



# THE REGISTER

SREC Newsletter

July 2020

## In This Issue

Each issue of *The Register* is designed to focus on trending issues in the real estate industry of Saskatchewan as well as offer educational moments and registrant-specific information and reminders. In this edition, we have included several reminders and discuss issues of import to the industry.

- Information on Amendments to *The Real Estate Act* can be found on pages 2 and 3.
- For guidelines on Showing Properties During a Pandemic please see page 4.
- Please see the Important Dates on page 5.
- Find information on Electronic Banking and Trust Accounts on page 6.
- Information on Dealing with Difficult Clients can be found on page 7.
- Recent Compliance & Discipline Summaries are on page 8.
- Did You Know: Commission Bylaws are provided on page 9.

We are very interested in hearing from our registrants. What information do you need? What would be helpful? As always, please do not hesitate to contact us with any questions, concerns, or ideas you might have.

## WE HAVE MOVED!

The Commission Office is located at:

**104 - 210 Wellman Crescent  
Saskatoon, SK S7T 0J1**

## THE COMMISSION AND COVID-19

As a preventative COVID-19 measure, the Commission office was closed to registrants and the public in March and has re-opened in accordance with the Provincial Government's Re-Open Saskatchewan Plan.

The Commission office will continue to operate its online services, and staff will respond to your calls, emails, and correspondence as usual.

Until further notice, the regulation of the real estate industry in Saskatchewan will continue in the normal course with respect to registration, compliance, trust account auditing, and education. Any exemptions or extensions to deadlines will be evaluated on a case by case basis.

The Commission urges all registrants to do their part in fighting the spread of COVID-19.

As always, should you have any questions or concerns, please do not hesitate to contact us with your questions or concerns:

For registration or general questions:  
[info@srec.ca](mailto:info@srec.ca)

For complaints or investigations:  
[compliance@srec.ca](mailto:compliance@srec.ca)

For new students or education questions:  
[saskinfo@realestate.sauder.ubc.ca](mailto:saskinfo@realestate.sauder.ubc.ca)

*Thank you,*  
Aaron M. Tetu | Executive Director / Registrar

## Amendments to *The Real Estate Act*

The provincial legislature and the Lieutenant Governor in Council have approved several changes to *The Real Estate Act* and *The Real Estate Regulations* which came into force on May 20, 2020. Some of those changes are summarized below. For a complete summary, some highlights, and copies of the Act, Regulations, and Bylaws, please see the links on the Commission's website.

### Changes to the Act

A brokerage is permitted to operate additional, registered "branch offices" so long as certain requirements are met. To promote clarity and fairness among registrants, a definition of "branch office" has been included in the Act:

- (b.1) "branch office" means a premises, other than the main office of a brokerage, from which registrants registered with a brokerage carry out trades in real estate if:
- (i) one or more registrants use the location for the purpose of trading in real estate;
  - (ii) members of the public are invited to the premises for the purpose of trading in real estate; and
  - (iii) there is signage or advertising for the premises by a registrant;

The Act has also been amended to expand the definition of "real estate" to include "any other property prescribed in the regulations." The Regulations have not been amended to include any other property.

A new section of the Act sets out the duty and objects of the Commission. The Commission's duty is (a) to serve and protect the public and (b) to exercise its powers and discharge its responsibilities in the public interest. The objects of the Commission are (a) to regulate the practice of registrants and to govern the registrants in accordance with the Act, Regulations and bylaws and (b) to assure the public of the knowledge, skill, proficiency, competency and trustworthiness of registrants in trades in real estate and other services provided by registrants.

An amendment of s. 6 of the Act allows the Commission to appoint one or two members to the Commission who practice in either commercial, farm or property management if such expertise is necessary.

New subsections of s. 26 authorize the Commission to refuse an application for registration where the applicant is not of good character or is otherwise unfit to be registered.

There are several changes made to the Commission's disciplinary powers under s. 38 of the Act:

- The maximum fine has been increased to \$25,000 per charge up to an aggregate of \$100,000.
- An order of a Hearing Committee requiring a registrant to pay a fine to the Commission may be registered as a judgment of the court and enforced pursuant to the court's process.
- The Lieutenant Governor in Council will be granted new authority to make regulations regarding the guidelines applicable to the Hearing Committee's ability to order that restitution be paid to an innocent member of the public.

Section 40 will be changed to permit the Commission to cancel a certificate of registration if the registrant has been convicted of an offence pursuant to the Criminal Code. Under the previous legislation, the Commission could only cancel a registration if the registrant was convicted of an indictable offence.

Sections 57 and 58 of the Act allow the Lieutenant Governor in Council to make regulations allowing for electronic signatures that are not accompanied by a witness' signature.

## Amendments, continued

The updated s. 66 will prohibit a brokerage from collecting a commission based on the difference between the price at which a property is listed and the price at which the property is sold. Other calculations, including those that combine a percentage of the sale price and a lump sum, will be permissible.

Section 89.1 will be added to introduce the concept of special penalties. Special penalties will only be available to the Commission with respect to breaches that are straightforward and can reasonably be determined without a full hearing of the matter. The Regulations will contain a list of these provisions and prescribe the penalty for a breach of one of the enumerated sections.

### Changes to the Regulations

Pursuant to the new regulation, a witness will not be required where certain documents (e.g. offers, agency agreements, etc.) are signed or executed in accordance with the Commission Bylaw regarding electronic signatures.

Section 29 of the Regulations now provides a limited exclusion from the requirements of the legislation for registrants trading in their own real estate. The registrant must still complete the required disclosures pursuant to s. 65 of the Act.

### Changes to the Bylaws

The new Bylaw with respect to electronic signatures reads as follows:

625(1) Where the Act, the regulations or the bylaws require an agreement to include a written signature, the signature requirement will be satisfied by:

(a) an electronic signature that:

(i) is originally created by the signatory by way of:

(A) a handwritten signature;

(B) a keyboard allowing the signatory to enter in their name as their signature; or

(C) drawing their signature and initials in a custom fashion utilizing a mouse, stylus or their finger depending upon the device being used to access the signing;

(ii) is digitized and embedded permanently in the document to which it pertains; and

(iii) has attached to the document, a record from the electronic signature software or application provider which certifies when, where, and by whom the document was executed.

(2) Where the Act, the regulations or the bylaws require an agreement to be executed and/or signed in writing in the presence of a witness, this requirement will be satisfied by:

(a) an electronic signature meeting the requirements set out in subsection (1) above;

(b) the consent to execute documents by way of electronic signature has been established by the registrant representing the purchaser or the seller (each of which is referred to as a “signatory”) at the time the registrant is retained by the purchaser or the seller; and

(c) the registrant utilizes software which:

(i) accurately reflects the information set forth in the contract; (ii) is capable of providing detailed transaction logs accessible to the registrant and which allows each signing participant the ability to review signing progress/history for the document in question;

(iii) ensures the security of the signed document such that once signed by a signatory, the content of that document cannot be altered; and

(iv) ensures that once signed by a signatory, that signature cannot be moved or removed from where it was affixed by the signatory.

## Showing Properties During a Pandemic

While the organized real estate industry has been deemed an essential service, ongoing concerns about social distancing and inviting people into our homes has changed the way some homeowners are thinking about the process of selling their home.

### **Showing Properties**

A seller is not required to open their home to show to potential buyers and the seller's word on facilitating access to a property for showings is, generally speaking, the final word on the matter. A seller can place any restrictions he or she sees fit on a registrant's ability to access the seller's property for the purpose of showing it to a potential buyer.

That said, it can be very difficult to find a buyer willing to purchase a property without being able to see the property first.

The listing agent can help find a balance between the seller's desire to find a buyer and to keep the number of people touring the property to a minimum. For example, the listing agent can create a detailed video tour of a listed property so that a buyer can get a sense of the look and layout of a property before requesting an opportunity to view the home in person. Buyers and buyer's agents viewing a property could be required to wear gloves, face coverings, or other protective equipment. A seller could also decide not to allow a potential buyer to view the house until an offer that is subject to a satisfactory viewing of the property has been accepted.

It is up to the seller to determine their level of comfort with the home being shown. It is up to the listing agent to ensure the seller understands the impact restrictions on showing can have on the seller's ability to find a buyer. It is up to a registrant representing a buyer to ensure that any requirements the seller has placed on showings are respected.

Things can get more complicated when the person living in a listed property is not the same person trying to sell it. Two examples of such a scenario are tenants and homeowners whose properties are the subject of foreclosure proceedings. Given the ongoing pandemic, it is clear why people in these circumstances may want to restrict access to the property. What is less clear is what right the people in these circumstances have to do so.

It is not up to the registrants representing the sellers of these properties to solve this problem or try to force the occupant of the property to allow the showing.

Tenant's rights are governed by the Office of Residential Tenancies. Landlords and tenants at odds over potential buyers viewing a property should address their concerns with legal counsel or contact the ORT for more information.

The foreclosure process is governed by the court and managed by law firms. A registrant selling a property in foreclosure is typically receiving instructions from the law firm handling the file and it is the law firm who will have to sort out how to deal with an occupant that is refusing to let the property be shown.

## Showing Properties, continued

The registrants involved in these transactions can assist by staying in contact with both parties where possible and by keeping the lines of communication open.

### Inspections

Sellers who accepted offers that were made subject to the completion of inspections and who are now hesitant to allow inspectors into their houses to carry out the inspection should be referred to legal counsel. This is an unprecedented situation, but there could be legal ramifications for a seller who impedes the ability of a buyer to remove conditions to which the seller initially agreed.

**Please contact the Commission with any questions or concerns that you may have.**



### IMPORTANT UPCOMING DATES & DEADLINES

September 9

Commission Meeting

October 8

Commission Annual  
General Meeting

December 9

Commission Meeting

The Commission Office will be closed on the following dates:

August 3 - Civic Holiday

September 7 - Labour Day

October 12 - Thanksgiving

December 24 to January 1

## Electronic Banking & Trust Accounts

Although banks have remained open during the pandemic, changes in banking hours may impact a brokerage's ability to make timely deposits into its trust account.

According to s. 71(1)(b) of *The Real Estate Act*, a brokerage must deposit into a trust account all money received by the brokerage in trust for other persons in connection with a trade in real estate within two business days after the later of:

- the day on which the offer to purchase is accepted; and
- the day on which the money is received by the brokerage.

As this requirement is set out in the *Act*, the Saskatchewan Real Estate Commission cannot waive the requirement or extend the time in which the brokerage must deposit the trust money it receives. However, the Commission Bylaws do allow for electronic transfers in and out of trust accounts provided the appropriate records are kept.

Bylaw 623.1 allows for deposits into a trust account using an ABM card, while Bylaw 624.1 permits electronic deposits into a trust account using the internet. Bylaws 623.2 and 624.2 allow for transfers of money out of a trust account using an ABM card and the internet, respectively. The details of the records to be kept in each situation are set out in these bylaws. Bylaws 623 and 624 state:

### **DEPOSITING FUNDS ELECTRONICALLY**

623.1 - A brokerage that deposits funds electronically, using an ABM bank card and an automatic banking machine, into an account in which money is held in trust shall maintain the automated banking machine deposit receipt that indicates the account number, time, date and amount of the deposit.

623.2 - A brokerage that deposits funds electronically, using the Internet, into an account in which money is held in trust shall maintain a written record signed and dated by the broker or authorized person that indicates the account number, date, amount and details of the deposit.

### **ELECTRONIC TRANSFER OF TRUST FUNDS**

624.1 - An ABM card may be used to transfer funds from an account in which money is held in trust only if the following conditions can and will be met:

- (a) the ABM card must be issued prohibiting cash withdrawals from the account;
- (b) before funds are transferred from the account to another account there must be written authorization for the transfer by the broker or by a person authorized by the broker and an ABM record of the transfer must be kept; and
- (c) the record is reviewed, signed and dated by the broker or by a person authorized by the broker on the date of the transfer or the next business day.

624.2 - A brokerage shall not make an electronic transfer using Internet banking from an account in which money is held in trust unless the following conditions can and will be met:

- (a) before the funds are transferred from the account to another account, there must be written authorization by the broker or by a person authorized by the broker supporting the transfer;
- (b) a printed record providing details of the Internet transfer is kept; and
- (c) the printed record of the transfer is reviewed, signed and dated by the broker or by a person authorized by the broker on the date of the transfer or the next business day.

## Dealing with Difficult Clients

As in any profession, registrants are sometimes confronted with clients who are difficult to work with or hard to please. In some cases, the client's behaviour escalates to the point that the registrant tasked with representing that client feels harassed and abused. A toxic registrant-client relationship can have significant negative impacts on both parties and should not simply be tolerated until the listing expires or the transaction is completed.

A registrant having trouble with a difficult client should make his or her broker or branch manager aware of the situation. The broker or branch manager has the ultimate authority regarding the brokerage's handling of a client or listing and may be able to offer advice or assistance to the registrant.

Where there is no written agency agreement between an abusive client and a brokerage, the brokerage may decide to terminate the agency relationship immediately. The brokerage must ensure that the client is notified of the termination and provide the client with copies of any documents he or she may need to proceed with a trade in real estate. Keeping in mind the brokerage's obligation to protect and promote the interests of the client, the broker or branch manager should consider the impact immediate termination of the agency relationship might have on the client and whether or not it would be prudent to maintain the agency relationship until an ongoing transaction is complete.

The situation becomes more complicated where the brokerage has entered into an agency agreement with a buyer or seller.

In order to dissolve a contract, the consent of all parties is required. As such, a brokerage cannot cancel an agency agreement if the client with whom the agreement was signed does not agree.

Additionally, a registrant is obligated to protect and promote the interests of the client. As a result of this obligation, barring truly exceptional circumstances, a brokerage cannot simply refuse to provide service to an abusive client so long as the brokerage contract continues to be effective.

Where the broker or branch manager has decided that cancellation of the contract is the best option, the broker or branch manager or the agent who has been handling the file can contact the client and request that the client sign a form cancelling the agency agreement.

If the client will not agree to a cancellation, there are other measures that can be put in place to try to de-escalate the situation.

A registrant is entitled to refuse to communicate with an abusive client by telephone and to insist that all communication be carried out in writing, e.g. by email, through text messages, etc. A registrant can also take steps to minimize in-person contact with the client or insist that the broker, branch manager or another registrant of the brokerage be present during in-person meetings with the client.

The agency agreement exists between the client and the brokerage; it does not rest with the individual agent handling the file. As such, the client could be reassigned to another registrant of the brokerage or the broker or branch manager could take over management of the file.

Registrants are required to protect and promote the interest of their clients, but they are not required to tolerate harassment or abuse by the client. While a contract between the brokerage and a difficult client may restrict the brokerage's options, there are steps that can be taken to minimize the impact an abusive client can have on the registrant tasked with his or her representation.

## Compliance & Discipline

The Commission's Investigation and Hearing Committees and the Legal & Compliance Department continue to work diligently managing numerous complaints and investigations. The Consent Order option to a formal hearing continues to be an effective and efficient method to closing complaint files.

The Consent Order process allows registrant(s) involved in a complaint to more efficiently deal with the breach and resultant sanction(s), and avoid the costs and time inherent in the formal hearing process.

Registrants are encouraged to review the elements of the discipline process on our website ([Commission Discipline Process](#)), which includes a simplified diagram explaining the steps involved.

Below is a brief summary of each decision (listed numerically), with its direct link. As always, full summaries can be found through our [website](#) (posted for three years), or on [CanLII](#) (posted indefinitely).

**[2019-49 Lynn Chipley](#)**: On February 26, 2020, Ms. Chipley was issued an order of reprimand and a \$2,000 fine for breaching Bylaw 712(e) by failing to take reasonable steps to ensure that the brokerage and its registrants were in compliance with the *Act*, the regulations and the bylaws.

**[2014-26 Reginald Kotlar](#)**: On May 4, 2020, Mr. Kotlar was issued an order of reprimand and: a \$750 fine for breaching s. 57(2)(e) of the *Act* by failing to immediately deliver a true copy of a written agency agreement to the seller who signed it; and a \$2,500 fine for breaching Bylaw 702 by failing to protect and promote the interests of his client.

**[2015-34 Reginald Kotlar](#)**: On May 4, 2020, Mr. Kotlar was issued an order of reprimand and a \$1,500 fine for breaching Bylaw 712(c) by permitting unregistered personnel to perform the duties of a registrant on behalf of the brokerage.

### QUESTIONS?

Contact the Commission's Legal & Compliance department at [compliance@srec.ca](mailto:compliance@srec.ca), or call 306-374-5233.



## Did You Know...

- that Commission Bylaw 712 requires brokers and branch managers to review and initial all real estate agreements in a timely manner and to review and approve all advertising created by the registrants under their supervision?

For more information about the obligations of brokers and branch managers, please take a moment to read [Bylaws 711 and 712](#).

- that each offer you complete with respect to a property should be marked with a unique contract number? The contract of purchase and sale is often made up of several documents, including the initial offer, a counter offer, amendments, schedules, and notices to remove conditions. The contract number is intended to clarify which documents form part of the same contract of purchase and sale.

For this reason, a new offer to purchase written on behalf of a buyer client should be marked with a new contract number, not the same contract number as was used on a previous offer.

- that, pursuant to Bylaw 723, registrants are required to notify the Commission, in writing, within five days of criminal charges and convictions, commencement of civil proceedings, settlements or judgments in respect of those proceedings, name changes, and bankruptcy, among other things?

### Regular Office Hours:

**Monday-Friday, 8:30am-noon, 1pm–4:30pm**  
**Closed weekends and holidays.**

## Contact Us

Saskatchewan Real Estate Commission  
104 210 Wellman Crescent  
Saskatoon, SK S7T 1J8

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## Commission Staff

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## Commission Members

**Vern McClelland**, Chair,  
Lloydminster, elected

**Cam Bristow**, Saskatoon, elected

**Cliff Iverson**, Regina, elected

**Anne Parker**, Regina, appointed

**Lori Patrick**, Regina, elected

**Bill Preston**, Saskatoon, appointed

**Dean Staff**, Saskatoon, appointed

**Bob Volk**, Regina, appointed

**Wayne Zuk**, Saskatoon, elected

Vacant, IC&I Appointment

Vacant, Area 3 (rural) elected