

# The Register



November 2006

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## *2005-06 Annual Meeting*

The Saskatchewan Real Estate Commission's eighteenth Annual Meeting took place on Thursday, October 12, 2006 at 1:15 p.m. in Saskatoon. Chairperson, Larry Gingerich welcomed all registrants to the meeting, introduced the members of the Commission and its staff and presented his Chairperson's report.

Ms. Jan Whitridge, Deputy Superintendent of Real Estate brought greetings on behalf of the Minister of Justice and the Superintendent of Real Estate. She noted that the Commission has the interests of the consumer at heart. Ms. Whitridge extended her thanks to the Commission members and staff for a job well done.

The Commission members received positive feedback and praise from the attendees. The general comments made indicated that registrants supported the Commission's initiatives undertaken during the last year.

It was very gratifying to see representation from all regions in attendance at the annual meeting. We thank each and everyone of you for taking time out of your very busy schedules to attend.



Our office will be closed for the holidays commencing at 12:00 noon on December 22nd, 2006 and re-opening at 8:30 a.m. on Tuesday, January 2nd, 2007.

## Bylaw Changes

The following bylaws were recently approved by the Commission, the Superintendent of Real Estate and printed in *The Gazette*. These bylaws provide for the selection process of an individual from the IC & I sector of real estate to serve as a Commission member.

### SELECTION COMMITTEE

**232** - Pursuant to subsection 9(1) of the Act a Selection Committee will be established consisting of no fewer than three Commission members to:

- (a) evaluate applicants for suitability as an appointed Commission member in accordance with clauses 6(1) (c) and 6(3) (c) of the *Act*; and
- (b) recommend an applicant for appointment to the Commission.

**232.1** -The Commission may:

- (a) appoint the applicant to the Commission; or
- (b) reject the Selection Committee's recommendation.

### NOTICE OF VACANCY

**233** - The Registrar shall notify all registrants of a vacancy on the Commission pursuant to clauses 6 (1) (c) and 6(3)(c) of the *Act* and allow at least thirty (30) days for the submission of applications.

### APPLICATION

**234** - Every applicant for this vacancy shall file with the Commission a completed appointee application in the form prescribed by the Commission.

### APPLICANT RECOMMENDATION

**235** - Within 90 days of receiving applications and determining a suitable applicant the Selection Committee shall forward the recommendation to the Commission.

### TERM of APPOINTMENT

**236** - A member of the Commission appointed

pursuant to clause 6(1) (c) of the *Act*:

- (a) holds office for a period not exceeding three years from the date of the member's appointment and until a successor is appointed; and
- (b) is eligible for reappointment but is not eligible to hold office for more than two consecutive terms.

## SREC On-line Credit Card Processing

In the spring of 2001, the Saskatchewan Real Estate Commission launched its Internet-based On-Line Registration system. Brokers were encouraged to apply for access to their own brokerage's on-line registration screen and proceed with registering or terminating individuals directly via the Internet. To date, a total of 77 brokerages representing 70% of all registrants, have signed on to use this type of on-line registration system.

Since the inception of this program, the Commission has been working to make modifications to improve the on-line process. Changes include the ability for on-line brokers to transfer registrants from one branch office to another branch office within the same brokerage without incurring a registration fee; changing brokerage or registrant home addresses; phone numbers, e-mail addresses without additional fees; viewing reports with respect to those individuals within the brokerage who have or have not completed their articling courses and/or continuing professional development seminars; generating additional copies of certificates of registration at any time during the registration year; and printing additional copies of receipts for payment of registration fees.

The Commission is about to introduce its latest addition to the system — the ability to enter

payment via credit card directly on-line at the time of processing a registration without sending the funds, in advance, to the Saskatchewan Real Estate Commission. This will assist brokers in truly registering individuals directly via the Internet 24 hours a day, 7 days a week, 365 days a year.

Because the system is Internet enabled, it eliminates compatibility of computer issues, is less expensive to operate and is user friendly. The turn around time for registration for qualified individuals under *The Real Estate Act* is immediate. The system eliminates the paper chase and telephone-tag with Commission staff at registration renewal in June each year. The system is also an effective and efficient communication tool with the industry. Brokerages wishing to sign up for this On-line System are asked to contact Verna at our office at [volfert@srec.ca](mailto:volfert@srec.ca).

## Association of Saskatchewan REALTORS®

The Saskatchewan Real Estate Commission would like to extend its best wishes to the Association of Saskatchewan REALTORS® as they relocated this past month to their newly renovated offices at:

2811 Estey Drive  
Saskatoon, SK  
S7J 2V8



We will miss them as our neighbours but look forward to a continued excellent working relationship.

## Payment of Remuneration to a Registrants' Corporation

The Saskatchewan Real Estate Commission has prepared draft legislation dealing with this topic. The Commission has received feedback from Saskatchewan Justice that the concept is viable. The Commission has asked its legal council to provide a legal opinion on the draft bylaws to ensure that the intent of the bylaws is clear and sustainable in law.

At their November 30, 2006 meeting, the Commission will review the solicitor's recommendations. The Commission is optimistic that this project can be completed with the appropriate bylaws in place prior to the end of December 2006.



At this time of year, it is nice to put aside the everyday concerns of business and enjoy the holiday season. Warmest greetings are extended to you from the members and staff of the Saskatchewan Real Estate Commission. May your holidays be filled with beautiful memories to warm you in the year ahead. Have a prosperous and Happy New Year.

## *Saskatchewan Real Estate Commission's Position on the Agency Task Force Recommendations*

As a quasi-governmental body, the Saskatchewan Real Estate Commission has authority to make bylaws with respect to trades in real estate. The bylaws come into force upon approval by the Superintendent of Real Estate and the publication of the bylaws in the Saskatchewan Gazette.

Saskatchewan's real estate legislation does not contain express statutory language that would allow the Commission to implement bylaws to change the laws of agency. Bylaws cannot presently be enacted that confer rights or impose obligations on registrants that conflict with the common law or statutory rights of clients, customers and third parties with whom registrants have been dealing.

The Commission is concerned that the major cause of the inherent challenges associated with agency relationships requires further research. (i.e. Is our registration hierarchy a contributing factor?)

In short the Commission's position is:

- The Commission will follow its past and present practice of not interfering with legal relationships between registrants and the public.
- The Commission will continue, through education, to inform registrants of the various models of agency and representation practiced in Saskatchewan.

Until this matter has been researched and the results assessed so that recommendations can be advanced, further efforts will not be undertaken by the Commission to:

- promote any specific model of agency or representation; or
- request legislative changes that may or may not accommodate the adoption of the Agency Task Force's (ATF) 16 recommendations.

### *SREC Annual Report*

One copy of the Saskatchewan Real Estate Commission's 2005-2006 Annual Report was distributed to all brokerage and branch offices in October. Please contact your broker/branch manager to review this report and to acquaint yourself with the activities of the Commission or you may view the report on our website at <http://www.srec.ca/pblctnsrpt.asp>.

### *IC & I Appointment*

The Saskatchewan Real Estate Commission has established a selection committee to review the qualifications of applicants for this position and to present a recommendation to the Commission. In November, the selection committee will interview three highly qualified registrants for this position. It is anticipated that the selection committee will be making a recommendation to the Commission at the November 30, 2006 meeting.

## *Integration of Phase III Articling Courses into Pre-licensing Phase I*

The Saskatchewan Real Estate Commission's Education Committee reviewed the articling courses and the excellent analysis reports received from the brokers who volunteered to review the articling courses for relevant content. The Commission is very appreciative of the time and effort the brokers expended in analyzing the course material and bringing to the Commission's attention the actual interactions that registrants have with the public. This information was instrumental in assisting the education committee in establishing the areas in which course material should be concentrated.

The Commission's Education Committee met with the Association of Saskatchewan REALTORS® (ASR) education committee to review several changes recommended by the Commission. ASR is in agreement to condense the content of the Phase III material where possible and remove material that falls outside the standards of the National Code of Real Estate Education established through ACRE (Alliance for Canadian Real Estate).

Funding for this project is available through the Interest Bearing Trust Account administered by the Commission. July 1, 2007 is the target date for implementation of this revised model of education.

## *2006-2008 CPD*

As part of registration renewal on June 30, 2008, **all registrants** are required to attend and successfully complete the two-day *Real Estate Update* workshop on Agency between October 2006 and June 2008. Successful completion is given only for 100% attendance during a specific workshop. The workshops are held in various locations throughout the province. The cost of the workshop is \$199/registrant (plus GST). Class sizes are approximately 35 participants per workshop and are filled on a first come, first served basis.

The Association of Saskatchewan REALTORS®, the organization responsible for the administration and delivery of these workshops, forwarded a CPD information package to all registrants. If you did not personally receive a package, please talk to your broker or visit the Association's website at: [www.saskatchewanrealestate.com](http://www.saskatchewanrealestate.com).

The instructors for this course will provide you with a general outline of the composition of the various models of agency. The course is not designed to provide legal advice to registrants. It is important to understand that the Saskatchewan Real Estate Commission does not promote any one model of agency or relationship between the real estate industry and the public.

The Commission would like to remind registrants that "Agency Fundamentals" was designed to identify various models of agency being practiced in trades in real estate.

### *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.**

## Commission Disciplinary Action

### **Barry Giles, Salesperson with Gary Emde Realty Inc. at the time of the Offense**

**Date of Decision:** July 13, 2006

**Date of Written Decision:** July 17, 2006

**Disposition:** Barry Giles received a letter of reprimand and an order to pay a \$500 fine for violating Commission Bylaw 721.

**Violation:** 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."

**Details:** In February 2005, Barry Giles entered into an MLS Exclusive Seller's Brokerage contract with a seller to market a property in Saskatoon. The seller disclosed some drainage and water infiltration problems in the past and claimed that he had repaired the problems. Within days of placing the property on the market, the seller accepted a Residential Contract of Purchase and Sale from a buyer also represented by Barry Giles. In negotiations involving the contract, Barry Giles verbally agreed to reduce his commission by \$1,070 by way of a rebate to the seller upon completion of the transaction.

The accepted contract called for possession/completion at noon on March 31, 2005. That date, Saskatoon experienced flash melting conditions and pooling of water in low lying areas. When Barry Giles and the buyer toured the property at 5:00 p.m., they found pools of water against the outside basement wall and a pool of water approximately 8 to 10 feet in diameter on the basement floor. The buyer consulted with his lawyer. In the days that followed, Barry Giles, the seller and the buyer worked at resolving this issue. The buyer obtained a \$2,345 contractor's estimate to repair the identified seepage issue. Upon receiving verbal assurances from the seller and the buyer, Barry Giles paid the buyer \$1,070 on behalf of the seller and \$500 of his own money towards the \$2,345 estimate of repair. In error, Barry Giles did not obtain written concurrence from the buyer and seller for this agreement and after the fact, the seller complained about the process.

The investigation confirmed that Barry Giles did not obtain or retain written documentation outlining the verbal agreements entered into. In handing down its decision, the hearing committee took into consideration the fact that Barry Giles has no previous sanction history before the Commission; he admitted his mistake and showed remorse for his errors. The hearing committee, in its decision, reinforced the importance of writing and clearly setting forth agreements with buyers and sellers.

### **Charles LaPointe, Broker, Homelife All-Sask Realty (Saskatoon)**

**Date of Decision:** September 13, 2006

**Date of Written Decision:** September 21, 2006

**Disposition:** Charles LaPointe received a letter of reprimand, an order to pay a \$5,000 fine for violating Section 39(1) (b) of *The Real Estate Act*; and an order to pay \$1,000 in hearing costs.

**Violation:** Section 39(1)(b) 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 fraudulent." Section 2(1)(iv) of *The Real Estate Act* defines "fraud" or "fraudulent" to include, in addition to their ordinary meanings, in connection with a trade in real estate: the failure, within a reasonable time, to properly account for or pay over any money received to the person entitled to it."

**Details:** Commencing in the summer of 2005 through the early winter of 2006, Charles LaPointe, broker/owner of Homelife All-Sask Realty represented a buyer regarding a commercial property in Saskatchewan. The corporate seller of the property resided in Calgary, Alberta and at all times material to the transaction was represented by another Saskatoon real estate brokerage. A number of offers and counter offers for the property led to Charles LaPointe receiving, in trust, a \$10,000 deposit on or about November 9, 2005. The January 13, 2006 accepted offer to purchase required that the buyer pay to the lawyer's trust account the \$10,000 deposit on or before January 31, 2006 in preparation for the February 10, 2006 completion date. Charles LaPointe did not pay the trust funds to the lawyer on January 31, 2006 or prior to February 10, 2006. The transaction completed when the buyer paid an additional \$10,000 to the lawyer's trust account on February 10, 2006.

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

The hearing panel heard evidence that Charles LaPointe did not respond to the listing brokerage representatives in a timely manner. Concern about the trust funds led the Superintendent of Real Estate to freeze Homelife All-Sask Realty's trust account. Charles LaPointe voluntarily terminated his registration with the Saskatchewan Real Estate Commission on February 28, 2006.

The investigation confirmed that on or before the February 10, 2006 completion date, Charles LaPointe unlawfully removed \$4,000 in trust funds and paid the remaining \$6,000 in trust funds directly to his client. After the trade completed, the client received the remaining \$4,000 as an assignment of commissions earned by Homelife All-Sask Realty for the trade in real estate.

In handing down its decision, the hearing panel acknowledged that although this was Charles LaPointe's first offense, the actions presented a serious risk to his client and the Commission. Charles LaPointe chose not to attend the formal hearing and provided little co-operation during the investigation process. The intention of the hearing panel was that the sanction would serve a general deterrent to the registrants to ensure they know that trust accounts must be treated as a fiduciary obligation to protect their clients and the community as a whole.



**Al Porter (Broker) Porter Property Management Corp. – Regina**

**Date of Decision:** July 13, 2006

**Date of Written Decision:** July 17, 2006

**Disposition:** Al Porter received a letter of reprimand and an order to pay a \$2,500 fine for violating Commission Bylaw 607 and an order to pay a \$2,500 fine and an order to successfully complete the *Property Management as a Professional Career* course for violating Commission Bylaw 608.

**Violations:** Commission Bylaw 607 states: "The broker or, where applicable, the branch manager shall ensure that all records, books and accounts are kept up-to-date. The broker or branch manager shall remain accountable and responsible for all trust funds until the funds have been disbursed in accordance with the trust conditions and a full accounting has been made to the parties to the trade." Bylaw 608 states: "It is the responsibility of the broker/manager to ensure that all trust funds received by a broker, branch manager or salesperson of the brokerage are properly deposited pursuant to the requirements of the *Act*."



**Details:** In July 2004 Al Porter, on behalf of Porter Property Management Corp., undertook to manage, for an out of town owner, twelve revenue units. The signed property management agreement required that the brokerage collect rent monies and deposit rents collected into the property management trust account. In error, the broker/brokerage did not deposit trust monies into the property management trust account, but rather, operated a separate account in the name of the owners. Porter Property Management Corp. also commingled security deposits with trust monies collected into this owner designated account.

The owners terminated the property management agreement in August 2005. In October 2005, the owners complained to the Saskatchewan Real Estate Commission that they had yet to receive a final accounting from Porter Property Management Corp. relating to security deposits and rents collected. The Commission's audit and investigation confirmed that Porter Property Management Corp. fell behind in its bookkeeping and statement preparation for this client. In May 2006 Porter Property Management Corp. paid the owner with the balance of monies held on the owner's behalf.

At the July 13, 2006 mitigation hearing, Al Porter acknowledged making mistakes and not submitting statements to the client in a timely fashion. As broker/owner and sole registrant of the company, Al Porter remained responsible for ensuring timely submission of statements to clients.

In handing down its decision, the hearing committee took into consideration the fact that Al Porter has no previous sanction history with the Commission; he admitted his mistakes and co-operated with the investigators. The hearing committee noted that notwithstanding the apparent consent by the owner to set up a separate bank account for the property; it remains the broker's responsibility and obligation to ensure compliance with Saskatchewan real estate legislation. The sanctions imposed provide specific and general deterrence to Al Porter and registrants through the industry.

## *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)

Verna Olfert	Ext. #1
Ed Miller	Ext. #2
Allan York	Ext. #3
Jason Weiler	Ext. #4
Al Jacobson	Ext. #5

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

## *2006 Annual Financial Report*

This year the Annual Financial Report will be available to all brokerages in electronic format. If you would like to receive your copy in Microsoft Word format please e-mail us at [volfert@srec.ca](mailto:volfert@srec.ca) and the document will be sent to you. Please note that you will still be required to submit a **signed** hard copy of the document to our office. Those brokerages who do not request an electronic version will receive their copy of the report by mail in mid-December 2006. Please note that this report must be completed and returned to the Commission office prior to March 15, 2007. A \$300 late submission fee will be levied against a brokerage whose report is received postmarked later than March 15, 2007.

## *Commission Members*

Larry Gingerich (Saskatoon,) Chairperson  
Cheryl Elliott (Prince Albert), Vice Chairperson  
Donnett Elder, Regina  
Phillip Mack, Regina  
Scott Musgrave, Lloydminster  
Anne Odishaw, Saskatoon  
Terry Powell, Saskatoon  
Ron Skinner, Yorkton  
Cameron Wilkes, Regina

## *Commission Staff*

Al Jacobson, Executive Director/Registrar  
Ed Miller, Director of Investigations/Audits  
Verna Olfert, Director of Registration  
Jason Weiler, Systems Administrator  
Allan York, Investigative Accountant