

How long does an FST appeal normally take?

An appeal to the FST usually takes 4 to 6 months to complete, but can take longer

Please note, if you appeal, the FST will require you to file your submissions and other documents within strict time periods. Please see the FST Directives and Practice Guidelines for details as to these time periods.

Do I get a copy of my decision?

Yes. As the person making the appeal, you will receive a copy of the decision. The decisions are also posted on the FST's website at www.fic.gov.bc.ca/fst. Please also see the **Active Appeals, Decisions and Judicial Reviews** section on the FST's website for some examples of FST decisions.

If I win my appeal, can I be awarded costs?

The FST has the power to award costs, but rarely does so. Please see the FST Directives and Practice Guidelines for more information on how and when the FST may award costs.

Can I have my money back if I win or decide to settle or withdraw my appeal?

No. The FST cannot refund the appeal fee in whole or in part, even if you win, settle or withdraw your appeal.

Can I appeal a decision of the FST?

You cannot appeal a decision of the FST. However, the Supreme Court of BC can review a decision on a judicial review application. Please see a lawyer for more information on how to make an application for a judicial review of an FST decision.

For more information, please contact:

Financial Services Tribunal
4th Floor, 747 Fort Street
Victoria, BC V8W 9V1

Phone: (250) 387-3464
Fax: (250) 356-9923

Email: FinancialServicesTribunal@gov.bc.ca



*A Layperson's Guide to
Mortgage Broker Appeals at*

The Financial Services Tribunal



This pamphlet provides background information for mortgage broker licencees who are considering an appeal of a decision of the Registrar of Mortgage Brokers to the Financial Services Tribunal (“FST”). It does not provide legal advice, and only interprets statutes such as the *Mortgage Brokers Act* and the *Administrative Tribunals Act*, as well as the FST Directives and Practice Guidelines. The Guidelines are available online at www.fic.gov.bc.ca/fst/.

You may also wish to contact a lawyer for legal advice concerning your appeal. If you do not have a lawyer and would like more information on how to get one to help with your appeal, contact the Canadian Bar Association (BC Branch) Lawyer Referral Service.

Should I appeal?

Being unhappy with a decision may not be enough reason to appeal. For your appeal to be successful, you must prove that the Registrar made a **specific** error in reaching their decision. There are three types of errors:

Error of Fact

The Registrar misinterpreted the evidence and reached a wrong factual conclusion. You must be able to demonstrate an “error of fact” by pointing to evidence.

Error of Law

The Registrar misinterpreted the law. You must be able to demonstrate an “error of law” by citing statutes or legal decisions.

Error of Mixed Fact and Law

The Registrar did not apply the law correctly to the facts. You must be able to demonstrate an “error of mixed fact and law” by pointing to evidence and citing statutes or legal decisions.

A general statement such as “they reached the wrong decision” is not enough for an appeal to be successful. If you appeal, you are responsible for showing why the original decision of the Registrar should be overturned. A lawyer may be able to help you to frame your appeal to increase your chances of success.

What are the deadlines for an appeal?

You must file your appeal within **30 days** after the Registrar issues the decision.

How do I file an appeal at the FST?

To appeal a decision of the Registrar you must:

- File an original and two copies of the completed Notice of Appeal. Please see the FST Directives and Practice Guidelines at www.fic.gov.bc.ca/fst for more information and for a suggested template for the Notice of Appeal.
- Pay a fee of \$850 for each party appealing the decision. The FST will not process the appeal until it receives this fee.

If I appeal, does the appeal automatically suspend the decision against me?

Most decisions of the Registrar are automatically suspended when an appeal is filed with the FST. If you appeal, the decision and the related penalty imposed by the Registrar will not take effect until after the appeal is completed.

However, there are some exceptions to this rule. First, if the Registrar made his decision without a hearing under section 8 (2) of the *Mortgage Brokers Act*, the decision would not be suspended by filing an FST appeal. The decision issued by the Registrar should indicate if this section applies.

As well, the Registrar may apply to the FST to have his decision take effect immediately if an appeal suspends his decision.

Can I have a new hearing at the FST?

The FST will not redo the original hearing, or provide a “fresh start”. Appeals to the FST are based on what was on “the record” of the decision of the Registrar. This means the FST will only review the:

- documents filed with the Registrar;
- transcripts of oral evidence given at the Registrar’s hearing;
- any other objects that were taken as evidence by the Registrar in making the decision; and
- written reasons of the Registrar.

The FST will also review the written submissions filed by you and the other parties to the appeal.

Can I give oral evidence or give the FST some new evidence in an appeal?

In unusual circumstances, the FST may consider new evidence that was not heard by the Registrar, or allow you to speak directly to the member of the FST hearing the appeal.

Please see the FST Directives and Practice Guidelines for more information on when oral submissions or new evidence may be heard as part of the FST appeal process.

