

The Register



February 2007

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Changes to Education Courses Effective July 1, 2007

The Saskatchewan Real Estate Commission and its education provider, the Association of Saskatchewan REALTORS® continue to revamp the material contained in these post education courses for integration into the Phase I salesperson's education course.

Effective July 1, 2007 the present Phase III - post education (articling) courses: *Principles of Real Estate Appraisal* and *Principles of Real Property Law* will be integrated into Phase I.

The revamped salesperson's course material has incorporated the common education standards outline established through the Canadian Regulators' Group. The Saskatchewan Real Estate Commission is working towards the development of education courses with content that is skewed in favour of practical real estate concepts. The course content will have less emphasis placed on historical and theoretical material.

In conjunction with the changes to the salesperson's course format, the education provider is working towards changing the course assignments to an on-line Internet web-based component that will serve as a course review. The Saskatchewan Real Estate Commission envisions that an Internet web-based examination component of the course will be a realization within the near future.

The Commission is in the final stages of developing bylaws, policies and procedures relating to education and registration to reflect the new changes. Complete details will be provided in the next issue of *The Register*.

SREC On-line Credit Card Processing

The Saskatchewan Real Estate Commission is pleased to introduce its latest addition to the on-line registration system — the ability to enter payment via credit card directly on-line at the time of processing a registration without sending the funds, in advance, to the Saskatchewan Real Estate Commission. This will assist brokers in truly registering individuals directly via the Internet 24 hours a day, 7 days a week, 365 days a year.

Because the system is Internet enabled, it eliminates compatibility of computer issues, is less expensive to operate and is user friendly. The turn around time for registration for qualified individuals under *The Real Estate Act* is immediate. The system eliminates the paper chase and telephone-tag with Commission staff at registration renewal in June each year. The system is also an effective and efficient communication tool with the industry.

On-line Registration Renewal Process June 2007

In May, the Saskatchewan Real Estate Commission will be introducing its latest enhancements to its on-line registration system.

The simplified renewal process eliminates the need to complete a paper renewal form. Registrants will now have the flexibility to individually renew their Certificate of Registration on-line via the Internet.

An overview of how we envision the new renewal process will work is as follows:

- Approximately the third week in May all brokerage offices will receive an envelope containing individual envelopes addressed specifically to each registrant at that brokerage.
- Each registrant will receive his/her own individual registration package containing instructions on how to log into the Commission's website using an access code and password.
- Once logged into his/her own screen, each registrant will have the ability to enter his/her own credit card for processing of the registration renewal fees.
- The registrant's application form will no longer be required to be submitted in paper format to the Commission office. The registrant completing the application via the Internet will be submitting his/her information electronically to the Commission office thereby eliminating the cost of paper, printing and postage.
- In addition, if there are no changes to be made to the registrant's information, a simple click of the process button is all that will be needed to capture the required data.
- Each registrant will have the freedom to print his/her own receipt and Certificate of Registration.
- This log in access will also provide each registrant with information regarding his/her specific education, personal information, etc.
- Each brokerage will be able to view a list of its registrants who have renewed with the brokerage using the brokerage on-line log in process.

The new process still allows a registrant to use the services of his/her brokerage to assist with the renewal process.

If you have any questions about this upcoming registration renewal process, please contact the Commission office at 306-374-5233 or toll free at 1-877-700-5233.

Saskatchewan Real Estate Commission



Front Row: Al Jacobson (Executive Director/Registrar), Terry Powell, Larry Gingerich (Chairperson) and Phillip Mack
 Back Row: Donnett Elder, Cameron Wilkes, Ron Skinner, Anne Odishaw, Cheryl Elliott (Vice Chairperson) and Scott Musgrave
 Missing: Richard Jeanneau and John Puderack (Not appointed to the Commission at the time of this photograph.)

Election Results

Pursuant to Bylaw 216.2, the Commission sent out notification in January to registrants in Region 1 (Saskatoon) requesting nominations for the one Commission position that would become vacant July 1, 2006. In accordance with Bylaw 217.2, the nominations were to be submitted prior to 4:30 p.m. on February 15th. Only one nomination was received. Therefore, pursuant to Bylaw 219.1 the Registrar declared Larry Gingerich, Associate Broker with Realty Executives Saskatoon elected to serve another three-year term with the Commission commencing July 1st.

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.

New Commission Appointments

The Saskatchewan Real Estate Commission is pleased to announce that Richard Jeanneau and John Puderack became members in January 2007.



Richard Jeanneau

Richard Jeannau was born and raised in Saskatoon. He has been a registrant since 1989. In 1988 he formed Risa Management, a property management company. In 2001 Richard became a partner with the brokerage J.J. Barnicke in

Saskatoon. In July 2006 Richard became affiliated with the Coldwell Banker franchise. He is the broker of Coldwell Banker Rescom Realty and along with his wife, Lisa own this entity. Richard has three children, Jade, Jase and Shelby; all of whom are still living at home. Richard looks forward to serving the industry as a member of the Saskatchewan Real Estate Commission.



John Puderak

Born and raised in Saskatoon, John comes to us with an extensive banking background as well as having his Certified General Accountant (CGA) designation. He is currently a director of the Saskatchewan Rental Housing Industry

Association and is one of two Saskatchewan representatives to the Canadian Federation of Apartment Associations.

While now for the most part retired, John keeps busy with various hobbies (mountain biking, Tai Chi, travel and revenue property) and his lovely wife and dance partner, Temple Hansen.

Obsolete Information on Website

The Saskatchewan Real Estate Commission reviewed its policy relating to information placed on its website for public viewing.

The Commission had concerns that some of the newsletters were dated and some of the articles printed several years ago had no relevance to today's practices. This led to some confusion and misinterpretation of the present legislation and policies governing the real estate industry.

Although a historical record will be kept at the Commission office of all previously published newsletters and bulletins, the Commission's public website retention period for these documents will be six years.

The Commission's website has been updated to reflect this change in policy.

2006 Annual Financial Report to the Commission

Brokers are reminded that the 2006 Annual Financial Report must be submitted to the Commission office by March 15, 2007 or a \$300 late submission fee will be levied against the brokerage.

Changes to Legislation

The following bylaws were recently approved and published in *The Gazette*:

116 – SERVICE AGREEMENT means an agreement that establishes a relationship between a brokerage and a person that identifies the responsibilities of each party and includes the services to be performed by the brokerage and the fee for service payable to the brokerage. A service agreement is considered to be a written agency agreement for the collection or attempted collection of remuneration for services in connection with a trade in real estate pursuant to Section 68(2) of the *Act*.

117 – FEE FOR SERVICE means a lump sum payable to a brokerage established through a service agreement for a specific trade or combination of trades in real estate pursuant to the definition of trade in Section 2(bb) of the *Act*.

Service Agreement

732 - Every service agreement must be in writing and executed in the presence of witnesses.

733 - A service agreement must contain, in addition to the requirements of an agency agreement pursuant to Section 57(1) of the *Act*:

- (a) the name and address of all parties;
- (b) the date the agreement was signed and the commencement date of the agreement;
- (c) the specific trade in real estate and duration of the trade for which a fee for service applies; and
- (d) disclosure stating the amount of the fee for service and that the fee is not payable until the trade is complete.

734(1) Subject to subsection (2), no registrant's brokerage shall pay or cause to be paid any commission or other remuneration from a trade in real estate to a person who is not a registrant.

- (2) An assignment of the commission or other remuneration from the registrant to a registrant's private corporation is allowed provided that the assignment is in writing and contains the following information:

- (a) the name of the registrant assigning the commission or other remuneration and the name of the registrant's brokerage;
- (b) the amount of commission or other remuneration to be assigned;
- (c) the details of the trade in real estate relating to the assigned commission or other remuneration;
- (d) the name of the private corporation the assigned commission or other remuneration is to be paid to;
- (e) the position or beneficial interest the registrant has in the private corporation;
- (f) the date of the assignment; and
- (g) a statement that the private corporation is not receiving the commission or other remuneration as a result of the private corporation trading in real estate.

- (3) For the purposes of this section, a "private corporation" shall be defined as a corporation in which the registrant owns more than 40% of the common shares of the corporation."

Remuneration Payable to a Registrant's Private Corporation

Under "Changes to Legislation" we have included the new bylaws relating to the process a registrant must follow in assigning remuneration earned through a trade in real estate.

A registrant's brokerage, upon entering into an assignment agreement with the registrant, can pay the registrant's trades in real estate remuneration directly to the registrant's private corporation. It is important to note that this bylaw does not off-load the tax consequences from the registrant's earned income from trades in real estate to the registrant's private corporation. In addition, the registrant's private corporation, as an unregistered entity, cannot be involved in the trade.

The Saskatchewan Real Estate Commission strongly urges registrants to consult with their tax advisor to determine what advantages may be derived from this type of assignment.

Mandatory Form Changes

The Saskatchewan Real Estate Commission approved the following changes to its mandatory forms and forwarded those changes to the Association of Saskatchewan REALTORS® for inclusion in the next printing of the documents:

Residential Contract of Purchase and Sale (Form 100)

- that the Commission's website address in the top left-hand corner be amended to read www.srec.ca;
- that clause 6.1 be separated into two sections (the first section to contain clauses c, d and e where the seller only represents these to the best of his/her knowledge and the second section to contain clauses a, b and f where the seller represents and warrants to the buyer);
- that in clause 6.1 the words "excluding monitoring contract" be added after alarm system on page three of the form; and
- that Section 4.11 on page 2 should include the words "or revocation" after the word "acceptance" in lines 2, 3, 4, 7 & 10.

Schedule C (Form 103)

- that the Commission's website address in the top left-hand corner be amended to read www.srec.ca;
- that items #8 (a current copy of the Condominium Plan) and item #9 (reserve fund study) be added in clause A;
- that the words "and Sundays" be added after "excluding holidays" in clause B; and
- that the title words "Special Terms" be changed to read "Special Conditions".

Notice to Remove Conditions (Form 803)

- that the Commission's website address in the top left-hand corner be amended to read www.srec.ca; and
- that the word "waived" be replaced with the word "removed" in the phrase on this mandatory form that reads as follows: "With respect to the above-mentioned property, the following conditions are removed."

Fee for Service Agreements

Through its bylaws, the Saskatchewan Real Estate Commission has now established definitions for fee for service and service agreements. In addition, a bylaw has been implemented relating to the contents and execution of service agreements. These bylaws are provided to you in this newsletter under the section entitled "Changes to Legislation".

The new legislation provides direction to registrants who wish to isolate the various menu of services identified in the definition of a trade in real estate in Section 2(bb) of *The Real Estate Act* (i.e. advertising, showing or negotiating, etc.). The legislation is intended to ensure full disclosure between a brokerage and the public for specific services and the remuneration for those services relating to a trade in real estate.

It is important to emphasize that fee for service agreements can only be used when a brokerage is using a lump sum calculation in computing its commission/remuneration. If a brokerage is using the percentage of sale price computation for commission/remuneration under Section 66 of *The Real Estate Act*, then the fee for service agreements are not permitted. In these cases, a brokerage would have to comply with Section 68(2) of the *Act* for residential trades. This section states:

"No brokerage shall collect or attempt to collect any commission or other remuneration for services in connection with a trade in real estate unless:

(a) any one of the following applies:

- (i) a written agency agreement has been entered into with the buyer or seller;
- (ii) the brokerage has obtained a written offer to purchase that is accepted in writing by the person liable to pay the commission or other remuneration; or
- (iii) the brokerage has obtained a written acceptance of an offer to purchase signed by the person liable to pay the commission or other remuneration; and

(b) subject to subsection (3), the trade in real estate has been completed by the parties."

Commission Disciplinary Action

Dwight Dunn, Broker, Dunn Realty & Insurance Ltd. (Wolseley)

Date of Decision: November 30, 2006

Date of Written Decision: December 22, 2006

Disposition: Dwight Dunn received a letter of reprimand and an order to pay a \$500 fine for violating Commission Bylaw 730(g).

Violation: Commission 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 re-sale residential real estate).”

Details: On or about August 10, 2004, Mr. Dunn signed an In-house Exclusive Seller’s Brokerage Contract to market a residential property in the town of Sinaluta, Saskatchewan. In June 2005, a potential buyer residing in Albuquerque, New Mexico became interested in the property after viewing it on MLS.ca with a reduced asking price. After being contacted by the buyer, Mr. Dunn provided her with additional pictures of the property and information relating to the geographical, structural and economical conditions surrounding the property. The seller had not resided at the property and provided no disclosure about the property.

The buyer, having no intention of viewing the property, felt confident enough with the information Mr. Dunn provided her that she requested he issue an offer to the seller. The offer Mr. Dunn faxed to the buyer was subject to the buyer’s receipt of a satisfactory home inspection on or before July 10, 2005 as per Mr. Dunn’s recommendation as the buyer was willing to purchase the property without a viewing it. After completion of the transaction, the buyer alleged that the property was in poor repair. Mr. Dunn did not have the buyer sign a Notice to Remove Conditions or Ancillary Services in the Purchase of Residential Real Estate form.

In handing down its decision, the Hearing Committee considered Mr. Dunn’s lack of previous sanction history and the length of time he has been in the real estate industry and the fact that he clearly acknowledged his error. It was the finding of the Commission that the circumstances of this transaction are serious. It is important that the mandatory forms be used by registrants as required by legislation. It is not for the registrant to decide when they should be used. It is to insure that there is no later dispute as to what has taken place that the forms must be signed. This is for the protection of both the registrant and the consumer, as memories change once the transaction has been completed. In the circumstances of a distant buyer, acting for both seller and buyer and where problems were determined before possession, registrants must make sure that the proper documentation has been completed. This sanction will provide a specific deterrent to Mr. Dunn to ensure he complies with this bylaw and will serve as a general deterrent to the registrants to ensure they know that all bylaws must be adhered to.

Carole Merriman, Salesperson, Sutton Group – Results Realty (Regina)

Date of Decision: November 30, 2006

Date of Written Decision: December 22, 2006

Disposition: Carole Merriman received a letter of reprimand and an order to pay a \$750 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: Carole Merriman became registered with the Saskatchewan Real Estate Commission in August 2002. In April

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



2005, Ms. Merriman represented a couple in selling their farm near Yorkton, Saskatchewan and the buyer during its purchase. This trade in real estate involved subdividing the land from the originally listed parcel.

Ms. Merriman had only one of the two sellers sign an Amendment to the Contract on the date of possession relating to a trade in real estate. The Amendment had the effect of the sellers giving up the keys and possession to the property to the buyer while the sellers' chattels remained at the property. Ms. Merriman did not specify in the Amendment that the completion of the sale was to be finalized upon the completion of a subdivision nor providing a schedule of compensation to the sellers for granting possession without receiving sale proceeds.

In handing down its decision, the hearing committee took into consideration the relatively short time that Carol Merriman has been in the industry and the fact that the transaction did conclude satisfactorily. The Committee was of the opinion that this was a unique situation, involving a subdivision and delayed ultimate closing of the transaction. It is imperative that registrants ensure that all parties realize the risks involved in a subdivision. There is no guarantee that it will be approved, even though the Rural Municipality has approved. It is a complex procedure thereafter and the sale is certainly at risk, to the detriment of all parties, should the subdivision not be approved. The sellers would not have their funds and would not have their property. The buyer would have possession and not a title.

Carole Merriman, Salesperson, Sutton Group – Results Realty (Regina)

Date of Decision: November 30, 2006

Date of Written Decision: December 22, 2006

Disposition: Carole Merriman received a letter of reprimand and an order to pay a \$750 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: Carole Merriman became registered with the Saskatchewan Real Estate Commission in August 2002. In July 2003, Ms. Merriman represented the buyer and seller under a Limited Dual Agency Acknowledgement regarding the sale of a farm near Yorkton, Saskatchewan. The buyers were relocating from Alberta and negotiated on the Saskatchewan property by providing two previous offers prior to the eventual accepted offer in July of 2004. Conditions for well water testing existed in the first two offers but not on the final accepted offer. The buyers eventually accepted possession of the property in October of 2004 and discovered a hole in the basement floor and problems associated with the water quality and quantity at the property.

The Committee was of the opinion that the knowledge of the registrant as to water problems in this area was relevant as was the fact that prior offers had the condition of water testing in them. If the buyers were adamant in not having the testing done, an Ancillary Services form where the buyers acknowledged that they had been advised to have such a test would have eliminated any issues. The need for water conditions to be appropriate for acreages is clear and registrants must share their understanding and expertise with their buyers.

It is also a concern that the registrant has properly viewed the property and knows that there are no issues of concern for the parties. If the sellers had told Ms. Merriman of the hole or if she had properly inspected the property ahead of time, the hole in the basement floor would not have been at issue in this matter. It is incumbent on registrants to take reasonable steps to insure that the facts provided to them by the sellers are correct. All of these considerations are made more important when the registrant is acting for both sides to a transaction; especially a transaction on an acreage in an area where water problems are known. This sanction will provide a specific deterrent to Ms. Merriman to ensure she complies with this bylaw and will serve as a general deterrent to the registrants to ensure they know that all bylaws must be adhered to.

Andy Schmidt, Salesperson, Century 21 Conexus Realty Ltd. (Regina)

Date of Decision: November 30, 2006

Date of Written Decision: December 22, 2006

Disposition: Andy Schmidt received a letter of reprimand and an order to pay a \$3,000 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 fraudulent."

Details: In April 2006, clients of a brokerage signed an Exclusive MLS Seller's Brokerage Contract to market a Regina property advertising the payment of a 2½% commission plus applicable taxes to the successful buyer's brokerage. On or about April 27, 2006 Andy Schmidt assisted potential buyers to write a Residential Contract of Purchase and Sale form offering to the buy the property subject to seven conditions. Before delivering a copy of the Residential Contract of Purchase and Sale form to the listing brokerage, Andy Schmidt added an eighth condition stating "buyer's brokerage to be 3½% plus taxes." Andy Schmidt claimed a belief that his clients were under a buyer's brokerage contract at 3½% and without

specific and written direction from his buyers, entered the eighth condition onto the contract.

The buyers and sellers did not come to an agreement on the contract as presented by Andy Schmidt to the listing brokerage's representative. The sellers remained steadfast that the buyer's brokerage commission remain at 2½% as per the listing contract; and Andy Schmidt claimed that the buyer's required buyer's brokerage commission of 3½%. Within hours of not accepting the buyers' offer, the buyers and sellers met privately and then learned of Andy Schmidt's insertion of condition #8. The buyers and sellers agreed to a new Residential Contract of Purchase and Sale form without assistance from Andy Schmidt or his brokerage and the sellers paid commission as contracted.

In handing down its decision, the hearing panel acknowledged that this was Andy Schmidt's first sanction after more than twenty years in the real estate industry. Notwithstanding a first offense, the evidence clearly indicated that Andy Schmidt committed a fraudulent act by inserting a clause into the contract for the express benefit of himself and not his buyers. Registrants must obtain written direction from their clients before amending a signed contract. The hearing panel's sanction acts as a specific deterrent to Andy Schmidt and a general deterrent to registrants to ensure the proper completion of paperwork as per their clients' wishes.

Notification to SREC

A registrant is required to notify the Saskatchewan Real Estate Commission in writing no later than five days after the occurrence of any of the following:

- Criminal Code proceedings or a conviction;
- Civil proceedings, judgments or settlements for trades in real estate, fraud, misrepresentation, undue influence or breach of trust;
- a change in a registrant's name;
- proceedings under *The Bankruptcy and Insolvency Act (Canada)*;
- proceedings under *The Winding Up Act*;
- Proceedings under *The Companies' Creditors Arrangement Act (Canada)*; or
- convictions under any law of any country, province, or state (except minor traffic violations).

2006-2008 CPD

As part of registration renewal on June 30, 2008, **all registrants** are required to attend and successfully complete the two-day *Real Estate Update* workshop on Agency between October 2006 and June 2008. Successful completion is given only for 100% attendance during a specific workshop. The workshops are held in various locations throughout the province. The cost of the workshop is \$199 per registrant (plus GST). Class sizes are approximately 35 participants per workshop and are filled on a first come, first served basis.

Outlined below is the CPD course schedule to **June 2007**:

Battlefords	April 10/11, 2007
Estevan	May 15/16, 2007

Lloydminster	April 17/18, 2007
Moose Jaw	May 8/09, 2007
Regina	May 1/2, 2007 June 12/13, 2007
Saskatoon	April 24/25, 2007 May 23/24, 2007 June 12/13, 2007
Swift Current	March 20/21, 2007
Yorkton	Feb. 28/March 1, 2007

To enroll in a seminar in the fall of 2007, please go to the Association of Saskatchewan REALTORS® website at www.saskatchewanrealestate.com and view the extended schedule located there.

SREC Contact Info

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Cheryl Elliott (Prince Albert), Vice Chairperson
Donnett Elder, Regina
Richard Jeanneau, Saskatoon
Phillip Mack, Regina
Scott Musgrave, Lloydminster
Anne Odishaw, Saskatoon
Terry Powell, Saskatoon
John Puderak, Saskatoon
Ron Skinner, Yorkton
Cameron Wilkes, Regina

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