

# The Register



August 2009

## *Risk Management Strategies for Errors and Omissions Insurance in Saskatchewan*

The Association of Saskatchewan REALTORS® takes great pleasure in offering this program, the result of a joint effort involving the Association and the Saskatchewan Real Estate Commission.

*Real Estate Update* advances skills and knowledge in the interest of consumer protection, while delivering relevant information on a continuing basis to all registrants throughout Saskatchewan. *Real Estate Update 2009-2010* is the required program for the Continuing Professional Development (CPD) registration renewal requirement on July 1, 2010 and is available to all registrants of the Saskatchewan Real Estate Commission.

### *Inside this issue:*

SREC Annual Meeting	2
Audit Concerns	2
Unregistered Property Management in Saskatchewan	3
Registration Report	4
Commission Disciplinary Action	5
Changes to Disclosure of Interest in Trade Form	8
Commission Members	8
Commission Staff	8
SREC Contact Info	8

In an attempt to increase the level of learning accomplished in the classroom, a copy of the 'Real Estate Update' will be posted on-line and will be available digitally. The course content will be made available subsequent to the September 29, 2009 invitational launch and in advance of classroom delivery. The material will be made available as a PDF on REALTORLink® and will also be available for study from the Association.

The full schedule will start October 13, 2009 in Saskatoon and run till May 27, 2010 with a total of 42. CPD information packages will be going out the 3<sup>rd</sup> week of August.

Registrants can apply by fax 306-373-5377 or enroll online at [www.saskatchewanrealestate.com](http://www.saskatchewanrealestate.com). Registrants should indicate on the enrollment form their option to have course confirmation either emailed directly to them or mailed to the registrant's office. **All registrants should confirm their enrollment if they have not received notification within one week of applying.** Once the schedule is confirmed, an official schedule and enrollment form will be posted on the Association's website.

**SASKATCHEWAN REAL ESTATE  
COMMISSION  
ANNUAL MEETING**

**October 8, 2009  
Saskatoon Club  
417 – 21<sup>st</sup> Street East  
Saskatoon, Saskatchewan  
1:15 P.M.**

1. Call to Order
2. Opening Greetings
3. Introductions
4. Greetings from Financial Services Commission
5. Overview of SREC's 2008/09 Activities
6. Special Presentations
7. Chairperson's Closing Remarks
8. Adjournment

***The Saskatchewan Real Estate  
Commission will be closed on the  
following days:***

*September 7 - Labour Day*

*October 8 (afternoon) - SREC Annual Meeting*

*October 12 - Thanksgiving*

*November 11 - Remembrance Day*

*December 24, 2009 (afternoon)*

*December 25, 28-31 Christmas Holidays*

*January 1, 2010 - New Years*

***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.**

***Audit Concerns***

Section 71 of *The Real Estate Act* requires that every brokerage registered with the Saskatchewan Real Estate Commission maintain at least one interest bearing trust account in a financial institution in Saskatchewan. Pursuant to clause 33(1)(b) of the *Act*, a brokerage shall notify the Commission in writing no later than five days after the opening or closing of a trust account. A surprising number of brokerages overlook this requirement and do not report the opening or closing of a trust account to the Commission. Brokerages not reporting trust accounts during the new registration year will be contacted and asked for written correspondence regarding non-compliance. In such cases, immediate audits and possible disciplinary action may be considered.

Brokers should have or should be developing policies and procedures with internal personal to make sure that trust accounts are reported within the guidelines of the *Act*. Brokers should review all trust account activity and immediately report any discrepancies to the Saskatchewan Real Estate Commission. Trust shortages are considered a serious incident regardless of how they had accrued and must be reported immediately to the Commission.

Recent Commission audits indicated that if some brokers had reviewed the monthly trust reconciliations, they may have found the trust discrepancies. Brokers are responsible for reviewing trust reconciliations performed by their employees and correcting any associated problems. Brokers should be comparing the actual bank statement with the liability listing on a monthly basis. The liability listing is one of the most important documents used during trust reconciliations because it compares the current liabilities to the actual closing bank balance. Brokerages that have been reporting outstanding cheques on their annual financial report in order to balance their liabilities may be at fault of misrepresentation. For example, outstanding cheques issued/or not, that have not cleared the financial institution and become stale dated or not negotiable, should be entered back on the liability listing. Continually reporting the same outstanding cheques on the Annual Financial Report to the

Commission in these cases is acceptable.

The requirements for proper record keeping are as follows:

**Commission Bylaw 601(a) states:** Pursuant to Section 31 of the *Act*, every brokerage shall maintain an adequate accounting system with respect to its trades in real estate, including at least the following books, records and accounts: books of account and all supporting records, including bank statements, duplicate deposit slips or other records of all deposits, receipts of funds, cancelled cheques and cheques stubs, a trust control ledger, the monthly trust reconciliation's, the monthly trust liability listings, and similar documents.

**Commission Bylaw 604** requires that all brokerages maintain a trust ledger for their real estate transactions. The following information must be recorded in the trust ledger: name(s) of the buyer and seller; property address; dates and amounts of trust funds received and disbursed, a running balance of trust funds held; and a transaction number (if a file numbering system is being utilized).

**Commission Bylaw 614** requires that all brokerages reconcile monthly each trust account with the bank statement. The following information must be recorded in the trust liability listing: the names of the parties to the transaction; the trust account number and the name of the financial institution; the address relating to the transaction; and the amount of funds being held in trust for each transaction.

Brokerages are confusing the trust ledger with the liability listing by combining the two. As part of our ongoing internal education of brokerages, the Commission's audit department is available to assist brokerages to create and/or maintain the required accounting system pursuant to Section 31 of the *Act*.

The Commission's audit department will expect to see monthly trust ledgers and liability listings that reconcile with the bank statement during the audit process. Brokerages that do not have records pursuant to Section 31 of the *Act* should be contacting the audit department prior to their audit.

Sections of applicable legislation are Sections 70-73 inclusive of *The Real Estate Act* ; Sections 15-17 inclusive of *The Real Estate Regulations* and Sections 601, 602, 603, 604, 606 - 616 inclusive of the Commission Bylaws.

## *Unregistered Property Management in Saskatchewan*

The Saskatchewan Real Estate Commission continues to receive reports that some registrants and many consumers unknowingly provide property management business to unregistered property managers in Saskatchewan. Property management as defined in Section 2 of *The Real Estate Act* remains a trade in real estate. Persons engaging in property management and not exempted by Section 3 of the *Act*, must be registered with the Commission. The inherent risk and lack of legislated public protection for someone dealing with an unregistered property manager cannot be overstated. Registrants are encouraged to consult a lawyer for some insight as to the liability issues incurred when referring clients to unregistered property managers.

The Commission reminds registrants that all persons registered to trade in real estate in Saskatchewan may be accessed via the Commission's website. For further information or to verify that an individual or brokerage is currently registered with the Commission, please visit the Commission's website at [www.srec.ca](http://www.srec.ca) and perform an on-line inquiry of the person or company trading in property management. Persons may be queried by city, individual's last name and brokerage name.

The Commission continues to research and discuss options for taking unregistered persons to task for trading in real estate through the courts. Please feel free to contact a Commission member or write a note to the Commission's Executive Director/Registrar if you have viable thoughts on dealing with unregistered activities.

## Registration Report

A total of 36 individuals applied for initial registration between April 1 and June 30 and were therefore exempt from the 2008-2009 CPD requirement and received a discount in their registration fees from \$575 down to \$300 for the remainder of the registration year.

As of May 31, 2009 there were twenty-four individuals who had not attended one of the 2008-2009 CPD seminars. Correspondence was sent to these registrants outlining the requirements for registration renewal on July 1<sup>st</sup> (i.e. enrollment and/or completion of the CPD home study course, written request for an extension and payment of the \$300 extension fee). Eighteen of these twenty-four registrants terminated their registration on June 30<sup>th</sup> and will be required to complete the 2008-2009 CPD by home study and will also be required to pay the \$300 fee prior to being granted reinstatement of their registration. One individual completed the home study course prior to June 30<sup>th</sup> and renewed her registration. Five registrants enrolled in the home study course, requested an extension, paid the \$300 extension fee and were thereby eligible to renew their registration for July 1<sup>st</sup>. These five registrants must complete the home study course by July 31<sup>st</sup> or their registration will be suspended until they do so. There will be no further extensions granted.

On June 1, 2009 there were a total of 49 registrants that were still required to complete the articling courses by June 30<sup>th</sup>. Twenty-five needed to complete both the Appraisal and Law course; ten – the Appraisal only and 14 – only the Law course. By June 30<sup>th</sup>, thirteen of the forty-nine terminated their registration and will be required to complete the new Phase I course prior to being granted reinstatement of their registration. Eight individuals provided proof of enrollment in the new Phase I course, written request for an extension, payment of the \$300 extension fee for July and were thereby eligible to renew their registration for July 1<sup>st</sup>. These 8 individuals will only be allowed subsequent extensions with a payment of \$300/month till December 31<sup>st</sup>. If they fail to complete the Phase I course by December 31<sup>st</sup>, their registration will be suspended until they pass the Phase I examination. The remaining twenty-eight individuals successfully completed the articling course examinations and thereby qualified for re-instatement of their registration.

The on-line registration renewal process went smoothly

this year. During the month of June, numerous phone calls were dealt with to assist registrants who had misplaced their log-in information and required assistance with the process. Only a small handful of registrants expressed concerns with use of a credit card via the Internet. We experienced only minor technical problems that were very quickly resolved by our Systems Administrator, Jason Weiler. A big thank you to Jason for his expertise in maintaining our database.

By 4:30 p.m. on Friday, June 30<sup>th</sup> there were 31 individuals who had not yet logged onto the Internet to process their registration renewal for July 1<sup>st</sup> and their Certificates of Registration expired at midnight on June 30<sup>th</sup>. Of these 31 individuals, 8 terminated their registration and the remaining 23 reinstated their registration by July 8, 2009.

The following brokerages chose not to renew their registration effective July 1<sup>st</sup>, 2009:

Brian Gibson  
Frier Agencies Ltd.  
Garand Agencies Ltd.  
Gene Douglas Real Estate  
Linke Agencies Ltd.  
Orange Properties Sask. Ltd.  
Shirley Real Estate Ltd.

The following new brokerage registrations were issued:

Brian Bast Realty Inc.  
Brian Borody Realty Inc.  
Century West Realty Ltd.  
Mariner Management Ltd.

### Registration Statistics:

	<u>June 1, 2009</u>	<u>July 1, 2009</u>
Brokerages/Broker	226	223
Branch Managers	21	19
Associate Brokers	151	145
Salespeople	<u>1,116</u>	<u>1,116</u>
Total # of Registrants	1,514	1,503

As of August 1, 2009 the total number of registrants in Saskatchewan was 1,522.

## *Commission Disciplinary Action*

The Saskatchewan Real Estate Commission's complete written hearing decisions are available on the website at [www.srec.ca](http://www.srec.ca). Select the menu item "Decisions" in the menu bar at the top of the home page.

### Martin Blonski – Re/Max Crown Real Estate Ltd. (Regina)

**Date of Decision:** May 21, 2009

**Date of Written Decision:** June 11, 2009

**Disposition:** Martin Blonski received an order of reprimand; an order to pay a \$2,000 fine for violating Commission Bylaw 714; and an order to pay a \$500 fine for violating Commission Bylaw 726(a).

#### **Violations:**

- (a) Commission Bylaw 714 states: "A registrant shall take reasonable steps to discover facts pertaining to every property for which the registrant accepts an agency agreement that a prudent registrant would take in order to fulfill the obligation to avoid error, misrepresentation or concealment of pertinent facts."
- (b) Commission Bylaw 726(a) states: "Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be: (a) false."

**Details:** In this matter, the registrant represented the seller and advertised that the condominium being sold contained "*a new boiler in 2006*"; however, it still contained the original one installed in 1959. This information was provided by the seller to the agent who failed to verify and confirm this fact as required by legislation. It must be noted that upon learning of the inaccurate advertising (post sale), the registrant (responsibly and proactively) immediately amended the advertising to prevent any future inaccuracies by other registrants. In fact, the Hearing Panel commented by saying that it "*was pleased with the quick corrective action taken by Mr. Blonski.*"

In its decision, the Commission's Hearing Panel stated that one of the fundamental reasons the public turns to the professionally trained registrant is "*so they can trust the information has been confirmed and not simply relying upon the sellers... This failure to do the necessary due diligence reflects on the industry as a whole and the message must be made to all registrants that it is essential that they must take reasonable steps to know the property.*" The Hearing Panel emphasized in its rationale that "*the public is relying on them [registrants] to know their properties*" and not to become complacent in doing their jobs.

### Paul Garand, Garand Agencies Ltd. (Rosthern)

**Date of Decision:** June 18, 2009

**Date of Written Decision:** July 17, 2009

**Disposition:** In accordance with the *Act* and the Regulations, the Hearing Panel in their discretion declined to make any sanction order in this matter.

**Violation:** Section 61(1)(b) of the *Act* states: "No brokerage shall employ, appoint, authorize or permit: a person to trade in real estate who is not registered."

**Details:** The circumstances in this case found that Paul Garand, broker of Garand Agencies Ltd., accepted "the paper work and the deposit cheque" of a transaction from a long standing salesperson who he mistakenly believed was registered. The salesperson was out of the country for many months and had allowed his registration to lapse. The broker historically required each salesperson to register on their own with the Commission; however, no mechanism was in place to ensure that registration of salespeople was checked and verified.

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

Upon the salesperson's return, he executed a trade in real estate and submitted the documentation and deposit to his broker which was accepted, thus facilitating a trade in real estate by a non-registrant and contravening Section 61(1)(b) of the *Act*.

The Hearing Panel recognized that this was the first offense in 5 decades of this broker being registered; also the now retired 78 year old broker had been relying on his belief that this former registrant was in fact registered. Moreover, the broker recently had a basement flood and all his papers were in boxes in a storage shed and had assumed that the former registrant had renewed his registration. The Hearing Panel, in their discretion, declined to make any sanction order in this matter.

### **Maureen Humeniuk, Hawryluk Agency Inc.**

**Date of Decision:** April 16, 2009

**Date of Written Decision:** May 20, 2009

**Disposition:** Maureen Humeniuk received an order of reprimand; an order to pay a \$500 fine for violating Commission Bylaw 702; and an order to pay a \$1,000 fine for violating Commission Bylaw 714.

#### **Violations:**

- (a) 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."
- (b) Bylaw 714 states: "A registrant shall take reasonable steps to discover facts pertaining to every property for which the registrant accepts an agency agreement that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts."

#### **Details:**

In September 2007, Maureen Humeniuk obtained an MLS Exclusive Seller's Brokerage contract from daughters of a seller. Three names appeared on title that included the mother and her two daughters. In March 2008, a buyer negotiated a successful contract of purchase and sale with the two daughters. The mother's signature was not obtained on the contract.

Maureen Humeniuk did not ask for or obtain a Power-of-Attorney that authorized the daughters to sell the property but relied on a verbal representation from the daughters for this authority. The buyer did not use a lawyer to complete the transaction and paid the cash proceeds prior to receiving clear title to the property.

In handing down its decision, the Hearing Panel reinforced the need that registrants understand who they work for and to undertake reasonable inquiries when representing clients. Notwithstanding the small rural community in which the registrant and sellers lived, registrants taking representations at face value from buyers or sellers without independent verification run the risk of making misrepresentation.

For this particular transaction, the buyer eventually received title and there was no indication that Maureen Humeniuk intentionally misrepresented the state of affairs at the property.



**Annette Katchan, Charan Property Management Inc. (Regina)**

**Date of Decision:** September 11, 2008

**Date of Written Decision:** October 27, 2008

**Disposition:** Annette Katchan received an order of reprimand and an order to pay a \$1,500 fine for violating Commission Bylaw 608. In addition, Annette Katchan received an order of reprimand and an order to pay a \$500 fine for violating Commission Bylaw 717.

**Violations:**

- (a) Commission Bylaw 608 states: “It is the responsibility of the Broker/Branch Manager to ensure that all trust funds received by a Broker, Branch Manager, or Salesperson at the Brokerage are properly deposited pursuant to the requirements of Clause 71(1) (b) of the *Act*.”
- (b) Commission Bylaw 717 states: “No broker, branch manager, associate broker or salesperson shall trade in real estate under any name other than the name on his or her Certificate of Registration.”

**Details:** Commencing in the summer of 2005, two out-of-country investors began working with Annette Katchan in the search for residential real estate in Regina. The clients eventually bought two properties and thereafter hired Charan Property Management Inc. to manage the revenue properties while the clients prepared to immigrate to Canada. The clients terminated their agreement with Charan Property Management Inc. in May 2006 and submitted a complaint to the Saskatchewan Real Estate Commission. The complainants alleged that the registrant engaged in activities that misled them about the state of repair at the property, failed to account for trust monies received and failed to provide updated accounting to the clients.

At the end of a two-day formal hearing, the hearing panel found Annette Katchan guilty as noted.

In handing down its decision, the hearing panel recognized that the clients and Annette Katchan disagreed as to the nature and quality of service provided. The sanctions imposed reflect the Commission’s concern that the registrant failed to properly account for trust funds to her clients amounting to a serious manner and a fundamental breach of a registrant’s duties. Annette Katchan’s advertising in a name other than that registered with her

brokerage was deemed less serious in that once brought to Annette Katchan’s attention, she corrected the advertising.

**Larry Stewart – Re/Max Saskatoon**

**Date of Decision:** May 21, 2009

**Date of Written Decision:** June 11, 2009

**Disposition:** Larry Stewart received an order of reprimand and an order to pay a \$1,000 fine for violating Commission Bylaw 726(b).

**Violation:** Commission Bylaw 726(b) states: “Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be: (b) inaccurate.”

**Details:** In the summer of 2008, Larry Stewart met with a local sales manager of a new magazine in the area and purchased advertising for the brokerage. As part of the advertising, Larry Stewart authorized his brokerage to scan market share information and send that information to the magazine’s publishing location outside of Canada. Time and distance constraints between the publisher and Larry Stewart led to the magazine going to print without Larry Stewart proofing the final product. Errors contained within the publication included references to total market share as gleaned from only the MLS data.

In its written decision, the hearing panel stressed the importance of broker supervision to ensure that all advertising is accurate. The hearing panel acknowledged Mr. Stewart’s unblemished track record and the problems that Mr. Stewart encountered in proof-reading the advertisement in keeping the fine lower in this circumstance.

**Gaston and Laurent Sirois, Sutton Group – Results Realty (Regina)**

**Date of Decision:** May 21, 2009

**Date of Written Decision:** June 11, 2009

**Disposition:** Gaston Sirois received an order of reprimand and an order to pay a \$1,000 fine for violating Commission Bylaw 730(f).

**Disposition:** Laurent Sirois received an order of reprimand and an order to pay a \$1,000 fine for violating

Commission Bylaw 730(f).

**Violation:** Commission Bylaw 730(f) states: “The following approved forms, provided by the Association of Saskatchewan REALTORS, shall be mandatory: (f) Statement of Disclosure.”

**Details:** In the summer of 2008, Laurent and Gaston Sirois entered into a Residential Contract of Purchase and Sale with potential buyers. This new home construction and completion of the contract remained contingent upon the sale of one of the buyers’ residences and the completion of the new home construction.

While the registrants verbally disclosed to the buyers that they owned a material interest in the property being purchased, the registrants neglected to complete the mandatory Disclosure of Interest in Trade form.

The hearing panel in handing down its decision stressed the importance that is not up to registrants to determine when and where mandatory forms are used. The Commission’s mandates mandatory forms to eliminate confusion and potential deception. While no deception occurred in this case, the sanction imposed stressed the importance of a proper paper trail with consumers.

## *SREC Contact Info*

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

Our fax number is: **1-306-373-2295**  
Our telephone numbers are:  
1-306-374-5233  
1-877-700-5233 (Toll Free)

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

Al Jacobson	ajacobson@srec.ca
Chris Mason	cmason@srec.ca
Ed Miller	emiller@srec.ca
Verna Olfert	volfert@srec.ca
Jason Weiler	jweiler@srec.ca
Allan York	ayork@srec.ca

## *Changes to the Disclosure of Interest in Trade Form*

As a result of some concerns experienced by registrants, the Saskatchewan Real Estate Commission members reviewed the content of the form and will be implementing the following changes to the form:

1. PART D: Removing the witness requirement stating “not a party to the trade in real estate.” It is recommended that there is no need to be this specific in stating who the witness can be. The removal of this phrase aligns the content of this form with other Commission mandatory forms in this area.
2. BROKERAGE ONLY Section: To clarify the intent of this section, “Managing Broker” will be amended to read “Disclosing Registrant’s Broker”.

Until the new forms are printed, it is acceptable for registrants to make these changes to the forms as required.

## *Commission Members*

Larry Gingerich (Saskatoon,) Chairperson  
Cheryl Elliott (Prince Albert), Vice Chairperson  
Donnett Elder, Regina  
Richard Jeanneau, Saskatoon  
Phillip Mack, Regina  
Anne Odishaw, Saskatoon  
Marion Piper, Lloydminster  
Terry Powell, Saskatoon  
John Puderak, Saskatoon  
Ron Skinner, Yorkton  
Wayne White, Regina

## *Commission Staff*

Al Jacobson, Executive Director/Registrar  
Chris Mason, Investigator  
Ed Miller, Director of Investigations  
Verna Olfert, Director of Registration  
Jason Weiler, Systems Administrator  
Allan York, Director of Audits