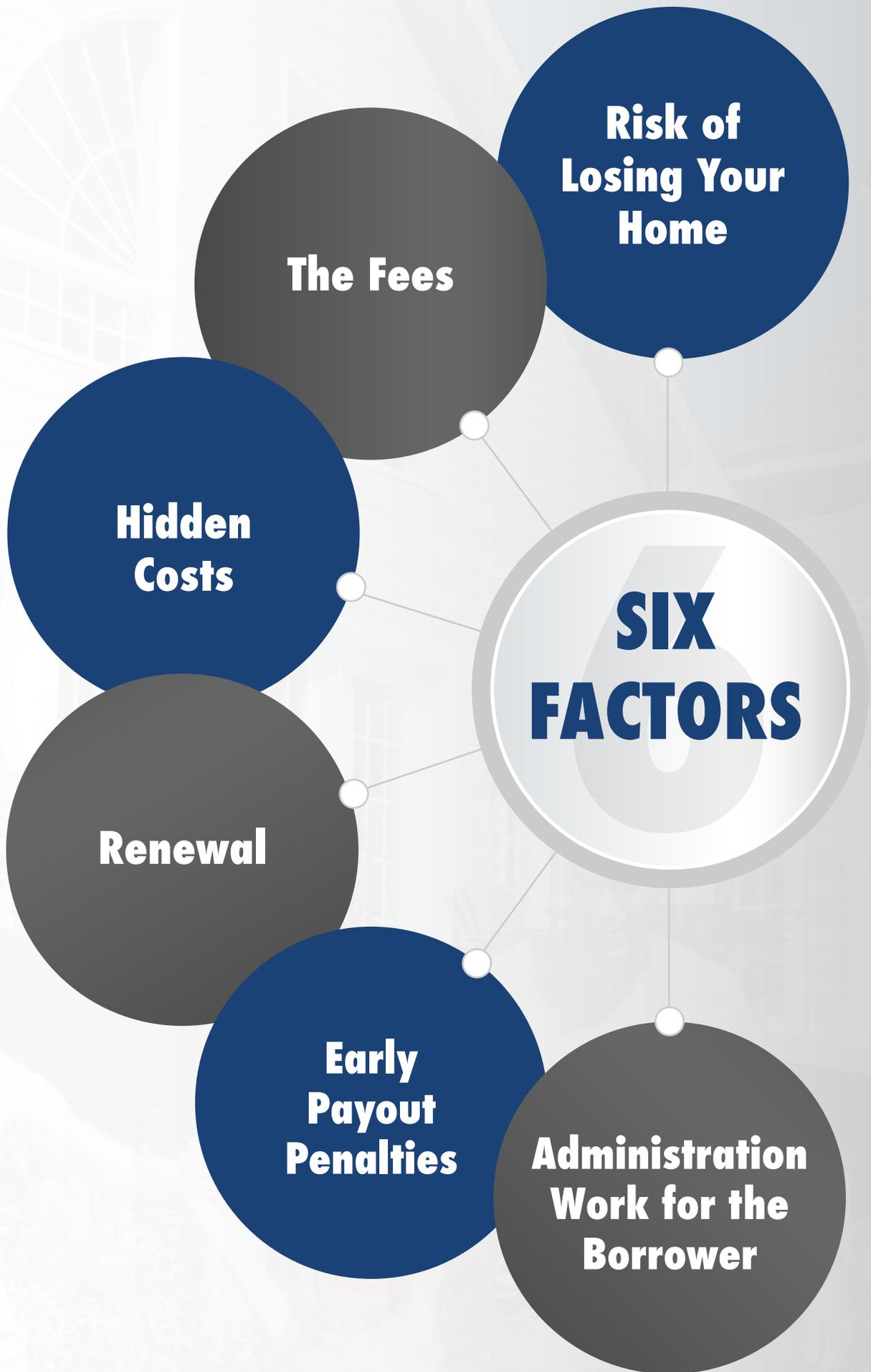
Private lenders usually loan you the funds you qualified for, and you usually pay interest-only payments under the loan agreement, which means you are not paying against principal, just interest payments.

There is no guarantee of renewal following the end of the mortgage term. However, the mortgage broker and private lender may renew if you make interest payments on time and you are not delinquent or behind in your payments. This also means that you should have a backup plan near the end of the renewal in the event the private lender does not want to renew.

“In many cases, private lenders can earn up to 18% or more on their investments.”

We are not suggesting that the private lending mortgage broker you are working with wouldn't find another private lender, but if your broker cannot find another lender to replace the current private lender, don't leave your backup plan preparation for the end of the renewal period. Be proactive with your back-up plan preparation in the event your private lending solution is not renewed. Keeping in touch with your bank, contacting other banks, or researching other private lenders is a worthwhile exercise and should be done well in advance of your private lending agreement renewal or expiry date.

A proactive mortgage broker is incented to renew the agreement, so they will look for a new private lender if the current private lender doesn't want to renew – as long as you are a good borrower and are not behind or delinquent.



FACTOR ONE – RISK OF LOSING YOUR HOME



“Private lenders vary in flexibility, integrity, risk tolerance and contractual requirements, to name a few.”

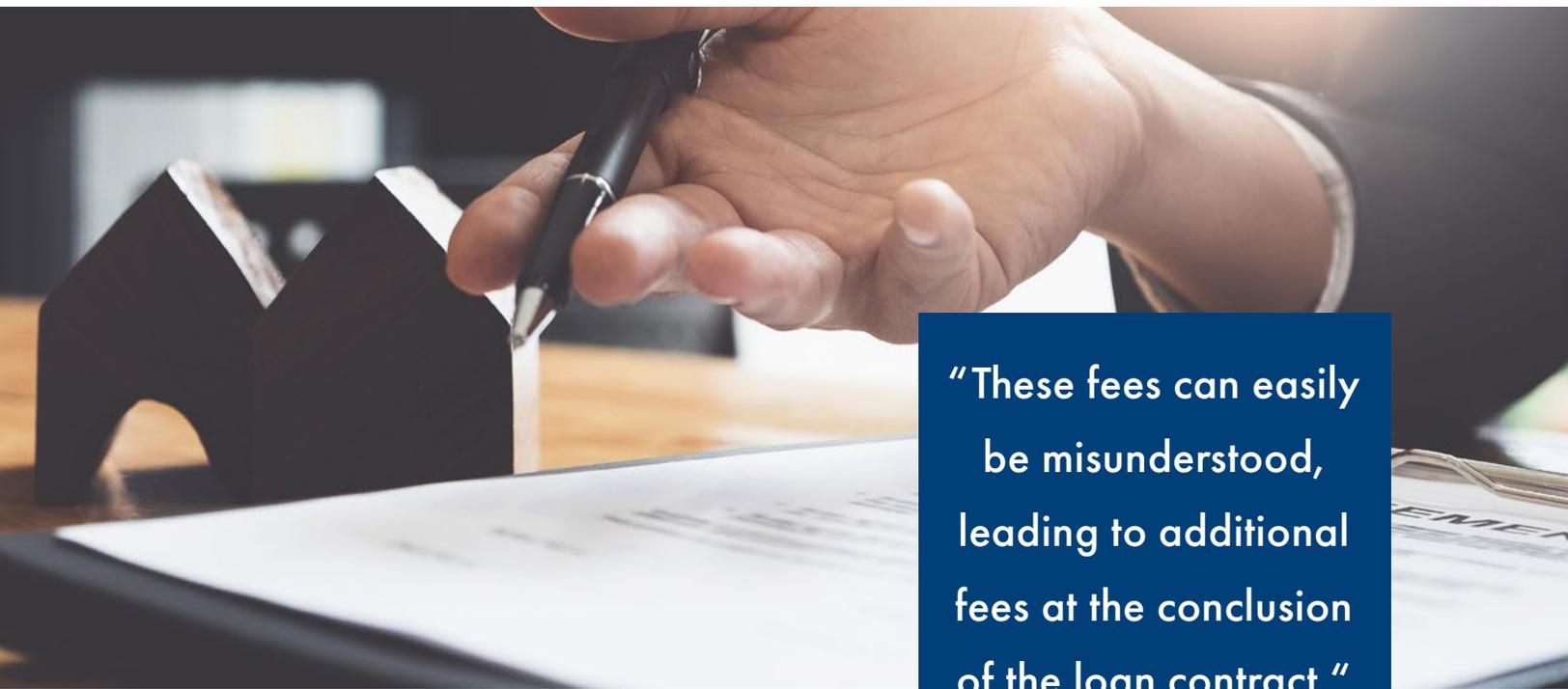
Although private lending does provide an alternative to traditional lending sources, you risk losing your home should you be delinquent in your payments. This doesn't mean that there isn't some flexibility with your broker, but there are no guarantees. If you miss consecutive mortgage payments, you risk triggering the foreclosure or power of sale of your home.

Private lenders vary in flexibility, integrity, risk tolerance and contractual requirements, to name a few. You will want to research private lending options, sources and alternatives.

If you are confident that you can service the interest-only payments, this may be an alternative for you. If you cannot service or make the payments, you should consider other lending alternatives, additional income sources, or perhaps even the sale of your home to avoid a private lending transaction foreclosure. Your lawyer can help you navigate through this decision process.

We've outlined the motivations for private lending and some of the risk involved. The next factor goes into some detail about the fees involved.

FACTOR TWO – THE FEES



“These fees can easily be misunderstood, leading to additional fees at the conclusion of the loan contract.”

There are numerous fees that you will be charged for a private lending agreement and contract. These fees can easily be misunderstood, leading to additional fees at the conclusion of the loan contract. Many private lenders and private lending companies are credible, yet can charge higher than expected fees, especially if you do not read the loan contract or understand the loan agreement. If the private lender is not of high standing and moral fibre, the contract could be much worse .

“Many of the people who are turned away are not giving up on purchasing houses and instead, they are turning to private lenders. Private lenders are willing to take on these risky mortgages, at rates typically around 10 per cent and with fees that must be paid up front. ” ~ HuffPost, “Why More Canadians Are Turning to Private Lender Mortgages”

The initial fees will be presented to you with the cost of borrowing and may look straightforward and legitimate. However, the fine print must be reviewed. There may be additional fees that are not being shared on the initial lending summary.

FACTOR TWO - THE FEES (CONTINUED)

Having a lawyer read the fine print and explain the fees in advance is essential. If you do not understand the fees, have the broker and lender's lawyer clarify and expand upon these fees in writing, and the extent of these fees in advance – including the final payout fees. At the conclusion of the loan agreement, the private lender and broker may be charging additional fees that are predefined and you may be compelled to pay to avoid additional interest fees while contesting the grey area fees. Ensure that all the fees are detailed in advance; fees that are detailed at the beginning of the loan agreement and all the future fees that are applicable when the loan agreement is eventually paid out. The broker and private lender should not be charging you fees that weren't detailed in the loan agreement.

This is where an experienced lawyer comes in, getting the private lender and broker to clarify the initial contract fees. They'll also help with defining in detail what the final fees and their amounts will be should you pay the loan out in advance, at renewal or at the conclusion of the loan agreement.

Every private lender and mortgage broker charges different types of fees. The fees listed in this document are not exhaustive. There may be other fees charged besides the ones listed here.

► BROKER AND BROKERAGE FEES

In many cases, you will be working with a broker who may own the brokerage or be part of a larger brokerage network. Both the broker and the brokerage network may be charging fees included in the total brokerage fees that you will have to pay for at the beginning of the contract and again if you are qualified to renew the loan agreement. The brokerage fees may remain the same upon renewal or may even increase at the discretion of the broker and brokerage.

FACTOR TWO - THE FEES (CONTINUED)

▶ INTEREST

The interest fee will be provided and listed in the details for the duration of the loan agreement. If you will need the agreement to be renewed, now is the time to request the renewal interest rate, which the broker may or may not be able to provide, given the potential for interest rates to change over time.

▶ LEGAL FEES - YOURS & THEIRS

You will need to pay for your own legal fees and the fees of your private lenders. Sometimes your private lenders will consolidate with one lawyer, but not always. Be aware that in addition to your own legal fees for this transaction, you will also be paying legal fees for the private lenders.

These fees will also be required upon the payout of the loan agreement. Again, you'll need to cover both your legal fees and those of the private lenders.

A lawyer can help you with an estimate of these fees.

▶ ADMINISTRATION

The loan agreement fees may also include administrative fees, disbursement fees and pension/RRSP administrative fees, if the private lending funds are from an RRSP or pension fund.

▶ APPRAISAL

Prior to the process for the private lending loan application, the private lender will need a professional appraisal performed for your home. This appraisal is performed by a recognized appraisal professional of the broker's choosing, at the borrower's expense. The fee will need to be paid prior to the private lending loan application process.

As you can see there are substantial fees and costs associated with private lending. There may also be hidden costs involved with private lending, which we'll detail next in Reason Three – Hidden Costs.

FACTOR THREE - HIDDEN COSTS



“It is critical that you research house and property insurance beforehand.”

You are probably wondering why we didn't list 'hidden costs' under the fees section. The reason is that these are 'costs', 'stress' and 'significant effort' not directly associated with the private lending agreement. Here's one example:

It is critical that you research house and property insurance beforehand. If you secure a second or third mortgage, your house and property insurance provider may not have the risk tolerance for more than one or two mortgage holders on your property.

Your house property coverage and the provider must be validated very early in the process so you can confirm that your current insurance provider does indeed cover the additional mortgage holders. If not, early validation gives you reasonable time to attempt to secure appropriate coverage.

FACTOR THREE - HIDDEN COSTS (CONTINUED)

If your insurance provider does not cover the additional mortgage holders, this means you will have to go to the secondary insurance market, which requires a great deal more work, stress, and effort on your end. You also may have to pay two or three times more than what you may be paying today for your house and property insurance.

“Do your homework and research all the possible elements that will be impacted by your second or third mortgage transaction.”

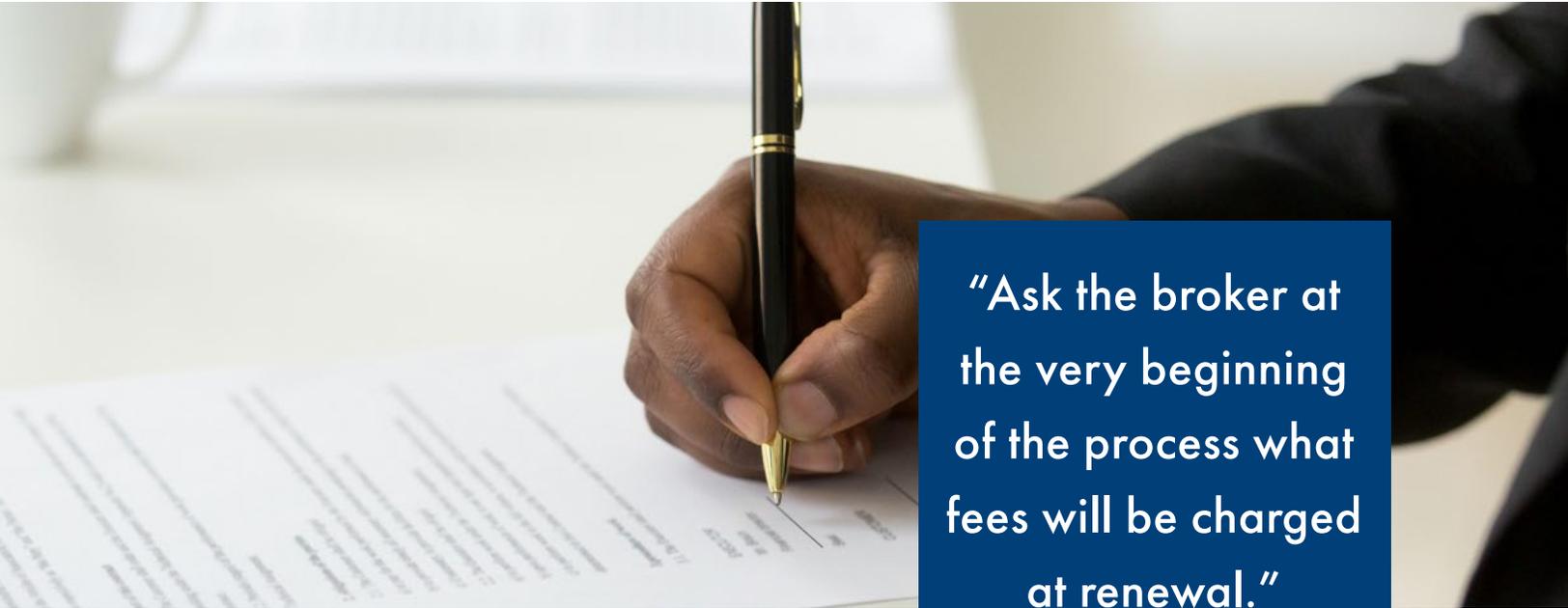


Each year that you have a private lender mortgage, you must review the secondary insurance market coverage which may go up in price or even reduce coverage upon renewal.

Do your homework and research all the possible elements that will be impacted by your second or third mortgage transaction. A lawyer can help you with this exercise.

Once you have understood the risks, the process, and fees involved with private lending and what happens when the agreement is signed, the next step is to start working on an exit strategy. The renewal for the private lending agreement will arrive sooner than you think. Time to start planning for the payout or the renewal of the agreement.

FACTOR FOUR - RENEWAL

A close-up photograph of a person's hand holding a black pen with gold accents, poised to sign a document. The document is out of focus, showing some text and lines. The background is a soft, out-of-focus office setting.

“Ask the broker at the very beginning of the process what fees will be charged at renewal.”

▶ ADMINISTRATION

If you decide to renew the private lender’s loan agreement and the broker has confirmed an acceptable interest rate and terms, be prepared for additional broker administrative fees. These fees may remain the same, decrease, or increase. Ask the broker at the very beginning of the process what fees will be charged at renewal.

▶ POSSIBILITY OF AN INCREASED INTEREST RATE

Do not leave the renewal interest rate discussion and preparation for the renewal date. Try to negotiate and document this rate well in advance of the renewal, if possible. Some brokers are service-oriented and will have some flexibility. They represent their private lending clients, but if you are a good borrower and not delinquent, they may want to keep you as a borrower.

Ask the private lending broker prior to signing the first private lending agreement about a renewal date interest rate confirmation. The broker may be reluctant to provide one in the loan agreement, or at a minimum they may send you an email with an interest rate renewal confirmation or expectation that you can leverage if you need the private lending agreement to be renewed again and want the payments to stay the same.

FACTOR FOUR - RENEWAL (CONTINUED)

► INSURANCE RENEWAL

If you are renewing the private lending agreement, you will need to also renew the property's secondary market insurance. Do this well in advance of the renewal. Some insurance companies may change their risk tolerances and may not renew. Trying to secure property insurance with little or no notice will only add stress, and will most likely cost you much more. Ask for assurances from your secondary market insurance company for renewal assurances for both cost and same coverage. You may also contact your previous property insurer to see if they cover additional mortgage holders or they may even recommend a secondary property insurer.

If you have been working on your exit strategy, then you should either be prepared for the renewal of the private lending loan agreement or the possible payout of the loan if you were successful in securing funding from traditional sources, such as your bank.

FACTOR FIVE - EARLY PAYOUT PENALTIES



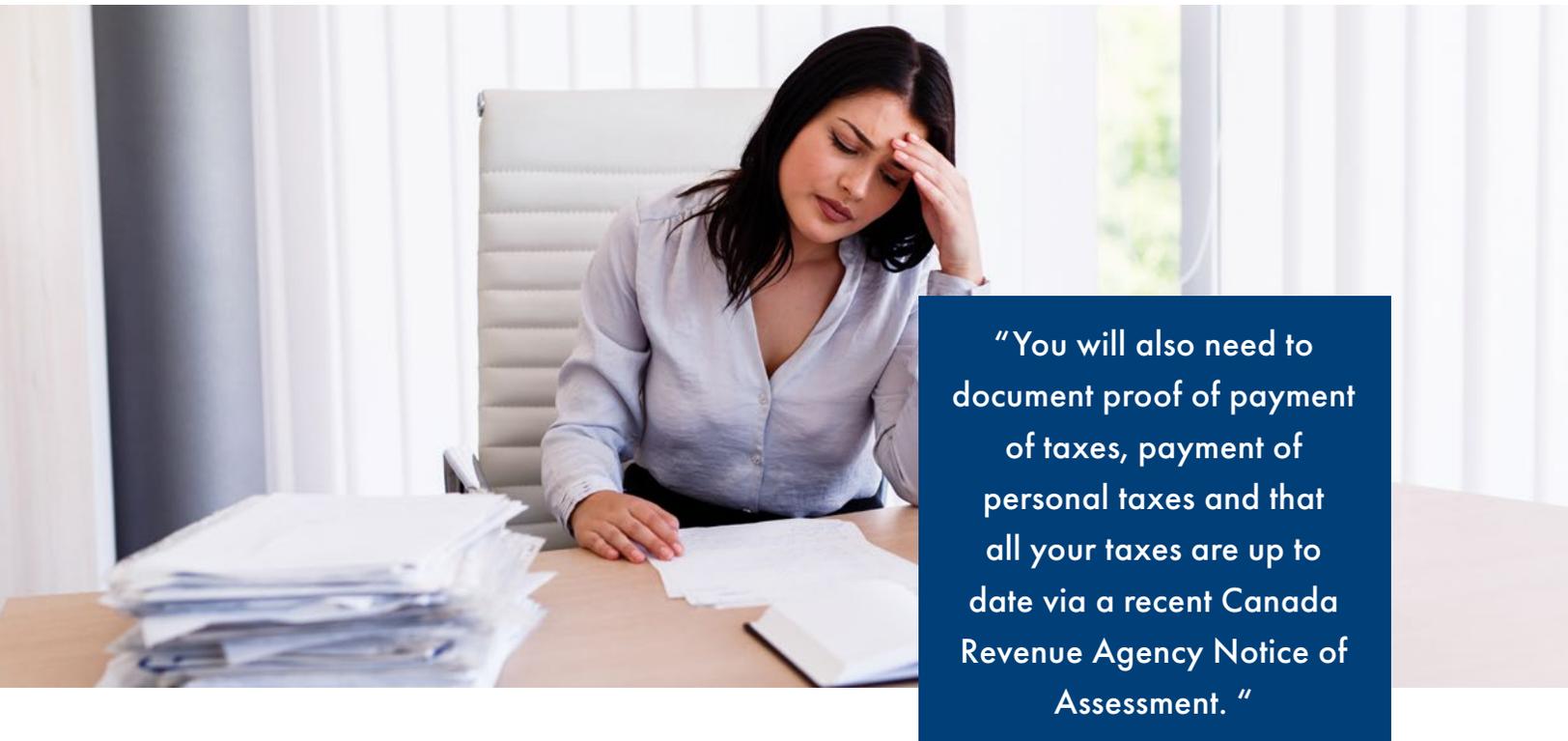
“Ensure that all fees and sub-set fees are agreed to in advance.”

Your private lender loan agreement will provide details about early payout penalties, which are usually a set number of months of interest as a penalty. What they may not provide is early payout administrative costs, as discussed under fees.

Ensure that all fees and sub-set fees are agreed to in advance. There shouldn't be any surprises when you pay the loan out early or upon renewal.

Receiving funds from a private lender does require administrative effort, which we will discuss next.

FACTOR SIX - ADMINISTRATION WORK FOR THE BORROWER



“You will also need to document proof of payment of taxes, payment of personal taxes and that all your taxes are up to date via a recent Canada Revenue Agency Notice of Assessment.”

In addition to insurance coverage research and validation, there is other work you will need to be prepared for, including the signing of numerous post-dated cheques for every private lender (sometimes there are more than one or two, sometimes three or more), which means 12 post-dated cheques for each private lender. Same goes for renewal, more post-dated cheques.

You will also need to document proof of payment of taxes, payment of personal taxes and that all your taxes are up to date via a recent Canada Revenue Agency Notice of Assessment. This also applies for your business, if you have one, and the possibility of other credit worthiness documentation. Be prepared to provide full disclosure of your personal finances for you and your spouse.

SUMMARY

Although we have endeavoured to outline observations and insights related to private lending, your first step before agreeing to or signing any legal document, including a private lending loan agreement, is to contact a lawyer who has experience and specialization with refinancing, second and third mortgages, and private lending transactions.

The contents of this document are not legal advice, but insights to help you in advance of making any serious decisions.

Prior to approaching a private lending broker, individual or private lending company, ensure that you have exhausted traditional lending alternatives or even your trusted friends and family who can afford the risk involved with a private lending investment.

Make sure that you and your spouse can service the additional debt load and make the payments to the private lender. As soon as you have signed the agreement, be proactive and start thinking about an exit strategy well in advance of the loan agreement renewal. There is no guarantee that the private lender and broker can renew. It doesn't hurt to approach your bank again and see if they can refinance the second or third mortgage, just be prepared to pay the extra fees and costs associated at the end of the loan agreement.

If there is a possibility of deferring the private lending alternative, then explore this option, as additional opportunities may arise in the future. If there are no other options, then do your homework, review our insights, observations and reasons to be cautious, and follow the advice and counsel of your lawyer.

ABOUT NICHOLS LAW PROFESSIONAL CORPORATION – NLPC

Nichols Law Professional Corporation (Nichols Law, NLPC) has been helping clients throughout the Greater Toronto – GTA area, York Region and Markham, with their real estate, estate planning and business legal needs and issues for over 30 years.

Over the years, our clients have told us that they need an specialized, ethical, organized and competent law firm that can listen, empathize and understand their needs before rushing to conclusions.

Our culture, legal services offerings, and our approach are based upon our client's insights and needs, this is an essential cornerstone of NLPC. NLPC endeavors to provide a responsive, high quality of work and high integrity environment for our clients.

Nichols Law Professional Corporation (NLPC) provides legal assistance for the following client needs:

- Real Estate
- Estate Planning / Estate Administration
- Business, Corporate and Commercial
- Notarizations

NLPC's clients include families that are just starting out and need assistance with their growing needs with new or larger homes for a growing family, or protecting their dependents and loves one with their estate planning needs.

NLPC helps business professionals, commercial entities and small business owners with their legal needs for starting a new business, contract or agreement advisory or more complex corporate or commercial legal needs.

Knowing more about your law firm and its lawyers can provide some "peace of mind" in advance of your first meeting or interaction. NLPC believes people should work with legal advisors who are a good fit for them personally and professionally, and strives to develop mutual chemistry with every client by looking out for their best interests.

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