

Return of Deposits Addressed in Revised Residential Contract of Purchase and Sale Form

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In the past, the wording in Section 7 of the Residential Contract of Purchase and Sale caused considerable confusion within the real estate industry and the public as to which of the parties to a transaction was to receive the deposit and at what stage during the transaction did the brokerage have clear direction to disburse the deposit amount.

The wording in this section of the form left the buyer with the impression that the buyer was entitled to the deposit if conditions were not satisfied or met on the date stipulated in the conditional offer and would be returned to the buyer. In addition, the seller was left with the impression that when the conditions had been waived or met and the offer was unconditional, the seller was entitled to the deposit whether or not the transaction completed.

Unfortunately, the form did not include any notification that the real estate legislation under Section 16 of the Regulations would supersede the intended method of disbursement as stipulated in the offer. Under the Real Estate Regulations, the deposit must be held in trust by the brokerage until the dispute (justified or not) was resolved by the parties through agreement or through the courts.

The changes to the Commission's mandatory form, Residential Contract of Purchase and Sale are intended to clarify this oversight and the confusion that now exists in the real estate industry by integrating the requirements of Section 16 of the regulations into the wording of the form.

The new form now states that the deposit or trust funds paid into trust by the buyer will be returned to the buyer if the conditions in paragraph 2.1 of the contract have not been removed or waived in writing by the required date. Once the conditions have been removed or waived in writing, the buyer's

deposit or trust funds become payable to the seller's brokerage as forfeiture to the seller, if the buyer fails to complete the contract.

The changes on the Residential Contract of Purchase and Sale ties both parties, the seller and buyer, to an agreement that Section 7 of the form is an agreement to disburse trust funds in accordance with Section 16 (a) of the Real Estate Regulations.

Further amendments to Section 7 of the form allow for either party to seek civil remedy for a breach of the contract.

The following is the new wording for Section 7 of the Residential Contract of Purchase and Sale:

- 7.1 If this offer is not accepted, the entire deposit and any other monies paid, without interest, shall be returned to the Buyer.
- 7.2 If this offer is accepted and the conditions in paragraph 2.1 above have not been satisfied or waived in writing by the date set forth in paragraph 2.1 above, the entire deposit and any other monies paid by the Buyer shall be forthwith returned to the Buyer.
- 7.3 If this offer is accepted and all conditions have been removed in writing by the date set forth in paragraph 2.1 above and the Buyer fails to execute any required conveyance or formal documents when prepared, or fails to pay any required cash payment or comply with any of the terms in this contract, this contract shall be void at the Seller's option. Where the defaulting party is the Buyer, the deposit and any other monies shall be forthwith delivered to the Seller's brokerage as forfeiture to the seller.
- 7.4 The Buyer and the Seller agree that the provisions of this section are an agreement to disburse the trust funds pursuant to Section 16 (a) of The Real Estate Regulations.
- 7.5 The disbursement of the deposit and other monies as agreed to above is not a prohibition from the Buyer or the Seller seeking a civil remedy for a breach of this contract.

The Commission's form provider, the Association of Saskatchewan REALTORS® has been requested to revise the Residential Contract of Purchase and Sale form and make it available to all registrants as soon as possible. The Commission recommends that all brokerages implement the use of the revised form at their earliest opportunity. It is anticipated that all brokerages will have access to the amended form and sufficient notification to ensure its implementation prior to April 1, 2009. After April 1, 2009, Section 730 of the Commission Bylaws relating to mandatory forms will apply to the revised Residential Contract of Purchase and Sale form.

SREC Implements New Mandatory Form Relating to Disclosure of Interest in Trade

A new form entitled Disclosure of Interest in Trade has been developed to replace the mandatory form Statement of Disclosure form now in use.

The Saskatchewan Real Estate Commission developed a new mandatory form to cover off all the disclosure issues for an associate, a registrant or immediate family member buying or selling real estate and property management disclosures for a registrant who owns the property. The present Statement of Disclosure form did not address written disclosures as required by legislation relating to:

- (a) a registrant's property used for Property Management;
- (b) a registrant's trading in real estate for immediate family members.

In addition, the new disclosure form will help to clarify disclosure when an associate of a registrant and registrants are involved in buying and selling their own properties. The implementation of this form must be complied with immediately.

2008-2009 Commission



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

Election Results

Pursuant to Bylaw 216.2, the Saskatchewan Real Estate Commission sent out notification in January to registrants in Region #3 (Rural Saskatchewan) requesting nominations for the two Commission positions that would become vacant July 1, 2009. Two nominations were received for the vacant positions. The number of candidates nominated for Region #3 equaled the number of vacancies for that region. Therefore, pursuant to Bylaw 219.1, the Executive Director/Registrar declared Marion Piper (Musgrave Agencies, Lloydminster) and Ron Skinner (Royal LePage Premier Realty, Yorkton) elected to serve three-year terms with the Commission commencing July 1, 2009. Congratulations Marion and Ron.

Registration Fees

There is a reduction in registration fees during the period April 1 to June 30, 2009 for new applicants entering the industry within the last three months of the registration year. The registration fees prior to April 1st total \$575; however, after April 1st they are as follows:

Registration Fee	\$100
Errors & Omissions Insurance	\$100
Real Estate Assurance Fund	<u>\$100</u>
Total	\$300

Commission Disciplinary Action

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

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

Keith Bartlett, Sutton Group – Results Realty (Regina)

Date of Mitigation Hearing: September 9, 2008

Date of Written Decision: October 2, 2008

Disposition: Keith Bartlett received an order of reprimand and an order to pay a \$1,000 fine for violating Commission Bylaw 712(c).

Violation: Commission Bylaw 712(c) states: "A broker or branch manager shall be responsible for ensuring that the brokerage utilizes only registered personnel to perform the duties of registrants on behalf of the brokerage."

Details: In April 2008, Keith Bartlett allowed a registrant who was restricted to residential real estate, to undertake a commercial seller's brokerage contract. Keith Bartlett mistakenly believed that he could act as the supervising broker notwithstanding that the registrant remained restricted to residential sales only.

During the course of the Commission's investigation, Keith Bartlett admitted his error and accepted full responsibility for his actions and cancelled the seller's brokerage contract as soon as he became aware of the problem.

In considering the disciplinary action, the hearing panel recognized Keith Bartlett's unblemished thirty-three year real estate career. The hearing panel reinforced the Commission's statement that the purpose of specialty registration was to protect consumers by ensuring that registrants only trade in the areas of real estate in which they are registered and have proper training/education. The hearing panel stressed the importance of deterrence for industry members and the registrants should be aware that claiming ignorance of the legislation is not an excuse for actions.

Slade Desrochers, Realty Executives Saskatoon

Date of Mitigation Hearing: November 28, 2008

Date of Written Decision: January 14, 2009

Disposition: Slade Desrochers received an order of reprimand; an order to pay a \$500 fine for violating Commission Bylaw 726(c).

Violation: Commission Bylaw 726(c) which 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 reasonably capable of misleading the recipient or intended recipient."

Details: In May 2007, Slade Desrochers purchased a condominium property in Saskatoon and maintained the property for revenue purposes. At the time of making the purchase, Slade Desrochers acknowledged receiving one above-ground parking stall with the unit.

In December 2007, Slade Desrochers listed the property for sale through his brokerage and mistakenly advertised the property as having an underground parking stall. Approximately one week after listing the property for sale, Slade Desrochers received and a buyer agreed to a full list price sale of the unit for completion on or about December 28, 2007. Immediately after completion and possession, the buyer learned that he received an above ground as opposed to



underground parking stall.

Slade Desrochers submitted that he had no malicious intent to mislead; rather he simply checked the wrong box when listing the property. In handing down its decision, the Commission's hearing panel acknowledged Slade Desrochers lack of previous sanction history and that the Estoppel Certificate, as contained in part of the purchase documentation for the benefit of the buyer, acknowledged some dispute regarding some parking stalls. While the hearing panel stressed the importance that registrants must accurately report properties for sale in all advertising, Slade Desrochers' Estoppel Certificate cautioned potential buyers of unresolved parking lot issues.

Judy Forster, Forster Realty Inc. (Regina Beach)

Date of Mitigation Hearing: May 8, 2008

Date of Written Decision: June 10, 2008

Disposition: Judy Forster received an order of reprimand and an order to pay a \$1,500 fine for violating Commission Bylaw 727.

Violation: Commission Bylaw 727 states: "A registrant shall only advertise properties for sale or lease, or properties sold or leased, when written authorization has been obtained from the owner or the owner's lawful representative. The advertisement shall be in accordance with the lawful instructions of the owner or his or her lawful representative."

Details: During the summer of 2007, Judy Forster (broker of Forster Realty Inc.) authorized the creation and distribution of a pamphlet entitled *The Resort Review*. The July 6, 2007 issue of *The Resort Review* contained errors in that the pamphlet identified listings that belonged to brokerages other than Forster Realty Inc. *The Resort Review* failed to identify the full name of specific brokerages whose seller's brokerage contracts were contained within the pamphlet and Forster Realty Inc. did not possess the written authority from all owners listed with other brokerages.

In handing down its decision, the hearing panel stressed the significant distinction between an advertising brochure and reproducing MLS information to clients. When registrants choose to create their own brochures, extreme caution must be used to ensure 100% factually correct representations. While perhaps not the registrant's intent, the possibility exists that a member

of the public viewing a brochure such as *The Resort Review* could be misled into thinking that all the listings belonged to the brokerage other than the one possessing a seller's brokerage contract.

Marty Leier, Hallmark Realty & Associates Limited (Saskatoon)

Date of Mitigation Hearing: May 8, 2008

Date of Written Decision: June 10, 2008

Disposition: Marty Leier received an order of reprimand; an order to pay a \$1,000 fine for violating Commission Bylaw 725.2; and an order to pay a \$3,500 fine for violating Commission Bylaw 730(f).

Violations:

- (a) Commission Bylaw 725.2 states: "Prior to the seller accepting an offer to purchase, a broker, branch manager, associate broker or salesperson shall disclose in writing to a seller the registrant's relationship to the buyer when the buyer is an immediate family member of the registrant."
- (b) 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 April 2007 Marty Leier wrote a \$125,900 Residential Contract of Purchase and Sale form identifying Ryan Leier and/or assignee as the buyer of a property listed with another brokerage. Marty Leier failed to provide written disclosure to the seller as to his relationship to the buyer (his son) as required under Commission Bylaw 725.2. On April 27, 2007 and after the seller had already accepted the contact, Marty Leier wrongly used an amendment to the Residential Contract of Purchase and Sale form to disclose in writing to the seller that the buyer was his son.

On or about August 1, 2007 the transaction completed, at which time Marty Leier and his spouse became registered owners of the property at Information Services Corporation. Marty Leier failed to provide mandatory disclosure to the seller of the intended change in buyers/owners.

On August 2, 2007 Marty Leier took possession of the property and on August 3, 2007 re-listed the property in his and his spouse's name on the MLS. In the days leading up to August 10, 2007, Marty Leier represented the sellers and the buyers and assisted in preparing a

\$154,900 Residential Contract of Purchase and Sale form. Marty Leier failed to provide the mandatory Statement of Disclosure form to the buyers on or before the buyers wrote and he accepted their Residential Contract of Purchase and Sale form.

In considering the disciplinary action, the hearing panel acknowledged that this was Marty Leier's first offense after a lengthy real estate career. The hearing panel stressed the importance of mandatory disclosure and the timing of that disclosure; oral disclosure is not sufficient. The hearing panel concluded that as an experienced registrant, Marty Leier knew that written disclosure is mandatory when writing a contract for himself or a family member. The hearing panel found that Marty Leier's actions fell short of the expected standard for registrants and he displayed a disregard for the need to follow written disclosure requirements.

Update re: Outstanding Articling Courses

A number of individuals who are practicing under the old model of education are still subject to the successful completion of the *Principles of Real Estate Appraisal* and *Principles of Real Property Law* courses. These individuals were issued their renewal Certificates of Registration on July 1, 2008 with conditions specifically printed on the Certificate requiring the completion of these two course prior to June 30, 2009.

The Saskatchewan Real Estate Commission recently implemented the following policy: **"Individuals who fail to complete the articling courses pursuant to Bylaw 332 by June 30, 2009 will be required to take the new Phase I course after July 1, 2009. These individuals will be given six months (until December 31, 2009) to complete the Phase I course to retain registration. However, upon application to the Registrar, one-month extensions at \$300/month to complete the Phase I course may be granted at the discretion of the Registrar after December 31, 2009."**

These two articling courses will not be available after June 30, 2009. Registrants subject to these requirements and their respective brokers are requested to take specific note of the Commission's policy and to ensure successful completion of the two articling courses well in advance of the June 30, 2009 deadline.

2008-2009 CPD Requirements

Please note that the two-day Agency Fundamentals seminar was a CPD requirement prior to June 30, 2008. As part of the registration renewal on June 30, 2009 **all registrants** are required to attend and successfully complete the one-day Real Estate Update continuing professional development seminar for this fiscal year July 1, 2008 to June 30, 2009.

Class sizes are approximately 40 participants per workshop. There are only approximately 22 seminars scheduled throughout the province between now and May 31st. This equates to 880 seats available. **There will be no seminars offered in June.** If you fail to attend a seminar prior to the end of May, you will be required to:

- i) file an application with the Commission requesting a one-month extension and paying the \$300 extension fee of for the month of June 2009; and
- ii) apply to the education provider to enroll in a special make-up home study course and to successfully complete the required assignment and return it to the education provider.

If a further time period is justified to complete the CPD course and examination, one final extension after renewal will be considered by the Registrar. If the educational requirement is not met prior to July 31, 2009, the registrant's registration will be suspended until the education has been completed.

2008 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, 2009 to avoid a \$300 late submission fee being levied against the brokerage.

Bylaw Changes

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

Bylaw 231.1 - Pursuant to clause 6(3)(b) of the *Act*, the Board of Directors of the Association of Saskatchewan REALTORS® shall appoint, by a majority vote of the Directors, an individual who is a registrant to serve a vacancy of a Commission member elected pursuant to clause 6(1)(b) of the *Act*. This individual shall meet all qualifications established in the *Act*, regulations and bylaws to represent the region in which the vacancy has occurred.

Bylaw 730 - 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) Disclosure of Interest in Trade; and
- (g) Ancillary Services in the Purchase of Residential Real Estate (applies only to re-sale residential real estate).

Bylaw 804 - Upon receiving a written report pursuant to clause 35(2)(a) of the *Act*, the members of the hearing panel who will conduct the hearing will be selected from the Commission's established Hearing Committee.

Bylaws 231.1 and 730 required a name change from the Saskatchewan Real Estate Association to the Association of Saskatchewan REALTORS®.

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.

FINTRAC Update

Provisions in the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#) for the real estate sector for anti-money laundering and anti-terrorist financing took effect on **June 23, 2008**. Criminal penalties for willful non-compliance that can be found in the <http://www.fintrac-canafe.gc.ca/pen/2-eng.asp> also took effect in June, followed by the civil penalties, including administrative monetary penalties that take effect on December 31, 2008. Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) has assured the Canadian Real Estate Association that enforcement of the new regulations will be gradually phased-in and that considerable efforts will be made by the federal government to promote a better understanding of both money laundering risks and the new measures developed to combat them as they did when the initial requirements became law in 2001. FINTRAC has also advised that criminal charges will only be imposed for repeated and deliberate or willful non-compliance during this unofficial phase-in period. Violations are classified by the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations as "minor", "serious" or "very serious" and carry maximum penalties of \$1,000, \$100,000 and \$500,000 respectively. The administrative monetary penalties' program also has maximum penalties for individuals and entities.

Website Address Change

We would like to draw to your attention that the Commission's website address is www.srec.ca. Please check your bookmarks and make sure you have the correct address.

CDP Course Development

For your information, we would like to outline the process the Commission undertakes to prepare for each year's CPD seminar material.

The Commission's Education Committee:

- (a) meets to identify issues that it deems relevant for inclusion in the upcoming CPD program;
- (b) meets jointly with the Association of Saskatchewan REALTORS[®], Education Committee to discuss and reach consensus on the topics to be included in the upcoming CPD seminars; and
- (c) brings its recommendations to the Commission for approval prior to being forwarded to the Association staff for development of the next year's course.

The Association of Saskatchewan REALTORS[®] staff members prepare a draft of the course material and that draft is reviewed by the Commission's

education committee. Recommendations for changes are made to the Association; those changes are made and another draft is provided to the Commission. After the Commission's Education Committee is satisfied with the course material, it recommends that the Commission members approve the CPD material. The Association prepares for printing and delivery of the next CPD program.

In developing the CPD material for a new registration period, the Commission's Education Committee considers such issues as legislative changes, current trends and market issues, anonymous reporting of sanctions within the industry to assist in educating registrants, local and global issues affecting the industry, FINTRAC information, etc. The Commission feels it is extremely important to keep registrants apprised of important changes within the industry to assist in protection of the public.

SREC Contact Info

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 Phillip Mack, Regina
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 Anne Odishaw, Saskatoon
 Terry Powell, Saskatoon
 John Puderak, Saskatoon
 Ron Skinner, Yorkton
 Wayne White - Regina

Commission Staff

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 Chris Mason, Investigator
 Ed Miller, Director of Investigations
 Verna Olfert, Director of Registration
 Jason Weiler, Systems Administrator
 Allan York, Director of Audits