



THE REGISTER

SREC Newsletter

June 2019

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.

- 1) Important deadlines are just around the corner—please check out [page 2](#) and mark your calendars!
- 2) With the global nature of business, it is important to be aware of the potential of scam artists taking advantage of people. Real estate is no exception. Turn to [page 4](#) for details.
- 3) Being an agent in a For Sale By Owner transaction can be complicated. Be sure you, your client and the seller are made well aware of your role. Turn to [page 6](#) to learn more.
- 4) Wonder what you need to do if the property you have been asked to list is part of an estate? Learn more on [page 12](#).

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. Feel free to share our newsletters with those who may be interested.

We hope you enjoy this issue!



REGISTRATION

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Deadline for annual registration renewal is June 30. Don't delay and face license suspension and late fees!!

Deadline Reminders!

Registration renewal is due June 30th!

Each year, all registrants MUST renew their registration with the Commission. Information about the renewal process, complete with renewal fees, can be found on our [website](#).

BEFORE YOU CAN RENEW:

- If you have not completed your annual CPD (CPD 2018-2019) by May 31, you must apply *in writing* for a 30 day extension. If an extension is granted, registrants must pay the **\$300 extension fee**, and purchase and complete your CPD BEFORE you will be able to renew your registration.
- If your name is highlighted in **red**, it is time to upload a new profile photo. Photos MUST be head and shoulders only, or they will not be accepted by the system. To change your profile photo, login to your personal page on the Commission's Online Registration System and click directly on the existing photo. A new screen will be displayed with details on the photo requirements and instructions for upload.
The Commission cannot alter photos; we can only "accept" or "reject". It is the registrant's responsibility to ensure the photo meets specifications (similar to a passport photo). Noncompliant photos will be rejected and registrants will be unable to renew their registration until a photo matching the specifications is submitted.

All outstanding late or extension fees will be applied to your registration renewal.

IN ORDER TO RENEW:

- Registrants must print the Registrant Application Form, complete it and provide the original to their broker for employment records.
- Registrants are expected to take responsibility for themselves and log into their personal page of the Commission's Online Registration System to renew their Certificate of Registration for the next registration year. *If your broker plans to process all renewals on behalf of their registrants, please confirm all actions were completed. If individual registrations are not renewed on time, the registrant is the one held accountable.*
- *The annual renewal fee (\$540) is payable online during the registration renewal process by either VISA or MasterCard. Once processed, registrants have the option to print a new Certificate and receipt for payment for their records.*

Changes to your Registration at June 30th?

Are you contemplating making any of the following changes in registration status for the commencement of the new registration period at July 1st?

- a) leaving the industry for a period of time;
- b) changing the brokerage with whom you are currently registered;
- c) registering a new brokerage with the Commission;
- d) amending your name; or
- e) amending the name of your brokerage.

Deadline Reminders, continued

These are special circumstances and the Commission recommends that you follow the procedure outlined below:

- **DO NOT** log-in and renew your registration online.
- **DO** contact the Commission office (info@srec.ca) in early June to discuss the process required to affect the noted change in your registration.

REMEMBER: Once renewals are processed, refunds are *not* granted except in extraordinary circumstances.

CPD 2018/2019

Each registration year, registrants **must complete ONE** Continuing Professional Development (CPD) course.

Registrants who have not completed their CPD on or before 11:59pm May 31 are not eligible to renew their registration.

Registrants who miss the CPD deadline must apply in writing* to info@srec.ca for a 30 day extension and are subject to a \$300 late fee.

**The request must include an explanation detailing WHY the registrant was unable to comply with the CPD requirement in the time allowed. If granted, the extension is limited to 30 days and comes with a \$300 extension fee, which is applied to the registrant's renewal fee and is due upon renewal.*



2019 Dates to Remember

IMMEDIATE:

**May 16-
June 30**
Registration renewals

COMING SOON:

June 6 - 8
Real Estate
Regulators of Canada
(RERC) Conference
(Vancouver, BC)

**June 6 (Saskatoon)
Sept. 5 (Regina)**
Regular Commission
meetings

July 1
Registration year
begins

Oct. 15-Dec. 31
Professional
Corporation permit
renewals

Real Estate Scams—Awareness Check

The Saskatchewan Real Estate Commission wants to remind all registrants and the public to be cautious when posting and/or answering ads for rental accommodations and property sales, especially online. There is an increasing number of scams being run by individuals who appear to be legitimate at first glance, but who are anything but. Some scammers hijack a real rental or real estate listing by changing the email address or other contact information, and placing the modified ad on another site. The altered ad may even use the name of the person who posted the original ad. In other cases, scammers have hijacked the email accounts of property owners on reputable vacation rental websites.

Scammers often advertise rentals that don't exist or aren't available to trick people into sending money before they find out the truth. Individuals are being contacted from outside of Canada about potential revenue generation from their out-of-country property (most often holiday-use condominiums). Victims are sent counterfeit checks for rental down payments and are either asked to remit any extra money back to the "client", or they find out later that they are responsible to the bank not only for the counterfeit check amount, but also the NSF fees charged by the bank.

In other cases, rental advertising is copied by the scammers and rental deposits are collected from victims who believe they are putting down payments on a rental until someone discovers that the property was not available to be rented. By that time, the scammer is long gone and the victims are out their deposit money.

Another type of scam involves real estate posted via classified ad. Scammers duplicate the ads, altering them slightly, and then repost. When the victim sends an e-mail through the classified advertisement website inquiring about the home, they receive a response from someone claiming to be the owner. The "owner" claims he is currently on missionary work in a foreign country (or is somehow otherwise unavailable personally). Therefore, he needs someone to rent his home while he is away. The victim is asked to send money to the owner in the foreign country.

Other rip-off artists make up listings for places that aren't actually for rent or don't exist, and try to lure you in with the promise of low rent or great amenities. Their goal is to get your money before you find out it's not real.

Being savvy when you're in search of real estate is well worth the effort. Here are some signs you may be dealing with a scam:

They Tell You to Wire Money

This is the surest sign of a scam. There's never a good reason to wire money to pay a security deposit, application fee, first month's rent, or vacation rental fee. This is true even if they send you a contract first. Wiring money is the same as sending cash; once you send it, you have no way to get it back.

Real Estate Scams, continued

They Want a Security Deposit or First Month's Rent Before You've Met or Signed a Lease

It's never a good idea to send money to someone you've never met in person for an apartment you haven't seen. If you can't visit an apartment or house yourself, ask someone you trust to go and confirm that it's for rent, and that it is what was advertised. In addition to setting up a meeting, do a search on the owner and listing. If you find the same ad listed under a different name, that's a clue it may be a scam.

They Say They're Out of the Country

But they have a plan to get the keys into your hands. It might involve a lawyer or an "agent" working on their behalf. Some scammers even create fake keys. Don't send money to them overseas. If you can't meet in person, see the apartment, or sign a lease before you pay, keep looking. What if the rental itself is overseas? Paying with a credit card or through a reputable vacation rental website with its own payment system are your safest bets.

If you believe you have been the victim of a real estate scam, report it to your local law enforcement immediately. Though the Commission investigates all officially filed complaints, our jurisdiction is limited with respect to non-registrants.

If you find that one of your real estate listings has been hijacked by an apparent internet scammer, you should take steps to see if you can get the illegitimate advertisement taken down. You can try contacting the person who posted the advertisement and request that they take it down or contact the site that is hosting the advertisement, identify yourself as the real estate agent listing the property for sale, and request that the site take down the fraudulent advertisement. You should also make sure your seller client is aware of the scammer's advertisement.



Collecting Commission on “For Sale by Owner” Transactions

Requirements of a Service Agreement

The Real Estate Act (the “Act”) defines an “**agency agreement**” as an agreement between a brokerage and a seller or buyer for a trade in real estate.

Section 57(2) of the *Act* states that a **written agency agreement** is not valid unless:

- (a) it contains an expiry date;
- (b) it contains only one expiry date;
- (c) the expiry date is less than 12 months from the date of the agency agreement;
- (d) it shows the total amount of commission, as a lump sum or as a percentage, to be paid to the brokerage; and
- (e) a true copy of the agency agreement is immediately delivered to the seller or buyer who signed the agency agreement.

Bylaw 116 defines a “**service agreement**” as an agreement that establishes a relationship between a brokerage and a person that identifies the responsibilities of each party and includes the services to be performed by the brokerage and the fee for service payable to the brokerage. A service agreement is considered to be a written agency agreement for the collection or attempted collection of remuneration for services in connection with a trade in real estate pursuant to Section 68(2) of the Act.

Bylaws 732 and 733 specify other information that must be included in a service agreement.

Therefore, a **service agreement** should:

- a) be made in writing;
- b) be executed in the presence of a witness;
- c) contain an expiry date;
- d) contain only one expiry date;
- e) contain an expiry date that is less than 12 months from the date of the agency agreement;
- f) show the total amount of commission, as a lump sum or a percentage, to be paid to the brokerage;
- g) contain the name and address of all parties;
- h) contain the date the agreement was signed and the commencement date of the agreement;
- i) set out the specific trade in real estate and the duration of the trade for which a fee for service applies; and
- j) contain disclosure stating the amount of the fee for service and that the fee is not payable until the trade is complete.

A true copy of the agreement must immediately be delivered to the seller or buyer who signed it.

Agency Considerations when Dealing with a Private Seller

Registrants often turn to service agreements when representing a buyer client who is interested in purchasing a property from a private seller (i.e. a seller who has not listed his or her property with a brokerage). The buyer’s agent may approach the private seller to request that the seller pay the agent’s commission out of the proceeds of the sale, rather than requiring payment directly from his or her buyer client.

Collecting Commission on “For Sale by Owner” Transactions, continued

The registrant does not intend to take on the private seller as a client, but must have some written notation that the seller has agreed to pay the registrant’s commission in order to collect payment. As such, the buyer’s agent may request that the private seller sign a service agreement with the agent’s brokerage in which the private seller will agree to pay a fee to the brokerage in exchange for the brokerage bringing a buyer.

In these instances, the registrant is looking to be paid a commission by the seller, but does not want to establish an agency relationship between the seller and the brokerage.

There is nothing in the legislation to prohibit a registrant from adding a term or condition to the service agreement stating that the private seller is not a client of the brokerage and an acknowledgement from the seller that the registrant is not acting as his or her agent. This “waiver” or “exclusion clause” would essentially amount to a registrant’s attempt to contract out of forming an agency relationship with the seller that might give rise to fiduciary obligations owed to the seller.

The complexity arises when determining whether or not contracting out of one’s fiduciary duties is permitted by law and would be accepted by the courts. Such a determination would likely be made on a case-by-case basis.

Courts across Canada have recognized that it is the nature and substance of the relationship between parties that gives rise to a fiduciary duty, not the specific category of actor involved.^{1,2} As such, a registrant will not necessarily owe fiduciary duties to a person simply because the registrant has entered into a service agreement with that person. It is the nature of the agreement and the relationship between the parties that must be considered.

The parties to a brokerage contract are entitled to include an exclusion clause or waiver in the service agreement stating that the agreement will not give rise to the regular fiduciary relationship. However, the inclusion of such a clause will give rise to two questions: (i) whether or not such a clause is enforceable, and (ii) whether or not the actions of a registrant create a fiduciary relationship regardless of the existence of an exclusion clause.

(i) Enforceability of Exclusion Clause

The enforceability of exclusion clauses was addressed at length by the Supreme Court of Canada in *Tercon Contractors Ltd v British Columbia (Transportation and Highways)*.³

When determining the enforceability of exclusion clauses, the court must consider three things.

The court must look to the parties’ intentions, as expressed in the contract, to determine the enforceability of the exclusion clause. As such, parties must explicitly state their intentions in the written contract. If a registrant does not intend to form an agency relationship with a private seller, the service agreement must state this intention in a manner that is unquestionably clear to the seller and to anyone else reading the contract.

The court must then consider whether the clause was unconscionable at the time the contract was made.

¹(1992) 70 BCLR (2d) 388 (CA).

²(1985) 25 OR (3d) (Gen Div).

³(2010) SCC 4, 1 SCR 69 [*Tercon*].

Collecting Commission on “For Sale by Owner” Transactions, continued

If an exclusion clause is found to be applicable in the circumstances and the court has determined that it was not unconscionable, the court may then undertake a third enquiry and consider whether the court should nevertheless refuse to enforce the valid exclusion clause because of the existence of an overriding public policy that outweighs the strong public interest in enforcing contracts. The burden of proving such a claim lies on the party seeking to avoid enforcement of the clause.

In *Tercon*, the court made specific reference to the importance of the integrity and business efficiency of the tendering process, which was at the forefront of the case. Extending this reasoning to the real estate industry suggests that maintaining the integrity and business efficacy of real estate contracts is an important consideration that will inevitably have to be taken into account should a court be tasked with determining the enforceability of an exclusion clause in a real estate service agreement.

In decisions like *Mega Reporting v Yukon (Government of)*, courts considering whether or not to refuse to enforce an exclusion clause on the basis of public policy have found that freedom of contract is paramount, regardless of the nature or character of the contracting parties.

Unless one is able to fit within one of the three exceptions to the enforcement of an exclusion clause as outlined in *Tercon*, the courts will give effect to such a clause.

(ii) Actions of a Registrant Creating Fiduciary Relationships

It must be noted, however, that the actions of a registrant may give rise to a fiduciary relationship regardless of the existence of an exclusion clause. An example of such conduct would be if a registrant were to provide advice about the value of a property or the price at which the FSBO seller should counter offer. Such conduct will create a fiduciary relationship between the registrant and the FSBO seller, regardless of whether or not an exclusion clause was included in the contract between them.

It is essential that registrants make very clear to private sellers that, while they are real estate agents, they are not the private seller’s real estate agent. Play it safe, and avoid advice entirely. Do not counsel the private sellers on anything relating to the transaction.

The test for whether a registrant is in a fiduciary relationship with a person is as follows:

- 1) The fiduciary has scope for the exercise of some discretion or power.
- 2) The fiduciary can unilaterally exercise that power... so as to affect the beneficiary’s legal or practical interests.
- 3) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding discretion or power.⁴

The determinative factor for whether a fiduciary relationship exists is the “measure of the confidential and trust-like nature of the particular advisory relationship, and the ability of the plaintiff to establish reliance in face”.⁵ This means that a fiduciary relationship between a registrant and a client can arise as soon as an agent receives confidential information from the client. An example of such information would be the prices that the client is willing to accept or pay in a real estate transaction.⁶

⁴*International Corona v LAC Minerals Ltd*, 1989 CarswellOnt 126, (1989) SCJ No 83 at para 45

⁵*Ibid.*

⁶*Anderson v Peters*, 2000 CarswellMan 610, 101 ACWS (3d) 668 (QB) at para 23.

Collecting Commission on “For Sale by Owner” Transactions, continued

It is important to note that a fiduciary relationship can arise in circumstances that may not seem obvious. This can include when a registrant acts on an unpaid basis, where a registrant is engaged in a joint venture with their clients, or where there is no express agreement between a registrant and a client.

Conclusion

An exclusion clause that explicitly states that there is no agency relationship between a property owner and a registrant is likely the best option for registrants who want to receive payment on a trade in real estate from a FSBO seller.

Registrants must ensure that any exclusion clause they draft contains clear and concise language and be mindful of their interactions with a FSBO seller so as to avoid any confusion or misunderstanding between the parties as to the nature of their relationship or the duties the registrant does or does not owe to the FSBO seller.

Any exclusion clause may only be used in addition to all requirements of service agreements as laid out above, and all other mandatory forms as required by the Commission Bylaws, *The Real Estate Act*, and the Regulations.



Image courtesy of Landmark Home Warranty

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).

[2017-17 Roger Wilson](#): On February 27, 2019, Mr. Wilson was issued an order of reprimand and:

- a \$1,500 fine for breaching s. 66(3) of *The Real Estate Act* by entering into an arrangement for a commission or other remuneration with respect to a trade in real estate that was not expressed as a lump sum or as a percentage of the sale price; and
- a \$750 fine for breaching Bylaw 617(b) by using a property management agreement that does not include the legal description of the property to be managed.

[2017-19 Gerald Batty](#): On February 27, 2019, Mr. Batty was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 712(e) by failing to take reasonable steps to ensure that a registrant of his brokerage was in compliance with the *Act*, the regulations and the bylaws.

[2016-41 Larry Ziegeman](#): On March 12, 2019, Mr. Ziegeman was issued an order of reprimand and a \$1,500 fine for breaching Bylaw 702 by failing to protect and promote the interests of his client.

[2016-51 Rita Baxter](#): On March 12, 2019, Ms. Baxter was issued an order of reprimand and:

- a \$1,000 fine for breaching s. 58(1)(a) of the *Act* by failing to obtain witness signatures on offers to purchase;
- a \$1,500 fine for breaching s. 58(3)(a) of the *Act* by failing to obtain the sellers' acceptance of an offer to purchase in writing; and
- a \$2,500 fine for breaching Bylaw 702 by failing to protect and promote the interests of her buyer client.

[2017-18 Brian Suer](#): On March 28, 2019, Mr. Suer was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 701(a) by making or permitting to be made a document that inaccurately indicated how a deposit was to be handled in the event the transaction collapsed.

[2017-41 Susanne Byman](#): On March 28, 2019, Ms. Byman was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 702 by failing to protect and promote the interests of her client by failing to have sufficient knowledge of the geographic area in which she was trading in real estate.

Compliance & Discipline

2018-22 John Schatz: On April 15, 2019, Mr. Schatz was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 730(d) by failing to use the mandatory Amendment to Residential Contract of Purchase and Sale form.

2018-23 Gary Emde: On April 15, 2019, Mr. Emde was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 712(a) by failing to adequately review the transaction documents prepared by a registrant under his supervision.

2019-03 Michael Duggleby: On April 15, 2019, Mr. Duggleby was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 723(c) by failing to notify the Commission within five days of the commencement of civil proceedings against his brokerage with respect to a trade in real estate and of a settlement entered into as a result of those proceedings.

2019-04 Brett Ackerman: On April 15, 2019, Mr. Ackerman was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 723(c) by failing to notify the Commission within five days of the commencement of civil proceedings against him with respect to a trade in real estate and of a settlement entered into as a result of those proceedings.

2018-54 Vasilios (Bill) Kutsogiannis: On April 25, 2019, Mr. Kutsogiannis was issued an order of reprimand and:

- a \$4,500 fine for breaching Bylaw 710 by failing to present a written offer to his seller client; and
- a \$1,500 fine for breaching Bylaw 727 by advertising a property for sale without written authorization from the owner or the owner's lawful representative.

2018-11 Jaspreet Gill: On April 25, 2019, Mr. Gill was issued an order of reprimand and:

- a \$1,000 fine for breaching Bylaw 723(a) by failing to notify the Commission within five days of the commencement of proceedings against him pursuant to the *Criminal Code*; and
- a \$1,000 fine and ordered to complete educational upgrading for breaching Bylaw 723(b) by failing to notify the Commission within five days of his conviction pursuant to the *Criminal Code*.

2016-71 Hillary Sayed: On April 25, 2019, Ms. Sayed was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 601(a) by failing to maintain an adequate accounting system by failing to obtain and keep on file written authorization from the owners to transfer money between accounts relating to two separate properties.

2016-20 Reagan Hnatiuk: On May 10, 2019, Mr. Hnatiuk was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 727 by advertising a property for sale without written authorization from the owner.

Important Note

Questions? Contact the Commission's Legal & Compliance department at compliance@srec.ca, or call 306-374-5233.

Listing a Property that is Part of an Estate

When a property owner passes away, there are certain steps that must be taken before a family member can begin the process of selling the assets of the estate.

If there is a Will, the person or people named as executor in the Will must apply for and be granted Letters Probate before they can begin distributing the assets of the estate in accordance with the testator's instructions.

If there is no Will, a relative of the deceased can apply for Letters of Administration, which will grant them authority to deal with the assets of the estate.

Until Letters Probate or Letters of Administration are granted by the court, no one has legal authority to dispose of real property that forms part of the estate of the deceased.

If a registrant is approached by a person who wants to list a property that forms part of an estate for sale, there are a few things the registrant should do before accepting the listing.

The registrant should search title to confirm that the person they are dealing with actually has authority to sell the property. If the person has been granted authority to deal with the assets of the estate, he or she will often be named on title in a representative capacity, such as "John Doe, Executor of the Estate of Jane Smith", although this is not always the case.

The registrant should also ask the person they are dealing with some questions to get a sense of what has happened with the estate. The registrant should confirm that the person has been in touch with a lawyer and recommend that they contact a lawyer if they have not already done so.

This is important because trying to sell the property without confirming that Letters Probate or Letters of Administration have been issued by the court can result in a sale being delayed or lost. Sometimes the person named as executor or administrator is unaware of the steps required to apply for court approval, the cost of the application, or the time delay that can be involved in such an application. It is quite possible that it will take months, not weeks, to obtain Letters Probate or Letters of Administration.

A registrant is not required to know how to obtain Letters Probate or Letters of Administration, but they should be aware that there are special considerations when a property forms part of an estate and ensure that their client has obtained appropriate legal counsel before proceeding.

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?

For more information, see the Commission's [Information Bulletin](#) and hearing decisions [2019 SKREC 22](#), [2019 SKREC 19](#), [2019 SKREC 20](#) and [2019 SKREC 9](#).



The office of the Commission will be **closed** for the following statutory holiday observances:

- **Monday, July 1** (Canada Day)
- **Monday, August 5** (Civic holiday)

Regular Office Hours:

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



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Cliff Iverson, Regina, elected

Al Myers, Saskatoon, 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