

## Property Management Legislation and Registrants

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### PROPERTY MANAGEMENT AGREEMENT

**617** - A written property management agreement shall be executed between a brokerage and the landlord and shall contain:

- the name and address of the brokerage and landlord;
- the identity of the property to be managed by street address, if applicable, and legal description;
- the amount of fee or commission to be paid to the brokerage and when the fee or commission will be paid;

- (d) the conditions on which the brokerage holds funds in trust for a landlord;
- (e) authorization of the landlord to transfer trust funds, when conditions of trust have been met, to an operating account on the landlord's behalf;
- (f) a disclaimer which states that once funds are removed from the property management trust account, in accordance with the conditions of trust, the funds are no longer considered as trust funds under *The Real Estate Act*. No claim can be made under the Real Estate Assurance Fund once funds are removed from the property management trust account in accordance with item (e).
- (g) all the terms and conditions under which the property is to be managed;
- (h) an expiry date of the agreement;
- (i) the date of agreement.

**618** - A broker shall prepare the following monthly statements with respect to each property management client:

- (a) a statement of receipts and disbursements that records:
  - (i) the balance carried forward from the statement of the previous month;
  - (ii) the funds received in trust for property management;
  - (iii) the amount of each disbursement and to whom it was made; and
  - (iv) the balance at the end of the month; and
- (b) any other financial statement that the broker agrees to provide to the client.

The broker shall keep these statements on file and shall make them available to property management clients on request.

Under Section 29, clause 2 of the Real Estate Regulations, a registrant is exempt from the legislation when carrying out property management of his or her own property as follows:

- 29(1) The Act does not apply to: .....
- (2) A registrant who engages in property management of real estate located in Saskatchewan and owned by the registrant or in

which the registrant has a material interest is exempt from the Act for the purposes of property management with respect to that real estate if the registrant discloses, in writing and in a manner that may be prescribed in the bylaws, to a tenant before entering into a lease or rental agreement:

- (a) that the registrant is the owner of or has a material interest in the real estate; and
  - (b) that although the owner or person having a material interest in the real estate is a registrant, *The Real Estate Act* does not apply to the lease or rental agreement.
- (3) For the purposes of this section, “**tenant**” means a person who leases or rents real estate.

## 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 Fundamentals*. Approximately 420 individuals have yet to complete this requirement prior to the end of June.

The remaining workshops are as follows:

**Regina:**            March 12/13, 2008  
                               March 25/26, 2008  
                               April 8/9, 2008  
                               May 6/7, 2008  
                               May 27/28, 2008

**Saskatoon:**        March 19/20, 2008  
                               April 22/23, 2008  
                               May 6/7, 2008  
                               May 21/22, 2008

Please visit the Association of Saskatchewan REALTORS®’ website at [www.saskatchewanreal-estate.com](http://www.saskatchewanreal-estate.com) and submit your enrolment form as soon as possible.

## *Saskatchewan Real Estate Commission*



Front Row: Phillip Mack, Larry Gingerich (Chairperson), Cheryl Elliott (Vice Chairperson), and Scott Musgrave  
 Back Row: Cameron Wilkes, Donnett Elder, Ron Skinner, John Puderak, Terry Powell, Al Jacobson (Executive Director/Registrar), Anne Odishaw and Richard Jeanneau

### *Registration Fees*

Effective April 1, 2008 the Saskatchewan Real Estate Commission is implementing a reduction in its registration fees for new applicants entering the industry within the last three months of the registration year (April - June). The Real Estate Insurance Exchange also implemented a reduced Errors and Omissions fee for this three-month period.

The registration fees prior to April 1 total \$630; however, after April 1st they are as follows:

Registration Fee	\$100.00
Errors & Omissions Insurance	\$100.00
Real Estate Assurance Fund	<u>\$100.00</u>
Total	\$300.00

## Attention Brokers:

Through the on-line registration screen, you as brokers have the ability to view a report providing you with the name of each registrant at your brokerage who may be required to complete the articling courses and the deadline for completion by that individual. Simply use the ID number and password you were provided with during the June 2007 registration renewal process. At the very bottom of your brokerage screen is a section called "Reporting". Through the education query, you may see the progress report with respect to the Continuing Education and/or articling courses being completed by registrants at your brokerage. If you have lost your ID number and password, simply perform the query on the Commission's website and it will be sent to you by e-mail.

## Executive Director/Registrar Appointed to ARELLO

The Commission is pleased to announce that effective January 2008, Mr. Jacobson, Executive Director/ Registrar has been appointed as a Director of the international body ARELLO (Association of Real Estate Licensing Law Officials). A portion of Mr. Jacobson's committee work with this organization will encompass participation in the following committee's: Education Certification, Education Issues, Monitoring, Examination Accreditation and Home Inspection Advisory committees. The Commission is very optimistic that a great deal of benefit will be derived from this relationship with ARELLO, by viewing regulatory issues from a more global perspective.

## 2007 Annual Financial Report to the Commission

Brokers are reminded that the 2008 Annual Financial Report must be submitted to the Commission office by March 15, 2008 to avoid a \$300 late submission fee being levied against the brokerage.

## Election Results

Pursuant to Bylaw 216.2, the Saskatchewan Real Estate Commission sent out notification in January to registrants in Region #2 (Regina) requesting nominations for the two Commission positions that would become vacant July 1, 2008. Only two nominations were received for the vacant positions. The number of candidates nominated for Region #2 equaled the number of vacancies for that region. Therefore, pursuant to Bylaw 219.1, the Executive Director/Registrar declared Phillip Mack and David Mayer elected to serve three-year terms with the Commission commencing July 1, 2008. Congratulations Phillip and David

## Thanks for your Participation

The Commission is very pleased with the response it received from the industry relating to a survey on CPD (Continuing Professional Development). The Commission thanks those of you who took the time to tell us what was lacking in the industry and what topics would be of interest to you. This will be immensely helpful, as the Education Committee prepares for discussion with our education provider (ASR) relating to future mandatory education updates and bringing recommendations to the Commission as a whole. The Commission's decisions as a result of the survey will be published in an upcoming issue of *The Register*.

## Legislative Changes

The Commission's Legislation Committee will be very active this year and into the next. The Commission has asked the Committee to review *The Real Estate Act*, its Regulations and Commission Bylaws and where possible simplify the legislation and expand the policy and interpretation area relating to the legislation. Areas of particular attention will focus on investigations and hearings, advertising, reciprocity with other jurisdictions, registration categories, assurance fund, mandatory forms, electronic use of contracts and governance guidelines.

## *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.

### Ronald Ashton, Salesperson, Century 21 Conexus Realty Ltd. (Saskatoon)

**Date of Decision:** September 26, 2007

**Date of Written Decision:** October 26, 2007

**Disposition:** Ron Ashton received a letter of reprimand; an order to pay a \$2,500 fine for violating Section 39 (1)(a) of *The Real Estate Act*; an order to pay a \$1,000 fine for violating Sections 58(1)(b)(i) and (iv) of *The Real Estate Act*; an order to pay a \$1,000 fine for violating Commission Bylaw 730(a) and (f); and an order to pay \$1,500 in hearing costs. The Hearing Panel did not find that Ron Ashton's overall actions were committed in a fraudulent manner as defined in Section 2(1) of *The Real Estate Act*.

#### **Violations:**

- (a) Section 39(1)(a) of the *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 harmful to the best interests of the public, the registrants or the Commission."
- (b) Sections 58(1)(b)(i) and (iv) of the *Act* state: "An offer to purchase obtained by a registrant is to clearly show, prior to execution by the buyer, date on which the offer is made; and the price offered by the buyer and the terms and conditions of the offer."
- (c) Commission Bylaw 730(a) and (f) read as follows: "The following approved forms, provided by the Saskatchewan Real Estate Association, shall be mandatory:
  - Residential Contract of Purchase and Sale (does not apply to the sale of new condominiums); and
  - Statement of Disclosure."

**Details:** In July 2005, Ron Ashton sold his principal residence to an acquaintance by way of a hand-written two-page document entitled "Agreement between Ron Ashton and Leonard Nagy". Ron Ashton created and delivered this document to a solicitor representing the buyer whereupon Ron Ashton received a \$28,000 cash to mortgage lawyer's trust cheque as contemplated in the document. The document called for the buyer to occupy and maintain the residence during the term of the existing mortgage; pay yearly insurance premiums for the property; and make \$1,550 monthly payments to Ron Ashton that included all utilities. In January 2006, Ron Ashton re-occupied the property and the buyer vacated the property acting on the verbal representation from Ron Ashton that Ron Ashton had re-paid \$28,000 to the buyer's lawyer. Ron Ashton never paid the \$28,000 to the lawyer or client and a complaint was submitted to the Saskatchewan Real Estate Commission.

The hearing panel found the transaction to be a trade in real estate; that Ron Ashton failed to use the required mandatory forms for the contract and written disclosure by a registrant; and that the document failed to clearly articulate the date of the offer and the terms and conditions of the offer. The hearing panel also determined that Ron Ashton's personal trade in real estate occurred without broker knowledge and direction and that the real estate documentation never flowed through brokerage. The hearing panel concluded that Ron Ashton

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

agreed to the two-page document in that Ron Ashton created the document specifically to receive \$28,000 as stipulated in the agreement. As an experienced registrant and a second time offender, Ron Ashton's actions caused harm to all stakeholders.

**Linda Swehla, Broker, Re/Max Nipawin**

**Date of Decision:** September 27, 2007

**Date of Written Decision:** October 26, 2007

**Disposition:** Linda Swehla received a letter of reprimand and an order to pay a \$1,000 fine for violating Commission Bylaw 730(g).

**Violation:** Commission Bylaw 730(g) states: "The following approved form, provided by the Association of Saskatchewan REALTORS®, shall be mandatory: Ancillary Services in the Purchase of Residential Real Estate (applies only to re-sale residential real estate)."

**Details:** In May 2005, Linda Swehla obtained a seller's brokerage contract for an acreage property. The seller and Linda Swehla used existing visual pictures plus assessment information from the Rural Municipality to describe the property for advertising purposes. On or about April 24, 2006 a customer toured the property on his own and thereafter approached Linda Swehla to write a full-price Residential Contract of Purchase and Sale form. In error, Linda Swehla neglected to have the buyer make use of the mandatory Ancillary Services in the Purchase of Residential Real Estate form at anytime during the transaction.

Approximately one year after completion, the buyer learned that the advertised acreage and Rural Municipality assessment from 2005 were in error. The Investigation Committee concluded that Linda Swehla used reasonable due diligence to assess the available 2005 information to market the property. Linda Swehla erred in not providing the buyer with the mandatory Ancillary Services in the Purchase of Residential Real Estate form.

The hearing panel's written decision emphasized to Linda Swehla (a first-time offender) and all registrants, that the failure to use mandatory forms can have a negative impact on the client and the registrant.



### *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.

## *Mandatory Forms*

The Commission developed seven (7) mandatory forms for use by registrants. Section 730 of the Commission Bylaws identifies the required forms. Bylaw 730 reads as follows: “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);
- (b) Schedule "C": Special Conditions for Contract of Purchase and Sale of a Condominium Unit (does not apply to the sale of new condominiums);
- (c) Counter Offer to Residential Contract of Purchase and Sale;
- (d) Amendment to Residential Contract of Purchase and Sale;
- (e) Notice to Remove Condition(s) on Residential Contract of Purchase and Sale;
- (f) Statement of Disclosure; and
- (g) Ancillary Services in the Purchase of Residential Real Estate (applies only to re-sale residential real estate). “

## *Cease and Desist Orders*

In early 2006, the Saskatchewan Real Estate Commission began an investigation with respect to Pin Services Ltd., Eric Jordan and Merv Easton trading in real estate while unregistered. After ten months of data collection, the Commission submitted a report to the Superintendent of Real Estate requesting that Pin Services Ltd. be issued an order that this corporation and its representatives in Saskatchewan cease its trades in real estate.

On December 13, 2006 the Deputy Superintendent of Real Estate issued such an order to Pin Services Ltd., Eric Jordan and Merv Easton.

In August 2007, a solicitor acting for Pin Services Ltd. made a Court Application on behalf of Pin Services Ltd. asking that the Deputy Superintendent of Real Estate’s Cease and Desist Order be discharged. The original date for the Application to be heard was August 28, 2007; however, the hearing was adjourned to October 4, 2007.

After discussions between the Commission’s solicitor and the solicitor representing the Superintendent’s department, it was agreed that arguments would be put forth on October 4, 2007. The Commission’s position was that an appeal of the order was not available pursuant to real estate legislation and the proper process was for Pin Services Ltd.’s solicitor to request a judicial review. The judge would not rule on the proper process as she felt that would restrict the judgment or jurisdiction of a later Justice who would hear the arguments on the merits of the Application. The judge adjourned the hearing sine die. This means it could be brought back to the Court by any party upon notice to the other parties. Since that time, there has been no further communication from Pin Services Ltd.’s solicitor.

As the Court made no further ruling, the Cease and Desist Order remains in effect.

Following another investigation and a request by the Commission, on November 13, 2007 the Deputy Superintendent of Real Estate issued a Cease and Desist Order to Orest Olekshy of Melville, Saskatchewan who was managing properties on behalf of others without being registered with the Commission. Since the order was issued, no further violations by Mr. Olekshy have come to the Commission’s attention.

Both the above Orders may be viewed on the Commission’s website at [www.srec.ca](http://www.srec.ca) under the heading of “Decisions”.

## General Comments and Statistics

The past year has been an extremely busy one for the Commission with the increased activity in the market place. Many new challenges surfaced that required quick and decisive action by the Commission. The Commission continues to monitor the activity of the market place and requests that registrants keep the lines of communication open with the Commission so that potentially explosive issues can be addressed expeditiously for public protection.

The Commission's financial position has never been stronger since its formation. The Interest Bearing Trust Account balance is estimated to exceed \$1 Million by fiscal year end. This will provide the Commission with a sufficient comfort zone to forward to the Superintendent of Real Estate many education, training, research and legislative projects that will add substantial value to the real estate industry and ultimately, enhance protection to the general public.

Registration activity has increased significantly during the past year. Saskatchewan is experiencing an increase in the number of real estate licensees from other jurisdictions seeking registration in Saskatchewan. We have 1402 registrants in the province to date. This is an increase of 7% since the end of the last fiscal year (June 30, 2007).

The Commission has seen an approximate 35% increase in investigations this year over last year for the same period of time with the number of complaints totalling 69. This trend is not expected to decrease in the near future. The increase in complaints appears to have a direct relation to the increased activity in the market place. Many of the complaints relate to undisclosed latent defects, price evaluations, misuse of forms or non use of mandatory forms, trades by non registrants and registrants not trading through their brokerage.

### **The registration statistics as of February 22, 2007 are:**

Brokerages/Brokers	224
Branch Managers	23
Associate Brokers	141
Salespeople	<u>1,014</u>
Total # of Registrants	1,402

## SREC Contact Info

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## Commission Members

Larry Gingerich (Saskatoon,) Chairperson  
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

## 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