

**DECISION OF  
THE SASKATCHEWAN REAL ESTATE COMMISSION  
AND CONSENT ORDER**

*Moore (Re)*, 2019 SKREC 40

Date: December 2, 2019  
Commission File: 2019-38

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF BRANDON MOORE**

Before: A Saskatchewan Real Estate Commission Hearing Committee  
comprised of the following:

David M. Chow - Chairperson

Wayne Zuk

Dean Staff

**CHARGE and ADMISSION OF MISCONDUCT:**

[1] The registrant is charged with and is admitting to professional misconduct as follows:

**Count 1:**

That, contrary to section 39(1)(c) of *The Real Estate Act*, Mr. Moore breached Commission Bylaw 701(a) by drafting an offer to purchase that stated that the Purchaser owned the Property when, in fact, the Purchaser did not own the Property.

**Count 2:**

That, contrary to section 39(1)(c) of *The Real Estate Act*, Mr. Moore breached Commission Bylaw 730 by failing to use the mandatory Residential Contract of Purchase and Sale and the mandatory Notice to Remove Condition(s) on Residential contract of Purchase and Sale.

## LEGISLATION:

[2] Section 39(1)(c) of *The Real Estate Act* states:

*“Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act, if...it is a breach of this Act, the regulations or the bylaws or any terms or restrictions to which the registration is subject.”*

[3] Bylaw 701(a) states:

*“No registrant shall make or permit to be made, whether orally or otherwise, a statement, record, report, notice or other document required by this Act, the regulations or the bylaws that...contains an untrue statement of a material fact.”*

[4] Bylaw 730 states, in part:

*“The following approved forms, provided by the Association of Saskatchewan REALTORS®, shall be mandatory:*

*(a) Residential Contract of Purchase and Sale (does not apply to the sale of new condominiums);*

*...*

*(e) Notice to Remove Condition(s) on Residential Contract of Purchase and Sale;”*

## FACTS:

[5] In accordance with subsection 9(4) of The Real Estate Regulations (“the Regulations”), the Hearing Committee accepts Mr. Moore’s Statement of Facts and Admissions, which includes the following relevant points:

[6] Mr. Moore has been continuously registered as a broker under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since July 1, 2017. Prior to that, he was continuously registered as a salesperson from September 26, 2014 to June 30, 2017.

[7] Mr. Moore has taken the following real estate courses:

- Phase 1 – Real Estate as a Professional Career;
- Residential Real Estate as a Professional Career;
- Commercial Real Estate as a Professional Career;
- Farm Real Estate as a Professional Career; and,
- Real Estate Office Management & Brokerage.

[8] Mr. Moore has completed the continuing professional development seminars each registration year since 2014-2015.

- [9] Mr. Moore is presently registered under the provisions of *The Real Estate Act* as a broker with Black Dog Republic Realty Inc.
- [10] On June 12, 2018, the Builder signed a Seller's MLS® Brokerage Contract listing the Property for sale with Black Dog Republic Realty Inc.
- [11] Mr. Moore acted as the listing agent.
- [12] On June 12, 2018, Mr. Moore drafted an Offer to Purchase whereby the Builder would build a house to the specifications of the Purchaser.
- [13] The Offer to Purchase specifically states that the Purchaser owned the Property free and clear of all encumbrances and encroachments except as provided.
- [14] Although the Property is a residential property, Mr. Moore did not have the Builder and the Purchaser complete a Residential Contract of Purchase and Sale.
- [15] Although the Offer to Purchase drafted by Mr. Moore stated that the Purchaser owned the Property, the Property was in fact owned by the City of Saskatoon.
- [16] Conditions were removed on the day that the property's title transferred from the City of Saskatoon to the Purchaser.
- [17] The Purchaser and the Builder initialled notations added to the Offer to Purchase indicating that each condition had been removed.
- [18] Mr. Moore did not have the parties complete a Notice to Remove Condition(s) on Residential Contract of Purchase and Sale.

**REASONS:**

- [19] The Investigation Committee and Mr. Moore considered the following as relevant in agreeing to the within consent order:

Mitigating Factors

- [20] Mr. Moore was co-operative with the investigation.
- [21] Mr. Moore has no previous sanction history.

Aggravating Factors

- [22] Mr. Moore is registered as a broker. As the parties responsible for ensuring that the registrants and employees under their supervision are complying with the legislation, brokers are held to a higher standard of conduct.

[23] Mr. Moore failed to use multiple mandatory forms.

[24] Mr. Moore has been a registrant for over five years.

#### Prior Decisions & Other Considerations

[25] In May of 2012, the Appeals Committee of the Real Estate Council of Ontario rendered a decision [\*In the Matter of Suzette Thompson\*](#) (“*Thompson*”). The Appeals Committee in *Thompson* set out a series of factors to be considered when determining the appropriate sanction for a registrant found in breach of the legislation. The factors are as follows:

1. The nature and gravity of the breaches of the Code of Ethics.
2. The role of the offending member in the breaches.
3. Whether the offending member suffered or gained as a result of the breaches.
4. The impact of the breaches on complainants or others.
5. The need for specific deterrence to protect the public.
6. The need for general deterrence to protect the public.
7. The need to maintain the public’s confidence in the integrity of the profession.
8. The degree to which the breaches are regarded as being outside the range of acceptable conduct.
9. The range of sanction in similar cases.

[26] These factors are reasonable considerations and can offer guidance to members of a Hearing Committee tasked with crafting an appropriate sanction for a registrant found to have committed professional misconduct. These factors have been consistently applied in Saskatchewan Real Estate Commission consent orders since September 2016.

*1. The nature and gravity of the breaches of the Code of Ethics.*

[27] While representing the Purchaser and the Builder in a transaction, Mr. Moore drafted an offer to purchase that stated that the Purchaser was the owner of the Property when, in fact, the Purchaser did not own the Property. Mr. Moore also failed to use two mandatory forms in the course of the transaction.

*2. The role of the offending member in the breaches.*

[28] Mr. Moore was the only registrant involved in his breaches of the legislation.

*3. Whether the offending member suffered or gained as a result of the breaches.*

[29] There is no evidence to suggest that Mr. Moore benefitted from his actions, nor is there evidence that he suffered any losses.

*4. The impact of the breaches on complainants or others.*

[30] There is no evidence of actual consumer harm, but inaccurate information in a contract has the potential to create confusion and disagreement between buyers, sellers, and agents about the logistics of the transaction.

*5. The need for specific deterrence to protect the public.*

[31] Mr. Moore must be reminded that the accuracy of information set out in a contract is crucial to real estate transactions and to the industry as a whole.

[32] Mr. Moore must also be reminded that the mandatory forms are to be used in all cases. There is no discretion for registrants to decide if and when they will be used.

*6. The need for general deterrence to protect the public.*

[33] General deterrence is needed to ensure that other registrants know that promulgating inaccurate information is unacceptable and that the mandatory forms are to be used at all times.

*7. The need to maintain the public's confidence in the integrity of the profession.*

[34] Members of the public rely on registrants to ensure that the documents needed to complete a trade in real estate are completed properly. The public must be confident that registrants are using the appropriate forms and that the documents they are signing do not contain inaccurate information.

*8. The degree to which the breaches are regarded as being outside the range of acceptable conduct.*

[35] Mr. Moore's conduct falls below the standard expected of registrants, but it was not egregious.

*9. The range of sanction in similar cases.*

**A. What is an appropriate sanction for Mr. Moore's breach of Bylaw 701(a)?**

[36] There are several previous decisions dealing with a breach of Bylaw 701(a), five of which include principles relevant to the case at hand.

[37] In *Aldous (Re)*, [2019 SKREC 10](#), (file #2016-19) ("*Aldous*"), Catherine Aldous received an order of reprimand and a \$1,500 fine for breaching Bylaw 701(a) by backdating an offer to purchase a property. Ms. Aldous represented the seller of a property. Buyers wrote an offer to purchase the Property that was open for acceptance until 10:00 p.m. on February 5, 2015. Ms. Aldous' client could not sign the contract until the next morning. The buyers' agent suggested time stamping the offer to make it appear as though it had been signed by the seller before the offer expired and Ms. Aldous agreed with this suggestion. The contract states that it was signed by the seller at 9:55 p.m. on February 5, 2015 when, in fact, it was not signed by the seller until February 6. The transaction ultimately collapsed.

- [38] Ms. Aldous did not have a previous sanction history, was co-operative with the investigation, and signed a Statement of Facts and Admissions acknowledging her error.
- [39] There were no aggravating factors relating specifically to Ms. Aldous' breach of Bylaw 701(a).
- [40] Mr. Moore's breach is more serious than that of the registrant in *Aldous*. Mr. Moore drafted a document that identified the Purchaser as the owner of the Property when he knew that this was not the case. Mr. Moore is also a registered broker.
- [41] In *Anton (Re)*, [2018 SKREC 29](#), (file #2016-31) ("*Anton*"), Diane Anton was issued an order of reprimand and a \$1,250 fine for drafting a counter offer that stated it was signed by the seller at 9:00 pm on November 11, 2015 when it was not, in fact, 9:00 pm on November 11 when the seller signed the document.
- [42] Ms. Anton represented the seller of a property. She received an offer from another registrant and her seller client responded with a counter offer. Ms. Anton contacted the other registrant to discuss the seller's counter. The other agent came back with another suggestion, which Ms. Anton discussed with her client. The seller agreed to the new suggestion and Ms. Anton prepared a new counter offer. Ms. Anton signed this new counter offer on behalf of her seller client at his request. The seller did not want Ms. Anton to drive all the way back to the function he was attending to get his signature, nor did he want to have to exit the function to sign the document. The seller signed the counter offer the next morning. The new counter offer stated that it was signed by the seller at 9:00 p.m. on November 11, 2015, which was the same time at which the first counter offer was signed. It was not 9:00 p.m. on November 11 when the seller signed the document.
- [43] Ms. Anton had no previous sanction history and was co-operative with the investigation. At the time of the breach, she had only been registered for a few months. There was no evidence of consumer harm and her client ultimately signed the counter offer himself.
- [44] Mr. Moore's breach of Bylaw 701(a) is more serious than that of the registrant in *Anton*. While Ms. Anton's counter offer inaccurately identified when the seller signed, Mr. Moore inaccurately identified the owner of the Property. Ms. Anton had only been registered for a few months at the time of her breach of Bylaw 701(a), while Mr. Moore is registered as a broker.
- [45] In *Randhawa (Re)*, [2014 SKREC 1](#) (file #2011-48) ("*Randhawa*"), Harpreet Randhawa was issued an order of reprimand and a \$3,000 fine and was ordered to pay costs in the amount of \$3,900 for his breach of the bylaw. Mr. Randhawa's family member had made a conditional offer to purchase the property from Mr. Randhawa's seller client, which had been accepted by the seller. Another offer

was sent to Mr. Randhawa by a registrant the next day that was not disclosed to the seller. Instead, Mr. Randhawa returned an amended offer to the registrant with the name of the seller changed to his family member's name, although the family member's offer was still conditional and title had not transferred.

- [46] The fine in this case was somewhat mitigated due to the fact that Mr. Randhawa honestly believed that he was doing nothing wrong when he returned the amended offer to the registrant with the name of the seller changed to that of his family member.
- [47] Mr. Moore's breach of Bylaw 701(a) was similarly serious to that of the registrant in *Randhawa*. Both Mr. Moore and Mr. Randhawa inaccurately identified the owner of the property at issue in the transaction. Mr. Randhawa was representing a family member in the transaction and Mr. Moore is a broker, so both had aggravating factors at play.
- [48] In *Robinson (Re)*, [2014 SKREC 7](#) (file #2012-67) ("*Robinson*"), Mark Robinson was issued an order of reprimand and ordered to pay a \$1,000 fine for publishing an MLS® Listing that stated that the basement wall type was "cindercrypt blk" when, in fact, the basement walls were composed of concrete, drywall and brick. The inaccurate information was included in the listing as a result of a transcription error.
- [49] Mr. Robinson had no previous sanction history and he was co-operative throughout the investigation. He accepted full responsibility for his actions and there was no evidence of consumer harm as no sale resulted from the inaccurate listing. The error was not brought to Mr. Robinson's attention before the listing expired, so he had no opportunity to correct the information.
- [50] Mr. Moore's breach of Bylaw 701(a) is more serious than that of the registrant in *Robinson*. There is no evidence of consumer harm in the case at hand, but Mr. Moore's actions were deliberate. He knew the purchaser did not own the Property when he named the Purchaser as the owner on the contract. Further, Mr. Moore is registered as a broker. There were also more mitigating factors at play in *Robinson*.
- [51] In *Flegel (Re)*, [2015 SKREC 14](#) (file #2013-02) ("*Flegel*"), Jerry Flegel was issued an order of reprimand and a \$1,500 fine for completing an offer to purchase that stated that the purchase price included a deposit of \$10,000 when, in fact, the purchase price included a \$1,000 deposit. Mr. Flegel's error was unintentional in that he accidentally added an extra zero when writing the deposit amount. The error was discovered when the transaction collapsed and the seller requested that the brokerage turn over the \$10,000 deposit.
- [52] Mr. Flegel had no previous sanction history and was co-operative with the investigation. His error was unintentional, as opposed to a deliberate misrepresentation, and he did not benefit from his error.

- [53] There was consumer harm in that the seller accepted the conditional offer on the belief that the buyer's brokerage was holding a \$10,000 deposit and did not find out the truth until the transaction collapsed after the buyer had removed conditions.
- [54] Mr. Moore's conduct is more serious than that of the registrant in *Flegel*. Mr. Flegel's error was entirely unintentional, while Mr. Moore knowingly drafted a contract that identified the purchase as the owner of the Property when he knew the purchaser did not own the Property. Also, Mr. Moore is registered as a broker. However, there was evidence of consumer harm in *Flegel* that is not present in the case at hand.
- [55] An order of reprimand and a \$2,000.00 fine are appropriate sanctions for Mr. Moore's breach of Bylaw 701(a).

**B. What is an appropriate sanction for Mr. Moore's breach of Bylaw 730?**

- [56] There are several previous decisions dealing with breaches of Bylaw 730.
- [57] In *Hamilton (Re)*, [2018 SKREC 31](#) (file #2014-58) ("*Hamilton*"), Carmen Hamilton was issued an order of reprimand and a \$750 fine for breaching Bylaw 730(a) when she failed to use a Residential Contract of Purchase and Sale. She was also issued an order of reprimand and a \$750 fine for breaching Bylaw 730(c) when she failed to use a Counter Offer to Residential Contract of Purchase and sale.
- [58] Ms. Hamilton failed to use the mandatory offer and counter offer forms in the course of a trade in real estate. Ms. Hamilton represented the buyer and sellers as a limited dual agent. While writing an offer on the buyer's behalf, Ms. Hamilton called the sellers to discuss some chattels the buyer wanted included in the purchase of the property. There was no written offer to purchase at this time. Ms. Hamilton verbally communicated the buyer's offer to the sellers. The offer was not documented on a Residential Contract of Purchase and Sale that was signed by the buyer. Ms. Hamilton sent a text message to the buyer advising of the details of a counter offer from the sellers. The counter offer was not documented on the mandatory Counter Offer form. Ms. Hamilton discussed the sellers' response with the buyer and, as a result of this discussion, whited out the reference to the chattels on the Residential Contract of Purchase and Sale she had started writing.
- [59] Some months prior to this transaction, Ms. Hamilton had been warned by her branch manager that verbal offers were not an acceptable practice.
- [60] Ms. Hamilton did not have a previous sanction history and she was co-operative with the investigation. Her buyer client brought a civil action against her and she settled with the buyer for \$2,000.

- [61] Ms. Hamilton's branch manager had previously warned her that verbal offers were not an acceptable practice.
- [62] Mr. Moore's breach of Bylaw 730 is slightly more serious than that of the registrant in *Hamilton*. While Mr. Moore had never been previously warned about this conduct, he is registered as a broker. Also, there were more mitigating factors at play in *Hamilton*.
- [63] In *Howsam (Re)*, [2007 SKREC 10](#), (file #2006-65) ("*Howsam*"), Jeff Howsam received a letter of reprimand and two \$1,000 fines (one for each violation of Bylaw 730) when he failed to use mandatory forms in the process of a transaction.
- [64] Mr. Howsam negotiated the purchase of a residential cabin without disclosing, in writing, his registrant status to the Seller. The purchase price of \$50,000 was agreed upon. A hand written offer to purchase was drawn by Jeff Howsam and signed by the Owner and Mr. Howsam. Mr. Howsam gave the owner \$250 as a down payment on the purchase price and the balance was to be paid in 7 days. The Owner subsequently decided not to sell the cabin.
- [65] Mr. Howsam was not familiar with residential real estate transactions, but he was familiar with the need to use mandatory disclosure forms. He had been sanctioned two years previously for a failure to use the statement of disclosure forms.
- [66] The Hearing Commission noted its concern about the lack of use of mandatory form and that this could not be tolerated. It is not for the registrants to determine whether the forms should be used in the circumstances. The forms are mandatory and must be used. The forms are for the protection of the public and registrants and it is important that the public understands that the mandatory forms will be used.
- [67] Mr. Moore's conduct is slightly less serious than that of the registrant in *Howsam*. Mr. Moore does not have a previous sanction for failure to use mandatory forms and the seriousness of Mr. Howsam's breach was exacerbated by the fact that he was personally involved in the transaction. However, Mr. Moore is registered as a broker and is therefore held to a higher standard of conduct.
- [68] In *Ashton (Re)*, [2007 SKREC 12](#), (file #2006-70) ("*Ashton*"), Ron Ashton received an order of reprimand and a \$1,000 fine for breaching Bylaw 730(a) by writing a two-page residential agreement rather than using the mandatory Residential Contract of Purchase and Sale form. In July 2005, Mr. Ashton sold his principal residence to an acquaintance by way of a hand-written two-page document entitled "Agreement between Ron Ashton and [the buyer]".

- [69] In January 2006, Mr. Ashton re-occupied the property and the buyer vacated the property acting on the verbal representation from Mr. Ashton that Mr. Ashton had re-paid \$28,000 to the buyer's lawyer. Mr. Ashton never paid the \$28,000 to the lawyer or client. There was persistent disagreement between Mr. Ashton and the buyer as to whether the agreement was for a sale or a lease with an option to purchase.
- [70] The Hearing Committee noted that "as a senior and experienced real estate agent, Mr. Ashton should have been much clearer in the documentation he prepared." The Committee stated that clear documentation is an essential aspect of trading in real estate and one which the Commission was concerned that registrants take proper steps to address. The Committee also noted that the fact that Mr. Ashton did not intend for problems to arise did not relieve him of responsibility for having created the situation by the inherent lack of proper documentation.
- [71] Mr. Ashton had a previous sanction history from 1998 and was personally involved in the transaction.
- [72] Mr. Moore's breach of Bylaw 730 is not as serious as that of the registrant in *Ashton*. While Mr. Moore is registered as a broker, there is no evidence to suggest his conduct caused harm to a member of the public. Mr. Ashton's breach was also more serious because he was personally involved in the transaction.
- [73] *Howsam* and *Ashton* were decided before 2008. In 2008, the Saskatchewan real estate market underwent a significant expansion that saw a significant rise in property values. As property values rise, there is a corresponding increase in the commissions registrants can expect to earn on trades in real estate. Fines ordered by the Commission to act as deterrents against misconduct must keep pace with rising commissions or the Commission runs the risk of fines coming to be seen as a "cost of doing business".
- [74] In *Elenko (Re)*, [2019 SKREC 2](#), (file #2016-34) ("*Elenko*"), Jayson Elenko received an order of reprimand and a \$1,500 for breaching Bylaw 730(e) by failing to use the mandatory Notice to Remove Condition(s) on Residential Contract of Purchase and Sale.
- [75] Mr. Elenko had no previous sanction history, was co-operative with the investigation and signed a Statement of Facts and Admission acknowledging his errors.
- [76] The Hearing Committee noted as an aggravating factor that Mr. Elenko was personally involved in the transaction.
- [77] Mr. Moore's breach of Bylaw 730 is similarly serious to that of the registrant in *Elenko*. Mr. Elenko was personally involved in the transaction, but Mr. Moore is registered as a broker.

- [78] In *Amichand (Re)*, [2018 SKREC 9](#), (file #2016-74) (“*Amichand*”), Will Amichand received an order of reprimand and a \$2,000 fine for breaching Bylaw 730(e) by failing to use the mandatory Notice to Remove Condition(s) on Residential Contract of Purchase and Sale.
- [79] Mr. Amichand had no previous sanction history, was co-operative with the investigation, and signed a Statement of Facts and Admissions acknowledging his error.
- [80] The Hearing Committee noted as aggravating factors that Mr. Amichand failed to use multiple mandatory forms, was personally involved in the transaction, and was acting as a limited dual agent.
- [81] Mr. Moore’s breach of Bylaw 730 is less serious than that of the registrant in *Amichand*. Mr. Moore was not personally involved in the transaction and was not acting as a limited dual agent. However, Mr. Moore is registered as a broker.
- [82] In *Shaw (Re)*, [2013 SKREC 4](#), (file #2012-45) (“*Shaw*”), Vanna Shaw was ordered to pay a \$1,500 fine and was issued a letter of reprimand when she failed to use a Notice to Remove Condition(s) on Residential Contract of Purchase and Sale form. Ms. Shaw was also ordered to pay costs and to file transactional documents for the year of 2013 or the next 5 transactions, whichever came first.
- [83] The Hearing Committee stressed that the use of mandatory forms was not discretionary and that it was not up to the registrant to determine when and if to use various forms. The Committee found the lack of mandatory forms a “disturbing trend” and stressed that the fine for such a breach would be increased if more cases came before the Committee.
- [84] The Hearing Committee considered the length of time Ms. Shaw had been in the industry and her lack of previous sanction history. She was apologetic for her wrongdoing.
- [85] Ms. Shaw was registered as a broker and, at the time of the violation, Ms. Shaw was representing both the buyer and the seller as a limited dual agent.
- [86] Mr. Moore’s breach of Bylaw 730 is slightly less serious than that of the registrant in *Shaw*. Both Mr. Moore and Ms. Shaw are brokers with no previous sanction history who failed to use a Notice to Remove Condition(s) on Residential Contract of Purchase and Sale forms. However, Ms. Shaw made a practice of not using the Notice to Remove Conditions.
- [87] An order of reprimand and a fine of \$1,000 are appropriate sanctions for Mr. Moore’s breach of Bylaw 730.

[88] As Mr. Moore has agreed to sign this consent order, there will be no order as to costs.

**CONSENT ORDER:**

[89] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Moore, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

[90] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Bylaw 701(a):

1. Mr. Moore shall receive an order of reprimand for the violation of Bylaw 701(a);
2. Mr. Moore shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$2,000.00 fine for the said violation of the bylaw; and
3. Mr. Moore's registration shall be terminated if he fails to make payment as set out above.

[91] With respect to Count 2, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Bylaw 730:

1. Mr. Moore shall receive an order of reprimand for the violation of Bylaw 730;
2. Mr. Moore shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,000.00 fine for the said violation of the bylaw; and
3. Mr. Moore's registration shall be terminated if he fails to make payment as set out above.

[92] There shall be no order as to costs.

Dated at Moose Jaw, Saskatchewan this 2<sup>nd</sup> day of December 2019.

“David M. Chow”,  
David M. Chow, Chairperson