

The Register



May 2007

Education Update

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Effective July 1, 2007 Saskatchewan will be implementing a new model of education that no longer offers articling courses. The information contained in the articling courses has been integrated into the pre-licensing education courses. The Saskatchewan Real Estate Commission was of the opinion that an individual should have all his/her educational requirements (except for continuing professional development) prior to entering the industry in a particular specialty.

The revamped salesperson's course material has incorporated the common education standard's outline established through the Canadian Regulators' Group. The Saskatchewan Real Estate Commission is working towards the development of education courses with content that is skewed in favor of practical real estate concepts. The course content will have less emphasis placed on historical and theoretical material.

In conjunction with the changes to the salesperson's course format, the education provider (Association of Saskatchewan REALTORS®) is working towards changing the course assignments to an on-line Internet web-based component that will serve as a course review. The Saskatchewan Real Estate Commission envisions that an Internet web-based examination component of the course will be a realization by January 2008.

Registration Activity

From the period April 1, 2006 to April 1, 2007 Saskatchewan has seen a net increase of 23 registrants entering the industry. Although we have experienced an increase of 94 new registrants during this period, we have seen 71 registrants leave the industry as well. We will be doing an analysis of registrants to determine what, if any, impact demographics have on the exodus from the industry. We have seen an approximate 75% increase in the associate broker classification which has increased the number of registrants with advanced education. As of May 1, 2007 we have a total of 1340 registrants in Saskatchewan (brokerages/brokers 226, branch managers 21, associate brokers 145 and salespeople 948). Saskatchewan is experiencing a very active market and we anticipate a continued increase in the number of registrants entering the industry.

On-line Registration Renewal Process

The registration renewal packages were sent to all brokerage offices on May 14th. Contained in the package was an envelope individually addressed (marked Confidential) to each registrant containing an SREC On-line User Manual and the log-in access for the registration renewal process. The simplified renewal process eliminates the need to complete a paper renewal form. Registrants will now have the flexibility to individually renew their Certificate of Registration on-line via the Internet.

Registrants are reminded that it is their responsibility to ensure that they have renewed on-line prior to July 1, 2007. Failure to renew on time will mean that no further trades in real estate can be conducted by the registrant without being in violation of Section 18 of *The Real Estate Act*.

Points of Clarification:

- Q) I don't use credit cards. How do I pay?
- A) For those who wish to pay using a cheque or cash be aware that payment must be received by the Commission before the renewal process can proceed. In these cases, the registrant's brokerage must process the renewal on-line.
- Q) Why can't I fill out a renewal application form and send it to the Commission?
- A) The Commission no longer processes paper renewal application forms. All registrants must use the on-line process.
- Q) I prefer to have my brokerage prepare my renewal for me, is this permissible?
- A) Yes, your brokerage can register you on-line provided that you have verified your registration information with the broker or broker's designate.

If you have any questions about this registration renewal process, please contact the Commission office at 306-374-5233 or toll free at 1-877-700-5233 (extension #1).

Summary of Legislative Changes

Registration Fees for 2007/08: Effective April 2008, Saskatchewan is implementing a reduction in its registration fees for new applicants entering the industry within the last three months of the registration year (April/June). During this period, the registration fee will be \$100.00.

Effective July 1, 2007, the registration fees are also being reduced by \$80 due to the completion of the recapture of Saskatchewan's contribution to REIX's unallocated surplus.

Errors & Omissions Insurance: As of March 2007, REIX eliminated its \$35.00 transfer fee for individuals moving from one brokerage to another during the registration year. In addition, the premium will be reduced from \$205 to \$100 for the last three months (April-June) of our 2007-08 registration year for new applicants entering the industry.

Real Estate Assurance Fund Levy: As of July 1, 2007, Saskatchewan has reduced its REAF levy from \$20/registrant to \$10/registrant at registration renewal. This change was made after an analysis of the balance of the fund and the \$250,000 legislative requirement for a minimum balance and the expenses to operate the fund and the risk of a payout. The study showed that the Commission is at a risk for one \$25,000 to \$50,000 payout approximately every four to five years.

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.

Issues from Increased Activity in the Market Place

Saskatchewan has seen an extraordinary increase in market activity during the past few months. This has led to issues relating to handling of multiple offers and creative approaches that buyers have asked registrants to include in Commission mandatory forms. It is important to note that registrants are governed by statutory limitations in dealing with buyers and sellers. As a result, what may appear to be acceptable under contract or common law principles may prohibit a registrant from becoming involved in the transaction. The following are a couple of issues that Commission staff members are addressing in a proactive way by attending organized real estate education functions and providing updates. In addition, SREC has and is prepared to make visitations to brokerages and provide seminars on the activity issues. Please contact our office should you wish to take advantage of this type of information seminar for your sales staff.

Accelerated Offers – In these cases, buyers are asking registrants to present offers that contain an offering purchase price. In the conditions portion of the offer to purchase, the buyer states that he/she would offer \$1,000 more than any competing offer. The Saskatchewan Real Estate Commission believes that a registrant is in violation under Section 58 of *The Real Estate Act* for not clearly stating the price on an offer to purchase when the registrant is preparing the offer for a client.

Multiple Offers – The Saskatchewan Real Estate Commission has consulted with real estate boards in Saskatchewan to develop a process to deal with this situation. The Saskatoon Region Association of REALTORS® was the first real estate board in our jurisdiction to develop a procedure that seems to have helped alleviate the pressures and perceived unfairness in handling multiple offers. In this format the seller agrees to an irrevocable direction through an addendum to the listing contract. This states that the seller instructs his/her brokerage to present all offers received at a future time and date. This has worked successfully in dealing with the nightmare of communicating and disclosing changes to offers to each author of the document. In addition, this approach seems to create an environment of fairness and reasonable exposure to the potential buyers and the seller. This allows for all offers to be presented in a logical and fully disclosed fashion.

Schedule “C” – Special Conditions for Contract of Purchase and Sale of a Condominium Unit – Section 730 of the Commission Bylaws requires this form be used by a registrant when marketing any resale of a condo. This form can not be waived when a registrant is handling the transaction.

Flipping property on the strength of an accepted offer – In Saskatchewan, all interest in real property and ownership in fee simple must be registered with land titles (ISC). A brokerage would be required to have the written permission of the seller

(Registered Owner) or his lawful designate in order to advertise the seller’s property for sale. (See Section 727 of the Commission Bylaws.) It would not be possible for the registrant to meet this requirement if the registrant is obtaining a listing or marketing the property for the buyer subject of an accepted offer. The buyer is not the owner at this stage of the transaction. Under Section 58(2) of *The Real Estate Act*, a registrant who obtains an offer from a buyer must immediately deliver the offer to the seller. The *Act* does not allow for the registrant to deal with an offer in any other manner.

Extended Completion Dates – A registrant must be aware of the dangers to a seller in those cases where a person is buying property on speculation. In some cases, there is a suggestion from the activities in this market that investors are writing offers on properties with a very lucrative purchase price. In return, the offers are subject to a completion some 6 to 9 months in the future. The offer is subject to a substantial deposit or increase to be paid within a month from the date of the seller’s acceptance of the offer (never paid). No deposit or a very minimal deposit is obtained at the time of the offer. On the strength of the offer to purchase, the potential buyer then registers a caveat against the title of the property. The idea is to effectively tie up the property for the buyer’s benefit for as little financial risk as possible for as long as possible to realize the greatest return on the investment in this market. In some cases, the buyer does not have the funds to complete the transaction and is counting on flipping the property to another buyer before completion date or the caveat is removed from title.

Misrepresentation of Condominium Units – The Commission was involved in an investigation where the seller (FSBO) was attempting to sell a condo unit but failed to disclose this fact. A registrant acting for the buyer, prior to writing an offer decided to check the title of the property. The property was a townhouse that was registered as a condo unit several years ago. No capital reserve fund or other compliance with *The Condominium Property Act* was being followed by the seller. The Commission is finding that other condo units are not being properly disclosed by the sellers.

Specialty Licensing

It is still too early to assess the full pros and cons of specialty licensing. The majority of brokerages are licensed in all categories so the brokerage impact is insignificant at this time. We are finding that our definitions for the specialty areas are adding some complexities in trying to determine which specialty area the transaction falls into. The definitions may not be specific enough to isolate the various specialty areas. In addition, the brokerage is tied to the registration qualifications of the broker. This has caused a few category of registration problems (i.e. Brokerage restricted to commercial; registrant loses other specialties, except commercial while employed with this brokerage, although qualified in other specialty areas.)

Website Activity

Our IT staff member, Jason Weiler, continues to work on a contract basis with the Real Estate Council of Alberta and the Manitoba Securities Commission, providing expertise and programming assistance with the development of their on-line registration programs.

In addition, several enhancements were made to our website to accommodate the changes to our registration, compliance and education needs.

In May, the Commission renewed its website hosting contract with Ideapoint. The provider has completed several enhancements and upgrades to the dedicated server and hosting environments. This will lead to an increase in efficiency and security on the Commission's website.

Effective May 1, 2007 all new Commission hearing decisions and Superintendent of Real Estate decisions and cease and desist orders will be available in their entirety on the Commission's website.

Misleading Advertising

The Saskatchewan Real Estate Commission recently reviewed a brokerage's advertising practices as it relates to misleading advertising pursuant to Bylaw 726. The broker authorized the February 2006 publication of a brochure with the intention of summarizing the brokerage's 2005 sales activities. The brochure did not identify the dates that the identified properties sold nor did the broker possess written permission from all the current owners of the property to advertise the prior year's sale. Pictures contained in the brochure displayed real property at various seasons of the year.

The Commission deemed that the public would likely conclude that the brochure represented sales for a period greater than January and February 2006. As the brochure covered an extended sale period, the brochure in itself would not likely be misleading notwithstanding that the brokerage admitted not possessing written permission to advertise from all the current owners. Commission Bylaw 727 requires that registrants possess written permission from the owner of the property advertised. Once possession occurs and title transfers, the new owner possesses the authority to authorize advertising of the property.

The Commission's opinion is that in this case Bylaw 726 was not breached by virtue of the registrant failing to obtain the present owner's permission. However, registrants are reminded that a separate violation could occur for not obtaining the owner's permission to advertise a trade in real estate pursuant to Bylaw 727.

Commission Disciplinary Action

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.

Paul Jardine, Salesperson, Sutton Group – Results Realty (Regina)

Date of Hearing: March 8, 2007

Date of Written Decision: March 30, 2007

Disposition: Paul Jardine received a letter of reprimand and an order to pay a \$500 fine for violating Commission Bylaw 730(d) and an order to pay a \$1,000 fine for violating Section 58(1)(b)(iv) of the *Act*.

Violations:

- a) Commission Bylaw 730(d) states: "The following approved form, provided by the Saskatchewan Real Estate Association, shall be mandatory: (d) Counter Offer to Residential Contract of Purchase and Sale."
- b) Section 58(1)(b)(iv) of the *Act* states: "An offer to purchase obtained by a registrant is to clearly show, prior to execution by the buyer, the price offered by the buyer and the terms and conditions of the offer."

Details: In July 2005 Paul Jardine, a registrant and also a developer, agreed to a \$420,000 contract of purchase and sale with a client to build a care home in Regina. The parties later agreed to amend the purchase price to \$466,600.64 in lieu of additions and extras.

During the new construction phase, further verbal discussions ensued. In error, Paul Jardine believed that the buyer verbally agreed to pay \$50,000 over and above the agreed to contract price; the buyer disagreed with that interpretation. On April 8, 2006, Paul Jardine created a document for the benefit of the buyer that co-mingled, on a mandatory form contract amendment conditions with a notice to remove conditions. Thereafter, the buyer and Paul Jardine disagreed as to the state of completeness of the property. Both parties ended up seeking remedies through the court process.

In handing down its decision, the Hearing Panel recognized that this was Paul Jardine's first appearance before the Commission in his lengthy real estate career. Paul Jardine acknowledged making errors in the process and that the documentation could have been clearer which would have protected his company from suffering financially as a result of the profit shortfall. Notwithstanding the profit issue, the Commission's Hearing Panel stated that registrants must write factually correct documentation. The Hearing Panel stated that a more significant sentence would have been issued except for the fact that Paul Jardine's actions caused him to suffer a loss and that this was his first offense.

Trevor Millsap, Salesperson, Century 21 Conexus Realty Ltd. (Saskatoon)

Date of Hearing: January 18, 2007

Date of Written Decision: February 15, 2007

Disposition: Trevor Millsap received a letter of reprimand and an order to pay a \$2,000 fine for violating Commission Bylaw 721; a letter of reprimand and an order to pay a \$3,000 fine for violating Section 58(3)(c); and Trevor Millsap was ordered to successfully complete the *Real Estate as a Professional Career* course prior to June 30, 2007.

Violations:

- a) Commission Bylaw 721 states: "In addition to subsection 60(1) of *The Real Estate Act*, any registrant who makes any promises, guarantees or undertakings to a buyer or seller must do so in writing."
- b) Section 58(3)(c) of *The Real Estate Act* states: "Where a registrant presents an offer mentioned in subsection (1) and the offer is accepted the registrant shall immediately deliver a copy of the acceptance to the buyer."

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



Details: In January 2006, Trevor Millsap listed a Saskatoon property for sale, on behalf of his sellers, through his brokerage. In February 2006, during the negotiation process with buyers represented by another brokerage, Trevor Millsap orally promised to pay his seller \$700 upon the successful completion of a particular real estate transaction. The transaction completed in March 2006 and by mid-June 2006, Trevor Millsap had yet to honour his oral agreement with the sellers. Trevor Millsap transferred to another brokerage in June 2006 and at that time; he delivered to his former broker a copy of the written undertaking to pay the \$700. The sellers received the \$700 in June 2006 through the good will of the listing brokerage.

In May 2006 Trevor Millsap represented buyers in an attempted purchase of an executive property in Saskatoon. Negotiations proceeded to the conditional acceptance of a Residential Contract of Purchase and Sale form. In late May 2006 and notwithstanding that the buyers had signed the removal of the appropriate conditions form, Trevor Millsap failed to communicate the removal of the conditions in writing or by telephone to the listing brokerage. In consequence of these actions, the sellers sold the property to another buyer and Trevor Millsap's clients were successful in finding another property through Trevor Millsap's endeavours.

The hearing panel deemed that Trevor Millsap's actions or inactions were serious and had consequences on his clients. The actions caused embarrassment to the brokerages involved and affected the public's opinion of the real estate industry in general. The sanction serves as a specific deterrent to Trevor Millsap to ensure that promises made are recorded in writing and completed. The sanction also serves as a general deterrent to the real estate industry when completing and dealing with real estate documents.

Lauri Rose, Salesperson, Century 21 Conexus Realty Ltd. (Saskatoon)

Date of Hearing: January 17, 2007

Date of Written Decision: February 15, 2007

Disposition: Lauri Rose received a letter of reprimand and an order to pay a \$1,500 fine for violating Commission Bylaw 702.

Violation: Commission Bylaw 702 states: "A registrant shall protect and promote the interests of his or her client. This primary obligation does not relieve the registrant from the obligation of dealing fairly with all other parties to the transaction."

Details: Ms. Rose represented buyers from England who intended on immigrating to Canada and purchase a residence in Saskatoon. The buyers and sellers agreed to a contract subject to financing and a home inspection. Ms. Rose also obtained from her clients, pre-signed amendments and removal of conditions forms in anticipation that her clients would return to England and communication would become problematic. Ms. Rose used the pre-signed forms to communicate to the listing brokerage that all conditions were removed and that the deal would go forward. The deal did not go forward as the buyers did not sell their home in England and unconditional financing did not exist in Canada. The buyers did not know their house would not sell in England until the actual proposed possession date in England. Evidence at the hearing suggested that in England one has the option to cancel real estate transactions at any time prior to completion.

The Hearing Panel concluded that Ms. Rose did not protect and promote her clients' interests in

that she did not communicate to the sellers that financing was conditional on the satisfactory sale of the buyers' residence in England. Ms. Rose made a decision that the conditional approval of financing letter received from the financial institution was actually approved financing. Ms. Rose removed the financing condition without reviewing the bank documents with her clients. The hearing panel was satisfied that ample time existed for Ms. Rose to provide the financing letter and meet with one of the sellers before dealing with the financing condition on the offer.

The Hearing Panel had concerns relating to registrants using pre-signed forms and acting on alleged verbal authority from a client to add information to the pre-signed form.

The trade did not complete; the buyer and seller each claimed the \$5,000 deposit; and the deposit remains in the real estate trust account pending disposition through a court order.

The Hearing Panel found on the second count dealing with mandatory forms that Ms. Rose's altering the amendment form to a Notice to Remove Conditions form was not a violation of the Commission's Bylaws. The Hearing Panel found that the two forms are very similar in nature and that Ms. Rose amended the form in such a way that it was not confusing to the buyers or sellers.

Agency Agreements in Saskatchewan

Saskatchewan's *Act* defines "agency agreement" as follows: an agreement between a brokerage and a seller or buyer for a trade in real estate. In Saskatchewan any agreement involving a trade in real estate by a brokerage and seller or buyer is captured under the term: agency agreement. Saskatchewan's agency agreement is unique in that it ties all activities or services of a trade to an agency agreement. It is possible for a brokerage to have an agency agreement with a seller for particular services and an agency agreement with the buyer for different services from those offered to the seller. The Commission is presently reviewing this matter and looking at the feasibility of changing the word agency in the *Act* to something along the lines of representation. This change may more effectively represent what takes place presently in the industry.

Sections 68(2)(a)(ii) and (iii) of *The Real Estate Act* make reference to paying commissions relating to acceptance or accepted offers. In Saskatchewan we do not allow registrants to use the offer as an additional agreement for commissions. Therefore, as the offer does not include the amount of commission to be paid, there must be some other agreement involving the trade in real estate; namely, an agency agreement before commissions can be paid. In Saskatchewan we have recent legislation that refers to service agreements for various services provided within the scope of our *Act's* definition of trade. (See Section 2(bb) of the *Act*.) The service agreement is considered an agency agreement under Section 68(2) of the *Act*. The following legislation appears in the Commission Bylaws:

116 – SERVICE AGREEMENT means 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*.

117 – FEE FOR SERVICE means a lump sum payable to a brokerage established through a service agreement for a specific trade or combination of trades in real estate pursuant to the definition of trade in Section 2(bb) of the *Act*.

732 - Every service agreement must be in writing and executed in the presence of witnesses.

733 - A service agreement must contain, in addition to the requirements of an agency agreement pursuant to Section 57(1) of the *Act*:

- (a) the name and address of all parties;
- (b) the date the agreement was signed and the commencement date of the agreement;
- (c) the specific trade in real estate and duration of the trade for which a fee for service applies; and
- (d) disclosure stating the amount of the fee for service and that the fee is not payable until the trade is complete.

The Commission has no intention of interfering with the real estate industry and restricting what type of services have to be included in an agency agreement or what model of agency can be practised. The Commission believes that a brokerage should be free to provide any real estate services envisioned under our legislation, agreed to with a consenting party and identified in an agency agreement. In summary, the Commission provides the framework for the services but leaves the specifics in each individual case to the contracting parties. The Commission could not achieve this unbiased objective by mandating specific agency agreements.

Impersonation and Fraud

In recent months, some registrants have received solicitations via e-mail and Canada Post similar to the West African/Nigerian fraud letters that continue to circulate throughout the world. The most recent solicitations propose that the registrant become a party to an offense of impersonation to assist with the extraction of money from a foreign country. The twist in the recent approach is that the registrant's surname is identical to that of a person in the foreign country. The approach, as always, requires:

- an immediate response;
- confidential treatment of the information;
- faxing of documents and information to a foreign country; and
- the opportunity to make significant profit for no investment or risk.

Policing bodies warn consumers to:

- not respond to the e-mail or letter request;
- forward the letter by fax to Phonebusters at 1(888) 654-9426;
- forward the e-mail to waf1@phonebusters.com; and
- contact Phonebusters toll free at 1-888-495-8501 if you have further questions.

SREC Contact Info

Saskatchewan Real Estate Commission
237 Robin Crescent
Saskatoon, SK
S7L 6M8

Our fax number is: **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 SREC

A registrant is required to notify the Saskatchewan Real Estate Commission in writing no later than five days after the occurrence of any of the following:

- Criminal Code proceedings or a conviction;
- Civil proceedings, judgments or settlements for trades in real estate, fraud, misrepresentation, undue influence or breach of trust;
- a change in a registrant's name;
- proceedings under *The Bankruptcy and Insolvency Act (Canada)*;
- proceedings under *The Winding Up Act*;
- Proceedings under *The Companies' Creditors Arrangement Act (Canada)*; or
- convictions under any law of any country, province, or state (except minor traffic violations).

Commission Members

Larry Gingerich (Saskatoon,) Chairperson
Cheryl Elliott (Prince Albert), Vice Chairperson
Donnett Elder, Regina
Richard Jeanneau, Saskatoon
Phillip Mack, Regina
Scott Musgrave, Lloydminster
Anne Odishaw, Saskatoon
Terry Powell, Saskatoon
John Puderak, Saskatoon
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Commission Staff

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Verna Olfert, Director of Registration
Jason Weiler, Systems Administrator
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