

# The Register



February 2010

## *Appointment of Industrial, Commercial or Investment Member to the Commission*

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On-Line Registration	3	<b>Selection Process</b> To apply for this position, a registrant must be practicing in either the industrial, commercial, investment field of real estate or property management. Applicants are asked to complete the "Application for Commission Appointee" form. The forms will be received at our office until 4:30 p.m. on Friday, February 12, 2010. The Saskatchewan Real Estate Commission's Selection Committee will review the applications and investigate the background and qualifications of the applicants. Within 90 days of closing of this competition, the Selection Committee is to provide a recommendation to the Commission members for appointment.
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2009 Audit Review	7	<b>Application and Legislation</b> The application form is available on the Commission's website ( <a href="http://www.srec.ca">www.srec.ca</a> ) in the menu entitled "Latest Forms/News". In addition, the bylaws relating to the appointment process (Bylaws 232.1 to 236.3) can be found on our website under the menu – Publications in the drop down box entitled "Commission Bylaws".
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SREC Contact Info	8	The following link ( <a href="http://www.srec.ca/temp/icinominationform.pdf">http://www.srec.ca/temp/icinominationform.pdf</a> ) includes the nomination form and highlights the general roles and responsibilities of Commission members. More specifically, when a Commission member occupies this position, this member serves on the Legislative Committee that usually meets for four (4) one (1) day meetings in a year. In addition, the individual filling this position would be required to liaison at least twice a year with registrants in the commercial sector to discuss issues of mutual interest to the commercial sector and the Saskatchewan Real Estate Commission. Please give serious consideration to applying for this very important position.

## *Clients and Customers*

Commission Bylaw 709 states: “Negotiations concerning exclusively listed property or negotiations with any party who is exclusively represented shall be carried on with the client's agent and not with the client directly, except with the consent of the client's agent.”

Within the last few months, the Saskatchewan Real Estate Commission has and continues to receive reports that registrants are contacting clients of other brokerages rather than going through the client's agent. While the results of recent reports may not as yet be finalized, be advised that Commission Bylaw 709 will be strictly enforced as and when circumstances warrant.

## *Referral Fees*

The Saskatchewan Real Estate Commission recently learned of a variation of the Nigerian letter scam perpetrated through an international referral agency operating with a website, [www.worldproperties.com](http://www.worldproperties.com).

Essentially, a poorly written letter arrives at a registrant's e-mail address identifying a perspective buyer with millions of dollars for investment in a real estate venture in Saskatchewan. Couched within the letter are undertakings that the money will arrive via “diplomatic coverage for investment”.

The Saskatchewan Real Estate Commission encourages the public and registrants to visit [www.phonebusters.com](http://www.phonebusters.com) regarding information about the many consumer scams that exist in the world today. Phonebusters encourages consumers to notify the policing authorities when and if they receive solicitations that sound too good to be true.

## *Registration Fees*

There is a reduction in registration fees during the period April 1 to June 30, 2010 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

## *Brokerages' 2009 Annual Financial Report*

Brokers are reminded that the 2009 Annual Financial Report must be submitted to the Commission office by March 15, 2010 to avoid a \$300 late submission fee being levied against the brokerage.

## *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.**

## *Request for Nominations*

### **Composition of the Commission**

The Saskatchewan Real Estate Commission is comprised of 11 members, including four public members appointed by the provincial government. Six members are chosen through an election process from real estate registrants in the province of Saskatchewan. One member is appointed by the Commission members and this individual must be a registrant trading in industrial, commercial or investment real estate or property management. Pursuant to Bylaw 216.2, the six elected Commission members are two from each of the three regions: Region 1 – Saskatoon, Region 2 – Regina and Region 3 – all areas of the province outside of Saskatoon and Regina. Elected Commission members are elected to serve a three-year term commencing July 1<sup>st</sup> following that election.

### **This Year's Election**

Larry Gingerich and Anne Odishaw represent Region 1 – Saskatoon; Phillip Mack and Wayne White currently represent Region 2 – Regina; and Marion Piper and Ron Skinner represent Region #3 – all rural areas of the province. The term of office for Larry Gingerich and Anne Odishaw expires on June 30, 2010. The Election Day to fill two vacancies in Region 3 will be April 6, 2010.

### **Nomination Process**

Only registrants may nominate other registrants as candidates. Where a vacancy exists in a Region, a nomination form is enclosed for those registrants who may wish to be a candidate or to nominate a candidate. Candidates nominated for election in a Region must be a registrant with a brokerage in that Region.

Nominations must be received at the Saskatchewan Real Estate Commission office no later than **4:30 p.m. Tuesday, February 16, 2010**. A biographical note of the real estate background of each candidate who provides that information in the nomination

paper will be circulated. It would assist in the preparation of that material if nominations could be returned as soon as possible.

Ballots will be mailed to all registrants (in the Region an election is being held) in early March and must be returned to the Saskatchewan Real Estate Commission office no later than **4:30 p.m. Tuesday, April 6, 2010**. The ballots will be counted on **Tuesday, April 13, 2010**. Please select the following link: <http://www.srec.ca/temp/nominationform.pdf> for detailed information on the roles and responsibilities of Commission members and the nomination form.

## *On-Line Registration, A Broker's Responsibility*

Brokers are reminded that it is their responsibility to process the registration or termination of registrants with their brokerage through the Internet-based on-line registration database.

If you have a new applicant joining your brokerage, please ensure that the applicant completes the Registration Application form. The broker or his/her designate is to log into the Commission's database via the Commission's website at [www.srec.ca](http://www.srec.ca) for the purpose of processing the applicant's Certificate of Registration to represent the brokerage. Care must be exercised to ensure that the information is accurate when it appears in the database.

Likewise, when a registrant ceases to represent the brokerage, that individual's termination should be processed on-line via the Internet within five days of termination pursuant to 54(2)(b) of *The Real Estate Act*. Please note that brokers should ensure that the criminal record check has been received by the Commission prior to proceeding on-line to process the registration for a new applicant.

## *Employment Opportunity with the Commission*

The Saskatchewan Real Estate Commission is an independent, non-governmental agency, responsible for the regulation of the real estate industry, which is fast paced, dynamic and changing. The Commission is mandated to protect consumers and to provide services that enhance and improve the industry and the business of industry members. The Commission is planning for the future and is seeking an innovative and independent thinker to fill the newly created position of an **Assistant Executive Director**.

As the Assistant Executive Director reporting to the Executive Director/Registrar and working in partnership with the Commission members, you provide strategic guidance, oversight and decisive leadership for the effective stewardship of the Commission.

With a confident ability to successfully interact with all stakeholders — general public, registrants, government representatives, legal professionals — you represent the Commission in a professional, positive manner. Your excellent public speaking and presentation skills ensure a strong and diplomatic voice for the Commission.

Staying abreast of current issues that impact the real estate industry including legislation, compliance and governance issues in Saskatchewan and other jurisdictions across Canada is something you enjoy. Your effective writing and research skills enable you to analyze trends, review and draft necessary changes to legislation and develop effective policies and recommendations for the Commission.

Armed with previous experience with day-to-day administration and leading and motivating a diverse team of professionals, you are also a big picture thinker looking for an innovative organization where your strategic planning and budgeting skills can make a contribution to continued success and growth.

With credentials that include a business or related degree or 3-5 year's previous experience in a senior management position, you are poised to take a role with challenge and responsibility.

A full information package is available on the Commission's website at [www.srec.ca](http://www.srec.ca) or under Opportunities at [www.koenig/caexecutivesearch](http://www.koenig/caexecutivesearch) or by contacting Sherry Timmerman at 306-934-1743. Candidates seeking a rewarding career opportunity are invited to submit their resume in confidence (quoting Project 577) by Friday, February 26, 2010 to:

search@koenig.ca  
Koenig & Associates Inc.  
402 Queen Street  
Saskatoon, SK S7K 0M3  
Phone: 306-934-1743  
Fax: 306-934-1630

## *Brokerage Registration*

If you are contemplating a new brokerage registration or making changes to the existing structure of your brokerage, please ensure that you contact the Saskatchewan Real Estate Commission well in advance of any future or change in registration. This is especially true during the months of June and December.

Since all registrations expire on June 30th, registrants often contemplate the registration of a new brokerage or changes to an existing brokerage to coincide with the commencement of the new registration period on July 1st. If it is your intention to do so this coming June 30, 2010; please be advised that we recommend you contact the Commission at least six weeks prior to the end of June to discuss your future plans. In addition, you should be submitting all applicable documentation, including your application for registration, approximately one month prior to June 30th for review by Commission staff. These early steps will help to ensure that the process can be properly completed and your new brokerage registration can become effective July 1st.

With respect to the month of December, registrants may choose to make changes or establish a new brokerage commencing on January 1st. With the Christmas holidays and the Commission office closed for a period of time, it is always advisable to submit all documentation for brokerage registration well in advance of year-end.

If you have any questions, please do not hesitate to contact the Commission office for assistance.

## *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.

### **Katherine Crowe, former registrant with Royal LePage Regina Realty (Regina)**

**Date of Hearing:** September 17, 2009

**Date of Written Decision:** October 13, 2009

**Disposition:** Katherine Crowe received an order of reprimand; and order to pay a \$3,500 fine for violating Section 39(1) (a) of *The Real Estate Act*; and an order to pay a \$2,000 fine for violating Section 8(4) of the Real Estate Regulations.

**Violations:**

- (a) Section 39(1)(a) 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 harmful to the best interests of the public, the registrants or the Commission."
- (b) Section 8(4) of the Real Estate Regulations states: "A registrant shall respond, in writing, to the request made pursuant to subsection (3) and deliver the response to the Review Officer by the date set out in the request."

**Details:** Katherine Crowe practiced real estate in a small town while being registered with a Regina brokerage. Katherine Crowe represented out-of-province buyers in the purchase of revenue properties and engaged in property management for the buyers without the knowledge of her brokerage. During the course of the investigation, Katherine Crowe terminated her registration with the Saskatchewan Real Estate Commission with the representation that she had no desire to re-enter the real estate industry.

The investigation lagged due to Katherine Crowe's reluctance to respond to the Commission's Review Officer in a timely and appropriate manner. A mitigating factor in the sanction related to the fact that Katherine Crowe had already effectively suspended herself by leaving the real estate industry over a year and a half ago.

### **Christian Didur, Realty Executives Saskatoon**

**Date of Hearing:** January 15, 2009

**Date of Written Decision:** February 5, 2009

**Disposition:** Christian Didur received an order of reprimand; an order to pay a \$3,500 fine; and an order that his Certificate of Registration be suspended for a 30 day period for violating Section 39(1)(a) of *The Real Estate Act*.

**Violation:** Section 39(1)(a) 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 harmful to the best interests of the public, the registrants or the Commission."

**Details:**

On June 3, 2008 a buyer wrote a Residential Contract of Purchase and Sale that was accepted. The accepted contract required an initial deposit of \$5,000 with a second \$5,000 increase of deposit upon removal of conditions. On June 10, 2008 and on June 19, 2008 (respectively), two separate deposit cheques were returned for insufficient funds. The buyer's agent, Christian Didur did not notify the listing brokerage that a deposit was not being held by the buyer's brokerage. It was not until July 7, 2008 (some 21 days after learning of the first returned item) that the listing brokerage found out that there was no deposit received for an "offer" their clients had accepted.

The hearing panel stated that "*the issues of the deposits are of significant importance in every real estate transaction. All parties are relying on it to show the seriousness of the intentions of the buyer completing the transaction.*" The hearing panel strongly felt that because this is not an isolated incident, the sanction must be strong. Failure to do so in this circumstance will decrease public confidence in the supervision of registrants in the province.

In these circumstances, while the hearing panel appreciated Christian Didur's remorse, it is imperative that the fundamental importance of the deposit be protected in this decision. "*The public must have confidence that the registrants will ensure that the deposit is received when the registrants say it is there.*"

On appeal, the Commission's hearing decision to the Deputy Superintendent of Real Estate was upheld.

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

### **Rajen Naidu, Exit Realty Saskatoon (Saskatoon)**

**Date of Hearing:** September 17, 2009

**Date of Written Decision:** October 13, 2009

**Disposition:** Rajen Naidu received an order of reprimand and an order to pay a \$1,500 fine for violating Section 8(4) of the Real Estate Regulations.

**Violation:** Section 8(4) of the Real Estate Regulations states: “A registrant shall respond, in writing, to the request made pursuant to subsection (3) and deliver the response to the review officer by the date set out in the request.”

**Details:** In the summer of 2008, Rajen Naidu represented both the seller and the buyers of a commercial property. After completion, the buyers found significant material defects at the property and complained to the Saskatchewan Real Estate Commission about Rajen Naidu.

After two written requests and one oral request for a response to the Commission, Rajen Naidu took almost four months to respond to the Review Officer. In the end, while the initial complaint against Rajen Naidu was not substantiated, the Investigation Committee took Mr. Naidu to task for a delayed response that impacted on the ability of the Commission to meet its mandate. In passing sentence the Commission’s Hearing Panel found Mr. Naidu’s delay “lengthy and unwarranted... simply unacceptable... and would have been higher save for an undisclosed illness and family issues.”

### **Realty Executives Saskatoon**

**Date of Hearing:** January 15, 2009

**Date of Written Decision:** February 5, 2009

**Disposition:** Realty Executives Saskatoon received an order of reprimand; an order to pay a \$4,000 fine; and an order to pay \$1,000 in hearing costs for violating Section 39(1)(a) of *The Real Estate Act*.

**Violation:** Section 39(1)(a) 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 harmful to the best interests of the public, the registrants or the Commission.”

#### **Details:**

On June 3, 2008 a buyer wrote a Residential Contract of Purchase and Sale that was accepted. The accepted contract required an initial deposit of \$5,000 with a second \$5,000 increase of deposit upon removal of conditions. On June 10, 2008 and on June 19, 2008 (respectively), two separate deposit cheques were returned for insufficient funds. The buyer’s agent, Christian Didur did not notify the listing brokerage that there was no deposit in place. It was not until July 7, 2008 (some 21 days after learning of the first returned item) that the listing brokerage was told that there was no deposit received for an “offer” their clients had accepted. Sales Manager, Al Didur, of Realty Executives Saskatoon was apprised of these circumstances and still failed to ensure that the listing brokerage was notified; thereby creating a vicarious liability situation for the brokerage.

The hearing panel found this to be a very serious situation. They stated: “*the buyer’s deposit is a fundamental part of the real estate transaction. It goes to the basis of a contract. All parties are relying of the deposit to be valid.... A deposit, when stipulated in a contract, becomes an essential component of the transaction.*” Moreover, “*it is not acceptable that only the buyers’ agent or their brokerage know the facts. The listing brokerage and the seller must be notified immediately.*”

Emphasizing the point, the hearing panel went onto say that; “*the brokerage is responsible for the actions of their agents and management. They must not only have the policy in place to deal with such a situation, but also must have procedures in place to ensure that the policy is being adhered to in all situations..... and that lack of communication does have serious consequences.*”

On appeal, the Commission’s hearing decision to the Deputy Superintendent of Real Estate was upheld.



## 2009 Audit Review

The Saskatchewan Real Estate Commission thanks the staff, accountants and brokers for their co-operation and assistance during brokerage audits in 2009. We look forward to sharing the new audit process with the brokerages that have not received an audit in the previous year. The Commission audit procedures and brokerage discussions have resulted in the following concerns.

A Saskatchewan brokerage entered into an agreement to sell the brokerage to a new corporation. Upon review of the financial records, there appeared to be a substantial amount of funds in the trust account that the brokerage would be assigning to the new owners, pending the trade completions. The broker assumed that the trust reconciliations performed by the in-house accountant were accurate and completed up until the change in ownership. The accountant unexpectedly quit when asked to produce the reconciliation and the broker found that the individual had not completed a great deal of trust reconciliations. The broker hired additional help to complete the reconciliations prior to the sale and replaced any funds that should have been in the designated trust account.

During a 2009 brokerage audit, there appeared to be deficiencies in the way the brokerage was reconciling its trust account. The independent brokerage relied on the completed reconciliations performed by the administrative staff of the much larger internal corporation. When the brokerage completed and compared the actual liability listing to the amount of funds held in trust, they noticed a significant short fall. The brokerage allocated funds back into the trust account and administered policies and procedures to prevent further discrepancies.

A Saskatchewan brokerage became suspicious when an in-house accountant with signing authority disbursed unauthorized cheques from the brokerage's general account. Further review also indicated that the individual entered into a real estate transaction that required a deposit into the trust account. The accountant manipulated the brokerage records to indicate the receipt of the deposit for the transaction. When the transaction collapsed, the accountant issued, signed and released a cheque from the trust account to the seller. A criminal investigation is currently pending.

Audits and further discussions with brokers indicate that

brokerages need to evaluate the potential risks associated with property management. The Commission was made aware of situations where resident managers failed to submit trust funds associated with rental properties to the brokerage. One owner voiced a concern to the property manager when the property management company hired a resident manager with a criminal record. The actions of the property manager resulted in public harm when rental proceeds were not remitted to the owner.

The Saskatchewan Real Estate Commission would like to remind brokers of their supervision responsibilities in protecting the brokerage and the public. A yearly risk assessment of the brokerage may be beneficial in protecting everyone's best interests.

The Commission's audit department would be happy to do a risk assessment with brokerages upon request to reduce compliance issues prior to future audits. Please contact the Saskatchewan Real Estate Commission's Director of Audits, Allan York, for further information.

**BYLAW 711** - A broker or branch manager shall adequately supervise the activities of the registrants and other personnel for whom he or she is responsible. In determining the adequacy of the supervision, the Commission will consider the following factors, but will not be limited to making a determination on these factors alone:

- (a) whether the broker or branch manager was physically available to supervise;
- (b) whether the broker or branch manager had established written policies and procedures;
- (c) whether the broker or branch manager held regular staff meetings to determine that policies or procedures were properly implemented;
- (d) whether the broker or branch manager had undertaken all reasonable steps to ensure compliance by all salespersons and other personnel; and
- (e) whether the broker or branch manager took corrective and remedial action when a violation by a salesperson or other personnel was discovered.

## Continuing Professional Development

As part of registration renewal on June 30, 2010, all registrants are required to have attended and successfully completed the *Real Estate Update* workshop. The CPD course, *Real Estate Update* includes: legislative changes, compliance issues, legal updates, elements of risk reduction, professional standards and other current and timely issues. The workshops are being held in ten different locations around the province, with a total of over forty workshops. The cost of the workshop is \$120.00/registrant. Class sizes are approximately 40 participants per workshop and will be filled on a first come, first served basis.

Enrollment forms were sent to all brokerage offices in late July. To enroll in the workshop or for more information, please visit the Association of Saskatchewan REALTORS® website at:  
www.saskatchewanrealestate.com.

## 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
Ed Miller	emiller@srec.ca
Verna Olfert	volfert@srec.ca
Jason Weiler	jweiler@srec.ca
Allan York	ayork@srec.ca

## Notification to the Commission

Pursuant to Section 33 of *The Real Estate Act*:

A brokerage shall notify the Commission in writing no later than five days after the occurrence of any of the following:

- a change in the address of its main office or a change in the address of a branch office;
- the opening or closing of a trust account;
- a change in the membership or ownership of the brokerage, if the brokerage is a sole proprietor or firm;
- a change in its business name, if the brokerage is a firm or corporation;
- a change in its officers or directors, if the brokerage is a corporation;
- a change in the designation of the official, if the brokerage is a firm described in subsection 21(4) or a corporation;
- any amalgamation to which it has been a party, if the brokerage is a corporation.

No later than five days after changing his or her address for service, a registrant shall notify the Commission in writing of his or her new address for service. Where a brokerage intends to discontinue its operation or merge with another brokerage, it shall notify the Commission at least 10 days prior to the discontinuance or merger.

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