

Practice Tips from the Compliance Department

In each issue of *The Register*, the Commission's Legal & Compliance Department shares some valuable insights into common areas of concern in registrant practice. If you have questions concerning compliant practices in real estate transactions, please contact the Department at compliance@srec.ca.

Notations Such as “6/4/2” Are Not Sufficiently Clear Statements of Commission Payable on a Brokerage Contract:

Section 57(2)(d) of *The Real Estate Act* specifies that an agency agreement must show the total amount of commission, as a lump sum or as a percentage, to be paid to the brokerage. It is important that the commission payable be expressed in a manner that complies with this requirement and that is understood by the person signing the agency agreement. While notations such as “6/4/2” are common among registrants, the meaning may not be as clear to members of the public. It is the registrant's responsibility to ensure that the client understands how commission will be calculated and, in case there is disagreement about the commission owing, the registrant would be well-advised to make sure the contract is quite clear with respect to the calculation of commission. Other ways to clarify the commission payable include the use of a percentage sign (“%”) or a dollar sign (“\$”) to clarify whether the commission is a percentage of the sale price or a flat fee and including a conspicuous note that taxes will have to be added to the commission payable.

Offers Should Not Deal with Commission:

An agency agreement is a contract between a buyer or seller and a brokerage that, among other things, sets out the commission the buyer or seller agrees to pay to a brokerage and in what circumstances the commission will be paid. A contract of purchase and sale is an agreement between a buyer and seller. As the brokerage is not a party to the contract of purchase and sale, the contract of purchase and sale should not include terms or conditions regarding the payment of commission to a brokerage.

If a brokerage representing a buyer intends to collect commission from a seller who is not represented by a registrant, the brokerage must enter into a written agreement with the seller to that effect.

Names and Addresses of the Buyer and the Seller Must be Included in an Offer to Purchase:

Section 58(1)(b)(ii) of *The Real Estate Act* specifies that an offer to purchase must clearly show the names and addresses of the buyer and the seller. This requirement is not optional. The Saskatchewan Real Estate Commission has previously, and will continue to, discipline for violation of this section.