

# The Register



August 2006

## 2005-06 Annual Meeting

### *Inside this issue:*

2006-2008 CPD Seminars	2
Changes to the Model of Education	2
Reduction in the Rate of The GST/HST	3
Disbursing Trust Monies	4
Deposits & Trust Accounts	4
On-line Brokerages	5
IC & I Appointee to the Commission	5
Payment of Remuneration to a Registrant's Corporation	5
Broker Registration Requirements	6
SREC Disciplinary Action	7
SREC Contact Info	8
Commission Members	8
Commission Staff	8

Please note that the Saskatchewan Real Estate Commission has changed its Annual Meeting to October of each year. In the past, the annual meeting has not taken place until the following March or April after the Commission's June fiscal year-end. The date change is intended to bring the yearly activities to registrants in a more timely fashion.

The Commission's 2005-06 Annual Meeting will be held on October 12, 2006 in Saskatoon in the Hercules Room at the Saskatoon Travelodge Hotel commencing at 1:15 p.m. and concluding at approximately 3:00 p.m. Chairperson, Larry Gingerich and Executive Director/Registrar, Al Jacobson will be expounding on such topics as: models of agency, models of education, single class licensing, technological advances, registration and investigation issues. This is a prime opportunity for registrants to gain an understanding of the rationale for Commission projects and decisions in the past year. Please join us.

## Registration Renewal

A further deterioration in the number of registrants renewing their registration was experienced this licensing year.

A net total of eight brokerages left the real estate industry. Brokers, branch managers, associate brokers and salespeople decreased by fifty-two. Of those individuals terminating their salesperson registration this past year, thirty-seven failed to complete their post licensing courses prior to leaving the industry. An additional six salespeople were denied extensions to complete their post licensing courses and their registrations were terminated on June 30, 2006.

## 2006/07 and 2007/08 CPD Seminars

During the next two cycles of mandatory education, the Saskatchewan Real Estate Commission has agreed to implement an agency course. The course, *Agency Fundamentals* is a national training course that will be offered through the Saskatchewan Real Estate Association. Acronamic Learning Systems Inc. developed this product for the Alliance for Canadian Real Estate Education (ACRE).

The Commission, along with its education provider, were of the opinion that this course should be delivered over a consecutive two-day period. Some reasons for this decision are:

- 1) the content of the course cannot be delivered effectively in a one-day course;
- 2) the concept of agency is extremely complex and must be reviewed in detail; and
- 3) other jurisdictions are also finding a need to present the course over a two day period.

It is anticipated that the workshops will begin in October 2006 and run to June 30, 2008.

A registrant will only be required to take this one course to meet all the CPD requirements from July 1, 2006 to June 30, 2008.

The Saskatchewan Real Estate Association has confirmed that the cost of this course will be between \$200 and \$210.

Once the schedule has been drawn up and the actual cost of the course has been determined, we will provide registrants with an update.

### *Mission Statement*

**To protect the public interest by ensuring that registrants act within a professional framework that promotes ethical conduct and integrity and strengthens consumer trust and confidence.**

## *Changes to the Model of Education*

The Saskatchewan Real Estate Commission has received support from the real estate industry and organized real estate to proceed with its plans to integrate relevant content from the two post-articling courses, *Principles of Real Estate Appraisal* and *Principles of Real Property Law* into the Phase I and II courses.

The following response was received from the Saskatchewan Real Estate Association: “The Education Committee recommends to the Board of Directors that the best case scenario is that the Model of Education remain as it is; however, as there is an apparent will from the Association Membership, the Committee feels that the only other option is to have the most beneficial information from the post-articling courses condensed into pre-licensing, Phase I and Phase II. Unanimous approval.”

The Commission recognizes the importance of relevant education for registrants to meet their obligations to the general public. The Commission is responsible to ensure that the appropriate education is provided to enhance the service a registrant provides to the general public.

Within the next couple of months, the Commission will have its Education Committee review the real estate courses and determine what information is required to be moved from the articling courses to Phase I and Phase II of the present Model of Education.

In addition, several brokers will be contacted and provided with an opportunity to analyze the course content of the articling courses for relevancy. It is anticipated that this process can be completed in the fall of 2006. Once completed, the results of this process will be discussed with SREA’s Directors and Education Committee for final drafting.

The Commission has requested, and the Superintendent of Real Estate has approved, IBTA funding to assist in the revisions to the Model of Education.

## *Reduction in the Rate of the GST / HST*

The Canada Revenue Agency (CRA) has assembled a Question and Answer—Info Sheet on their website at <http://www.cra-arc.gc.ca/agency/budget/2006/gstrateqa-e.html>.

The following are a couple of samples of questions and answers off this website for your information. Several inquiries have been made to our office that parallel the following:

### **When is GST/HST payable?**

GST/HST on the consideration for a supply is usually payable the earlier of the day payment is made and the day the supplier issues an invoice. If there is an undue delay in issuing an invoice, GST/HST becomes payable when the invoice would have been issued if there had been no delay. In addition, if either the date of an invoice or the payment date under a written agreement is earlier than the date the invoice is issued, GST/HST becomes payable on the earlier date.

For a supply of property by way of lease, license or similar arrangement under a written agreement, GST/HST becomes payable the earlier of the date the payment is made and the date it is required to be made under the agreement.

If GST/HST is not otherwise payable by the last day of the calendar month after the calendar month in which any of the following events takes place, it becomes payable on that day:

- in the case of a sale of tangible personal property, other than a sale referred to below, the buyer acquires ownership or possession of the property;
- in the case of a sale of tangible personal property on approval, consignment, sale-or-return basis or similar terms, the buyer acquires ownership of the property or re-supplies it to someone other than the seller; and
- in the case of a supply under a written agreement for construction, renovation, alteration or repair of real property, or of a ship or other marine vessel when the work is reasonably expected to last more than three months, the work is substantially completed.

The GST/HST will be payable at 6%, or 14% where it becomes payable under these rules on or after July 1, 2006.

**We sell property under a conditional sales contract where the customer receives possession of the property June 1, 2006, but does not receive ownership of the property until full payment of the purchase price. The customer agrees to make monthly payments for the property over a period of time, starting on June 1. How will the reduced rates of tax affect such a conditional sales contract?**

In a conditional sales contract, the GST/HST on the consideration for the property is payable no later than the last day of the month following the month during which you transferred possession of the property to the customer. In this example, GST at 7% or HST at 15% will be payable on the payment made on June 1, since this is before July 1, 2006. GST of 6% or HST of 14% will be payable on the payment made July 1. Finally, on July 31 (i.e., the last day of the month following the month in which your customer took possession of the property), GST at 6% or HST of 14% will apply on the remainder of the consideration payable for the property.

**Does the new rate of tax (GST at 6% or HST at 14%) apply to real property purchased before July 1, 2006?**

The new rate of tax (GST at 6% or HST at 14%) applies to a taxable purchase of real property where both ownership and possession are transferred on or after July 1, 2006. There is an exception to this general rule for the purchase of a new or substantially renovated residential complex. If either ownership or possession of the real property is transferred before July 1, 2006, GST at 7% or HST at 15% will apply.

**What rate of GST/HST applies to services, such as legal services, or sales commissions, that are in respect of supplies of real property?**

The rate of tax in respect of a supply of a service in relation to real property is dependent on when the tax

becomes payable or is paid. Where tax becomes payable, or is paid without having become payable, before July 1, 2006, GST at 7% or HST at 15% will apply. Where tax becomes payable or is paid on or after July 1, 2006 without having been payable before that date, tax at the new rate (GST at 6% or HST at 14%) will apply.

Generally, tax payable in respect of a supply of a service is payable on the earlier of when payment is made and when the consideration for the supply becomes due. The consideration for a supply generally becomes due when the supplier issues an invoice in respect of the supply. If there is an undue delay in issuing an invoice, tax becomes payable on the day the invoice would have been issued had there been no delay.

## Deposits & Trust Accounts

Recent Saskatchewan brokerage audits identified instances where registrants are not immediately paying to their brokerage, monies received in trust for a trade in real estate as required under Section 70 of *The Real Estate Act*. Additionally, Section 71 of *Act* requires that the brokerage deposit all money received in connection with a trade in real estate into the brokerage's trust account within two business days of the acceptance of an offer. Usually, the identified cases involve a limited dual agency situation where the registrant does not want to deposit the cheque until all conditions are removed. Unfortunately, for the seller in the above scenario, with no deposit in trust the seller might justly complain that their interests were not properly protected.

The Saskatchewan Real Estate Commission's mandatory Residential Contract of Purchase and Sale form clearly outlines what a registrant shall do when receiving a deposit relating to a trade in real estate. It remains the compliance position that registrants do not have the option of handling a deposit cheque without paying the money immediately to the brokerage.

**An individual purchases a residential complex and takes ownership and possession of the complex before July 1, 2006. The individual's lawyer issues an invoice to the individual for services rendered in relation to the purchase of the complex after July 1, 2006. What rate of tax applies to the legal services provided?**

In the absence of any other factors (e.g., an undue delay in issuing the invoice), the tax becomes payable when the lawyer issues the invoice or at the time payment was made if that time is earlier than the time of issuing the invoice. Given that the invoice was issued after July 1, 2006, the lawyer will charge tax at the new rate (GST at 6% or HST at 14%).

## Disbursing Trust Monies

In the September 2003 issue of *The Register*, the Saskatchewan Real Estate Commission outlined a possible format for registrants and clients to follow in a very unique situation where a buyer has not removed conditions to a contract and states in writing, his/her wish to relinquish all rights and claim to the property. Some registrants are having difficulty interpreting Clause 7.1 in the Commission's mandatory Residential Contract of Purchase and Sale form.

The timing and intent of Clause 7.1 coupled with relevant Saskatchewan real estate legislation must be clearly understood. When and if a buyer provides written notification to the buyer's brokerage that the conditions were not satisfied or removed in writing and the deposit is not in dispute, Clause 7.1 may provide the appropriate disbursement solution. The Commission cautions brokerages not to disburse trust monies contrary to the terms of the trust pursuant to which the monies were received. In the September 2003 issue of *The Register*, the Saskatchewan Real Estate Commission outlined a possible format for registrants and clients to follow in a very unique situation where a buyer has not removed conditions to a contract and states in writing, his/her wish to relinquish all rights and claim to the property. A copy of this issue can be found on the Commission's website under "Publications". Prior to disbursement, should the return of a deposit to a buyer be disputed by a seller, the deposit must remain in trust pursuant to the provisions of Section 16 of the Real Estate Regulations.

## *On-Line Brokerages*

The Saskatchewan Real Estate Commission experienced an increase in the number of brokerages that have taken advantage of the Commission's on-line brokerage registration process this year.

The Commission is streamlining its on-line registration process to assist brokerages. We will be simplifying the contractual obligations that now exist for brokerages. In addition, the Commission is making final arrangements with Moneris that will give a brokerage the ability to pay on-line with a credit card as registration applications are processed. This will prevent delays that brokerages are now experiencing in waiting to have funds provided in their on-line account.

The manual processing of registrations will eventually be eliminated. In eliminating the manual process, the Commission can reduce its administrative costs that have an impact on registration fees.

The registration process for 2007/08 will do away with the manual mailing of renewal application forms. These forms are now retrievable from our website ([www.srec.ca](http://www.srec.ca)). A brokerage will be required to download the forms and have each registrant complete the appropriate form. Manual submissions of renewal forms will be processed on a first-come-first-served basis. Should an applicant's renewal form not be received or processed by the last day of the registration year (June 30th), that registrant will not be able to trade in real estate until properly registered.

The Commission encourages every brokerage to become familiar with the on-line registration process. Commission staff will provide you with any assistance you require in working with the on-line registration system. Verna, our Director of Registration would be pleased to provide demonstrations and training sessions, including assistance at a brokerage office as required.

## *IC & I Appointee to the Commission*

The Saskatchewan Real Estate Commission, in consultation with the Superintendent and Deputy Superintendent of Real Estate, are putting the final touches on the appointment process through bylaw development. It is anticipated that the bylaws should be in place by the end of August 2006. Anyone interested in applying for this appointment is asked to contact the Executive Director/Registrar for further details.

## *Payment of Remuneration to a Registrants' Corporation*

The Saskatchewan Real Estate Commission has received a legal opinion from its solicitor that bylaws could be developed to outline a payment process between the brokerage, its registrants and the registrant's private corporation.

The Commission is in the process of drafting bylaws and anticipates reviewing the draft with the Superintendent and Deputy Superintendent of Real Estate at the end of August 2006.

## *Broker Registration Requirements after July 1, 2006*

**(NOTE: The following does not apply to those registered under the new Model of Education that began February 2004.)**

Individuals who obtained salesperson registration status by completing the *Fundamentals of Real Estate* course, the *Real Estate 100* course, the *Real Estate 150* course or the old pre-licensing course and wish to obtain associate broker, branch manager or broker registration status, please review the following items carefully to determine what your educational requirements are after July 1, 2006:

1. If you have completed *Principles of Real Property Law*, *Principles of Mortgage Financing* and *Principles of Real Estate Appraisal* and are currently enrolled in either of the two courses; *Real Estate Office Management* or *Working Within the Real Estate Act*, you must complete these two courses prior to September 29, 2006. If this September 29, 2006 deadline is not met for either of these two courses, the ***Real Estate Office Management and Brokerage*** course will have to be completed.
2. If you have completed *Principles of Real Property Law*, *Principles of Mortgage Financing* and *Principles of Real Estate Appraisal* but have not yet enrolled in either of the two courses *Real Estate Office Management* or *Working Within the Real Estate Act*, you are required to complete the new ***Real Estate Office Management and Brokerage*** course.
3. If you have completed *Principles of Real Property Law* and *Principles of Real Estate Appraisal* but have not yet enrolled in either of the two courses *Real Estate Office Management* or *Working Within the Real Estate Act* and you have also not completed *Principles of Mortgage Financing*, you are required to complete the ***Real Estate as a Professional Career*** and ***Real Estate Office Management and Brokerage*** courses.
4. If you have not completed any courses beyond your initial salesperson registration course, you are required to complete the following:
  - (a) *Principles of Real Estate Appraisal*;
  - (b) *Principles of Real Property Law*;
  - (c) *Real Estate Office Management and Brokerage*; and
  - (d) *Real Estate As a Professional Career*.

Impending changes to the real estate legislation will remove the residential restriction for associate broker, branch manager or broker registration status. A registrant's Certificate of Registration will permit the registrant to trade in all categories of registration (i.e. Residential, Commercial, Farm or Property Management).

Upon achieving the educational requirements for the associate broker, branch manager or broker registration status, you may choose one of the following two options relating to associate broker registration:

- (a) remain registered as a salesperson in the applicable registration year and apply for associate broker status the following July 1 registration renewal period; or
- (b) apply immediately for associate broker registration by submitting an application form to the Saskatchewan Real Estate Commission along with the \$135 fee to change registration categories.

## Commission Disciplinary Action

Results of recent Mitigation and/or Formal Hearings conducted by the Commission.

### **Darrell Dick, Broker, Darrell Dick Realty Inc. – Saskatoon**

**Date of Decision:** May 11, 2006

**Date of Written Decision:** June 23, 2006

**Disposition:** Darrell Dick received a letter of reprimand and an order to pay a \$3,000 fine for violating Commission Bylaw 702.

**Violation:** Commission Bylaw 702 states: “A registrant shall protect and promote the interests of his or her client. This primary obligation does not relieve the registrant from the obligation of dealing fairly with all other parties to the transaction.”

**Details:** In November 2004, Darrell Dick signed a seller to an MLS exclusive seller’s brokerage contract to market a revenue property in Saskatoon. At the time of signing the contract, the seller and his now deceased father, verbally represented that the father possessed a power-of-attorney to also market the property. In mid-December 2004, the seller’s father signed acceptance of a Residential Contract of Purchase and Sale form by way of the alleged power-of-attorney; the seller never signed acknowledgement of the sale. Further complicating the transaction; a soon to be disbarred lawyer represented both the buyer and seller for the transaction.

Operating under the belief that the contract would complete as contracted, the buyer undertook efforts to re-sell the property on or before the proposed completion date. Once the original seller learned of the re-marketing attempts, he refused to sign the necessary transfer documents. This action effectively collapsed the trade in real estate causing hardship to the buyer.

In handing down its decision, the Commission’s hearing committee took into consideration the fact that Darrell Dick had one previous discipline matter before the Commission. In mitigation, the hearing committee acknowledged that Darrell Dick admitted his error in not verifying the alleged power-of-attorney and the problems that arose thereafter. The Commission determined that the circumstances of the transaction evidenced a lack of respect for proper procedures and the possibility of not protecting all parties to the transaction. The Commission’s hearing panel emphasized the importance of using proper forms, soliciting signatures and properly witnessing signatures of the parties to the transaction and keeping a proper paper trail. The sanction imposed provides a general deterrent to all registrants when completing real estate documents.



### **Ajit Matharu, Salesperson, Homelife Crawford Realty – Regina**

**Date of Decision:** May 11, 2006

**Date of Written Decision:** June 23, 2006

**Disposition:** Ajit Matharu received a letter of reprimand; an order to pay a \$500 fine for violating Commission Bylaw 730(g); and an order to pay a \$2,500 fine for violating Section 70 of *The Real Estate Act*.

#### **Violations:**

Bylaw 730(g) states: “The following approved form, provided by the Saskatchewan Real Estate Association, shall be mandatory: Ancillary Services in the Purchase of Residential Real Estate (applies only to resale residential real estate).”

Section 70 of the *Act* states: “On receipt of money tendered in connection with a trade in real estate, every broker, branch manager, associate broker and salesperson shall immediately pay that money to his or her brokerage.”

**Details:** In March 2004 and with the authority of a bona fide power-of-attorney, Ajit Matharu signed a non-cooperating in-house exclusive seller’s brokerage contract to market his father’s property in Regina. Within days of signing the contract, Ajit Matharu represented a buyer (a former registrant) to write a Residential Contract of Purchase and Sale form to purchase the property. In error and contrary to the stated word on the contract, Ajit Matharu directed the buyer to pay the deposit directly to the seller. Further, Ajit Matharu by-passed his brokerage’s

administration by not delivering the deposit cheque and all completed real estate documents to his broker. Additionally, Ajit Matharu did not complete the mandatory Ancillary Services in the Purchase of Residential Real Estate form when working for the buyers. On and after completion day, the buyers alleged that the property was in poor repair and that the sellers had failed to complete the contract as undertaken.

In delivering its decision, the Commission's hearing panel stressed to Ajit Matharu and all registrants that deposits received by a registrant must be paid to the brokerage. In addition, the Commission legislates the usage of mandatory forms when circumstances dictate; registrants not using the mandatory forms when required can face discipline.

#### **Leo Morrison, Sutton Group–Norland Realty (Saskatoon)**

**Date of Decision:** May 11, 2006

**Date of Written Decision:** June 23, 2006

**Disposition:** Leo Morrison received a letter of reprimand and an order to pay a \$1,500 fine for violating Section 39(1) (b) of *The Real Estate Act*.

**Violation:** Section 39(1)(b) 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 registrant is subject."

**Details:** In August 2004, Leo Morrison signed sellers to an MLS exclusive seller's brokerage contract to market a property in Saskatoon. The sellers resided some distance from Saskatoon and the majority of the communication occurred by telephone, fax and mail.

About the third week of October 2004, Leo Morrison, in a telephone conversation with the seller, discussed a price reduction. In the belief that the sellers agreed to a price reduction, Leo Morrison left the necessary paperwork in a mailbox at the property for the sellers to sign upon their arrival in Saskatoon. A couple of days later, Leo Morrison's assistant retrieved the signed documents from the mailbox; Leo Morrison then witnessed the seller's signature on the documents.

At all times material to the seller's brokerage contract, the property remained on the MLS. After the property sold through another brokerage, the sellers complained to the Commission that in fact they had not agreed to a price reduction and that someone had forged their signature. Handwriting analyses confirmed that: the sellers did not sign the price reduction documents; and Leo Morrison did not forge the seller's signature on the documents.

## *SREC Contact Info*

Saskatchewan Real Estate Commission  
**237** Robin Crescent  
 Saskatoon, SK  
 S7L 6M8

Our fax number is: **306-373-2295**

Our telephone numbers remained the same:

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1-877-700-5233

Verna Extension #1

Ed Extension #2

Allan Extension #3

Jason Extension #4

Al Extension #5

Our website address is: **www.srec.ca** and we may be reached at the following e-mail addresses:

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## *Commission Members*

Larry Gingerich (Saskatoon,) Chairperson  
 Donnett Elder, Regina

Cheryl Elliott (Prince Albert), Vice Chairperson  
 Phillip Mack, Regina

Scott Musgrave, Lloydminster

Anne Odishaw, Saskatoon

Terry Powell, Saskatoon

Ron Skinner, Yorkton

Cameron Wilkes, Regina

## *Commission Staff*

Al Jacobson, Executive Director/Registrar

Ed Miller, Director of Investigations/Audits

Verna Olfert, Director of Registration

Jason Weiler, Systems Administrator

Allan York, Investigative Accountant