



# PRIVATE MORTGAGES

## ARE THEY FOR ME?

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### WHAT IS A PRIVATE MORTGAGE?

A lot of people shudder at the thought of private mortgages. I too was one of them. And then I entered the world of real estate and real estate law, both as a lay person, when it came time to buying my own home, and as a lawyer, now assisting clients in the purchase & sale of their homes. Needless to say, I became quickly educated and well versed on the different terms and conditions of agreements of purchase and sales, and the different lending requirements of different institutional and private lenders. I quickly learned that private mortgages aren't the black sheep that everyone made them out to be. In fact, in today's world, they are a very necessary option to have. Not everyone finds themselves in circumstances conducive with the requirements imposed by conventional lenders. It might just so happen that your particular set of circumstances place you in a position better suited for a private mortgage. It is important to educate yourself before making any big decisions. This article is meant to provide some basic information on private mortgages in order to help you get started.

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### WHAT ARE PRIVATE MORTGAGES?

Private mortgages are essentially mortgages that secure real property in situations where the lender is not a mainstream institutional lender, such as a bank or credit union. Rather, the lender is a person or a private company.

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### WHY WOULD I CHOOSE A PRIVATE MORTGAGE?

Private mortgages are sought after by borrowers who were unsuccessful at securing a mortgage through a bank or other financial providers due to restrictive lending requirements. It is usually first time home buyers, self-employed persons or people who cannot provide proof of a steady income that find themselves in this situation.

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### SEEMS KIND OF RISKY... ARE PRIVATE MORTGAGES REGULATED?

In Ontario, we have what is called the Financial Services Commission of Ontario ("FSCO"), which is essentially a body that regulates private mortgages via the Mortgage Brokerages, Lenders & Administrators Act, S.O. 2006, c. 29. These regulations offer certain protections to consumers, such as:

- Oversight with respect to mortgage brokers who administer mortgages on behalf of third parties

- Requiring private lenders to obtain a 2 year licence unless they qualify for an exemption
- Providing for certain penalties in the event of non-compliance, such as fines, or even imprisonment

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### **WHY WOULD I OPT FOR A PRIVATE MORTGAGE?**

You may think that private mortgages aren't for you. And hey, maybe, in an ideal world, they wouldn't be. But the reality is, we have many clients who come to us in circumstances that aren't so welcoming to conventional lenders. This is nothing to beat yourself over about. Life happens. As we mentioned above in this article, you could be self-employed, and therefore not have the requisite history to meet strict lender requirements. Another situation that often happens is that you have a fast impending closing date, that was negotiated by your realtor in order to land you the deal, but now you find yourself in a rush to get a mortgage approved, and you find that the banks are taking their sweet time.

Yes, the mortgage rate for private lenders are typically higher than they are for conventional lenders, and yes the payback period is usually a lot shorter, but it is a lot easier to get approved for a private mortgage than a conventional one, and therefore a lot faster.

Ultimately these decisions depend on the set of circumstances you find yourself in. The important thing is to be as educated as possible about your options, and about the repercussions. If you make an educated decision, there is nothing to worry about. Consult a lawyer if you can. We often help our clients walk through their real estate closings from beginning to end. While some people choose to go about the earlier stages of this process without legal representation, which is completely fine, it can help in the long run save you a lot of time, headache and possibly even expenses.

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### **WHAT ARE THE RISKS OF PRIVATE MORTGAGES?**

Just as there are benefits, there are risks. Where there are roses, there are thorns. These risks are a two way streak, applying to both the lender and the borrower. It is of absolute paramountcy that both the private lender and the borrower do not enter into a private mortgage without first retaining legal counsel to review all the documents, and lenders must cautiously consider the condition of the property (which includes the prospective repairs and renovations). Our job as lawyers in this capacity is to negotiate terms, prepare security documents and register the resulting mortgage. The earlier on our involvement the better.

Another point that should be emphasized is that while we all know and expect private mortgages to be backed by registered security in real property, it is a good idea, and highly recommended by us, to have this clarified with your lawyer and put in writing in the form of a mortgage commitment before signing. In addition, you should have an initial title search of the property done. We make sure to do this for all our private lender clients as the borrower may be over-leveraged or pre-existing security may already be registered. For example, you do not want to find yourself in a situation where there is a lien, mortgage or interest registered on title to the property, resulting in a default, and the transaction is thereby terminated.

At Agnihotri | Anwar LLP we pride ourselves on our refined and detailed approach to real estate transactions. We understand how easy it is for the smallest minutest errors to manifest themselves in large, and sometimes devastating ways. We have significant experience advising both borrowers and lenders about the risks associated with specific private mortgage loan transactions. We have a proactive approach, ensuring all “t’s” are crossed and all “i’s” are dotted prior to sending off any documents and finalizing a deal. We assist borrowers in seeing through the fine print which is very heavy in mortgage contracts and commitments such as hidden fees or variable mortgage rates. We do that extra bit today to make sure our clients don’t have to deal with any unforeseen problems tomorrow. While with real estate transactions, there are never any guarantees, by virtue of the fact that there are just too many players and contingencies, the safest bet is to have a knowledgeable and serious lawyer right from the outset to make sure you are protected.

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