

The Register



December 2007

2006-2007 Annual Meeting

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The Saskatchewan Real Estate Commission's nineteenth Annual Meeting took place on Thursday, October 11, 2007 at 1:15 p.m. in Regina. Chairperson, Larry Gingerich welcomed all registrants to the meeting, introduced the members of the Commission and its staff, the Superintendent and Deputy Superintendent of Real Estate and presented his Chairperson's report.

Executive Director/Registrar, Al Jacobson outlined the Commission's recent activities and issues that were being addressed through various meetings, visits by staff and/or the Commission's newsletter.

Solicitor, Randal C. Touet gave a presentation that addressed registrants and their interaction with aging clientele (i.e. how to protect the rights of the elderly; show them respect; be conscious of their lack of hearing and/or sight; speak in plain language; review documents carefully, clearly and slowly; don't pressure them; verify power-of-attorney; be ware of warning signs regarding competency; etc.).

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 21st, 2007 and re-opening at 8:30 a.m. on Wednesday, January 2nd, 2008.

Assignment of Accepted Offers

In the May 2007 issue of the Saskatchewan Real Estate Commission's newsletter, *The Register*, we outlined the Commission's position on registrants preparing offers to purchase on the strength and reliance of another accepted offer to purchase in existence.

It is the Saskatchewan Real Estate Commission's position that a registrant cannot have two accepted offers in existence at the same time. In addition, the offer to purchase clearly states that the seller will provide title to the property to the buyer. The buyer, under the first or initial accepted offer, is not in a position to give a second buyer title until the first buyer has obtained the registered title. A registrant cannot be a party to a process that leads to an intentional misrepresentation. Registrants who participate or assist in obtaining a second offer from a buyer in the above noted circumstances will not be in compliance with the real estate legislation.

The Saskatchewan Real Estate Commission has been approached by registrants asking if there is a mechanism in place where the first buyer, with an accepted offer in place, can market the interest in the property. In reviewing the mandatory Residential Contract of Purchase and Sale, it states under Section 8.1 that the parties are contracting to make the contract binding on the seller's and buyer's heirs, executors, administrators, successors and assigns.

In the Saskatchewan Real Estate Commission's opinion, this would permit the marketing of the first buyer's contractual rights in a property to another third party through a process involving an assignment agreement. In such a situation, the assignor (first buyer under an accepted offer to purchase contract) would agree to assign to the assignee (interested third party in the property) the purchase contract.

It is extremely important for registrants to understand that assigning a contract carries with it all of the risks involved in the purchase contract along with the additional risks of an assignment. A registrant is required to adequately explain the risks to a client. The following list of questions, although not exhaustive, raises some of the issues a registrant would be expected to answer:

- What if the seller/developer doesn't complete construction of the building?
- What happens to the deposit relating to the purchase contract/residential contract of purchase and sale?
- Who holds the deposit in trust?
- What happens if the seller/developer refuses to transfer title?
- What happens if the construction is varied from what was originally agreed to?
- What happens if the assignor has breached the contract of purchase and sale/purchase contract?
- How has the registered owner's permission been obtained to permit an assignment?
- What happens if the assignee breaches the contract of purchase and sale after the assignment?
- What happens if the assignee does not pay the increased deposit?
- What happens if the assignor has already assigned the contract of purchase and sale/purchase agreement?
- What happens if the assignee does not satisfy or waive a condition on the purchase agreement?
- What if the assignee fails to close?
- What happens if the market has a correction?
- What are the tax implications for the transaction (i.e. GST)?
- How will the registered title transfer from the registered owner to the assignor and/or assignee?

The Saskatchewan Real Estate Commission solicitor's opinion is that the assignment of a contractual interest in property is a legal process. However, the process is extremely difficult to properly execute and should be avoided. All parties, including the registrants involved, should ensure independent legal advice is obtained prior to proceeding with this type of a transaction.

- Q. Does the Saskatchewan Real Estate Commission prohibit the use of assignment agreements?
- A. No, there is no provincial statute in Saskatchewan that prohibits this type of trade (investment) including the real estate legislation.
- Q. What terminology must a registrant use in the marketing of an assignment of an accepted offer to purchase?
- A. The advertising and agency agreement (service agreement) must refer to the assignor and assignee.

The terminology seller and buyer cannot be used.

- Q. Is an assignment a trade under the real estate legislation?
- A. Yes, an assignment is considered to be an act in the furtherance of a transaction in real estate under Section 2(bb) of *The Real Estate Act*. As a result, registrants must comply with all the associated real estate regulatory requirements relating to trades in real estate.
- Q. Is the Saskatchewan Real Estate Commission presently considering developing a mandatory assignment agreement for use by registrants?
- A. No, the Commission has developed mandatory forms relating only to Residential Contracts of Purchase and Sale, except for the Statement of Disclosure (a registrant directly or indirectly, buying or selling real estate) which cannot be used to single out or target only one segment of real estate.

Due to the complexities and variances involved in commercial, investment (assignments), farm or property management transactions, the development of mandatory Commission forms in each of these areas would be too restrictive.

CPD Equivalency

Are you a registrant in Saskatchewan as well as either Alberta or Manitoba? Both these provinces have been offering the Agency Fundamentals continuing education program in their respective provinces. If you attended the CPD seminar in either Alberta or Manitoba, you may make application for an equivalency in Saskatchewan. Simply send correspondence to the Commission office along with a copy of the certificate showing attendance/completion of the CPD requirements and you will be granted an exemption from the mandatory requirements in Saskatchewan.

Likewise, if you attended Saskatchewan's two-day seminar on Agency Fundamentals and are also currently registered in Manitoba or Alberta, contact the respective regulatory body and provide them with proof of completion of the Saskatchewan seminar.

Specialty Definitions

- Residential real estate means any premises intended for residential purposes and the land upon which the premises are situated; a building comprised of not more than four premises intended for residential purposes, land intended or used as a site for residential purposes; or acreages, cottages and hobby farms used for residential purposes.
- Commercial real estate means real property used for the conduct of retail or service businesses; used as an office; used for industrial purposes; that consists of a building comprised of more than four premises intended for residential purposes; or that is vacant land intended to be used for any of the purposes outlined above.
- Farm real estate means real property that is located outside a city, town, village, hamlet or resort village and that is used or will be used for the purpose of farming, but does not include minerals contained in, on or under that real property; and land used primarily for the purposes of extracting, processing, storing and transporting minerals. For the purposes of defining farm real estate, farming includes livestock raising, poultry raising, dairying, tillage of the soil, bee keeping, fur farming or other activity undertaken to produce primarily agricultural produce and animals.
- Property management means negotiating or approving a lease or rental of a landlord's real estate; holding money received in connection with a lease or rental; or both of these things.

The Commission is of the opinion that registrants violate legislation if they practice or advertise a trade in real estate in specialty categories for which a Certificate of Registration has not been issued. These violations would be considered a fraudulent act through an intentional misrepresentation.

2006-2008 CPD Seminars

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 Fundamentals between October 2006 and May 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 Commission's records indicate that approximately 45% or 615 registrants are still required to complete the two-day seminar prior to June 30, 2008. The number of individuals and their locations are listed below for your information: 5 - Estevan, 11 - Lloydminster, 7 - Moose Jaw, 6 - North Battleford, 4 - Prince Albert, 157 - Regina, 328 - Saskatoon, 5 - Swift Current, 24 - Yorkton and 68 - Rural Saskatchewan.

The remaining seminar dates are as follows:

Regina December 12 & 13, 2007
 January 23 & 24, 2008
 March 12 & 13, 2008
 March 25 & 26, 2008
 April 8 & 9, 2008
 May 6 & 7, 2008
 May 27 & 28, 2008

Saskatoon December 4 & 5, 2007
 January 30 & 31, 2008
 February 20 & 21, 2008
 March 19 & 20, 2008
 April 22 & 23, 2008
 May 6 & 7, 2008
 May 21 & 22, 2008

Specialty Registration

If you are a registrant who initially obtained a specialty registration; have now completed a second specialty course and are wondering what you are required to do with respect to your Certificate of Registration, continue reading.

As a registrant, with a current and valid Certificate of Registration, you will have noted that your Certificate contains a box at the bottom identifying that you have a "Conditional Registration". Within that text box, the Commission identified for you the area or areas of real estate in which you are registered to trade (i.e. Residential, Commercial, Farm or Property Management).

On a weekly basis, the Commission office receives notification from its education provider of individuals completing various educational courses. Upon receipt of that information, the Commission's database is updated and the Public Inquiries section of the Commission's website immediately reflects the areas in which an individual is registered to trade.

If you as a registrant wish to have an updated copy of your Certificate of Registration, simply log onto the Commission's website at www.srec.ca, select the On-Line Transaction Log-in, enter your user name and password and proceed to print a copy of your Certificate of Registration. The new certificate reflects the change in specialty area(s) that you may trade in as a result of your successful completion of another one of the specialty courses.

If you've forgotten your user name and password, the Log-in page provides you with the following question: "Forgot your login information?" Simply click on this question, a screen will appear asking you to submit your last name, first name and birth date after which your username and password will be sent to you directly by e-mail (e-mail address registered with the Commission).

Are You Receiving E-mail from the Commission?

On October 9, 2007 the Saskatchewan Real Estate Commission sent out an e-mail to all registrants reminding them of the upcoming Commission Annual Meeting. On November 6, 2007 the Commission disseminated a CPD Survey by mass e-mail to all registrants. An article regarding "Assignment of Accepted Offers" was sent by e-mail on November 9, 2007.

If you did not receive these Commission e-mail, you may not have an e-mail address on file with the Commission; or your e-mail address may be incorrect; or your e-mail host server is not recognizing the Commission's e-mail addresses with the extension srec.ca as valid e-mail addresses and thereby rejecting the Commission's attempt to communicate with you.

If you have a valid e-mail address and did not receive the Commission's correspondence, please e-mail volfert@srec.ca and submit your e-mail address for inclusion in our database. You are also reminded that if you transfer to another brokerage, your e-mail address may require updating.

SREC Annual Report

One copy of the Saskatchewan Real Estate Commission's 2006-2007 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>.

Registrations: What's your designation?

Recent audits throughout Saskatchewan identified instances where some registrants expanded their advertising by way of business cards to include categories not identified in Saskatchewan legislation.

All advertising shall identify the name of the brokerage with whom the registrant trades. The Commission reminds registrants that the designations recognized by the Saskatchewan Real Estate Commission are: broker, branch manager, associate broker and salesperson. Categories such as sales associate, sales consultant and sales representative do not identify your registration category. In order to avoid any misrepresentation or confusion, the Commission recommends that registrants use their appropriate designations in addition to any other promotional claims in their advertising.

Specialty registration for registrants further restricts what areas registrants may trade in. Rather than mislead the public about qualification levels, SREC encourages registrants to advertise at their registered level with SREC. Registrants with special or additional accredited training and/or designations must remember that your practice flows from your category of registration; not additional non-registration designations.

You can verify your registration status by checking the Commission's website, viewing your Certificate of Registration or calling the Commission office. Remember, consumers can also check a registrant's registration category by way of the Commission's website at www.srec.ca.

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.

Beverley Chubb, Salesperson , Red Coat Real Estate Ltd. (Assiniboia)

Date of Decision: July 12, 2007

Date of Written Decision: August 8, 2007

Disposition: Beverley Chubb received a letter of reprimand and an order to pay a \$3,500 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: Mr. Chubb signed an In-house Exclusive Seller's Brokerage Contract with a seller to market a property in Assiniboia, Saskatchewan The possession date was to be March 1, 2007.

The proposed buyer's father attended the brokerage office and Mr. Chubb provided the buyer's father with the keys to the property. The buyer's father did not provide Mr. Chubb with any written documentation or authorization from the buyer, the seller or their legal representative for the keys to be released at this time.

Upon realizing that the property's keys had not been returned and that renovations had commenced, Mr. Chubb contacted the buyer's lawyer, who also acted for the seller. He was informed that the buyer was out of the country as of the proposed March 1, 2007 possession date and had not attended at the lawyer's office to sign the required documents.

The purchase documents were obtained on March 8, 2007 and the trade in real estate did fortunately complete with the Seller receiving his proper entitlement.

In handing down its decision, the Hearing Committee considered Mr. Chubb's previous sanction history and the fact that the transaction completed successfully.

It was the finding of the Commission that the circumstances of this transaction were serious. The Hearing Committee was very concerned about the seemingly unconcerned manner in which the keys were released without authorization of any kind. Whether the actions occurred in a small community or a large urban centre, it does not diminish the need for a registrant to ensure that the release of keys must be authorized by the seller. The granting of unauthorized possession of the property created a situation in which all the parties were at risk. If the buyers were not able to get back and complete the paperwork, but had made alterations to the property, the seller would have had the potential for significant loss. Other intervening events could have caused the mortgage company to back out of the deal. Insurance issues were raised. It is only through good fortune that these and other negative possibilities were averted.

The Hearing Committee found that under the circumstances, the error was extremely significant and a significant fine was required to ensure that Beverley Chubb understands the importance of not giving possession of the property before it is acceptable and authorized. The fine was also required to assure the public that registrants who fail to protect them will be seriously dealt with and they should be able to rely on registrants to carry out their responsibilities.

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



Lyndon Downey, Salesperson, Realty Executives Saskatoon

Date of Hearing: July 12, 2007

Date of Written Decision: August 8, 2007

Disposition: Lyndon Downey received a letter of reprimand and an order to pay a \$500 fine for violating Commission Bylaw 730(g).

Violation: Commission Bylaw 730(g) states: “The following approved form, provided by the Saskatchewan Real Estate Association, shall be mandatory: Ancillary Services in the Purchase of Residential Real Estate (applies only to re-sale residential real estate).”

Details: In December 2005, Lyndon Downey showed a property to his clients. The seller was represented by another registrant. The buyers and sellers negotiated an acceptable purchase price. In error, Lyndon Downey neglected to provide the buyers with the Ancillary Services in the Purchase of Residential Real Estate form at the outset of the transaction. Upon completion and occupancy, the buyers alleged misrepresentation by the sellers and/or the seller’s representative. The investigation confirmed that the buyers possessed sufficient information at the time of removal of conditions that no misrepresentation existed.

The hearing panel acknowledged Lyndon Downey’s lengthy real estate career and emphasized the importance that registrants must use the mandatory forms as and when required. The failure to use the Ancillary Services in the Purchase of Residential Real Estate form in this particular transaction was mitigated in that Lyndon Downey included in the accepted contract many “subject to” conditions for the protection of the buyers.

Jeff Howsam, Salesperson, Re/Max Saskatoon

Date of Hearing: July 11, 2007

Date of Written Decision: August 8, 2007

Disposition: Jeff Howsam received a letter of reprimand; an order to pay a \$2,000 fine for violating Commission Bylaw 730(a) and (f); an order to pay a \$2,500 fine for violating Section 39(1)(a) of *The Real Estate Act*; and an order to pay \$2,100 hearing costs.

Violations:

- (i) Section 39(1)(a) of the *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 harmful to the best interests of the public, the registrants or the Commission.”
- (ii) Commission Bylaw 730(a) and (f) read as follows: “The following approved forms, provided by the Saskatchewan Real Estate Association, shall be mandatory:
 - (a) Residential Contract of Purchase and Sale (does not apply to the sale of new condominiums); and
 - (f) Statement of Disclosure.”

Details: On the August 2006 long weekend, Jeff Howsam, while on vacation in the Lac LaRonge Provincial Park learned of a cabin for sale. Jeff Howsam viewed the cabin with friends and a relative of the owner. Thereafter, Jeff Howsam telephoned the owner in Prince Albert and made arrangements to meet the owner the following day. Jeff Howsam negotiated a \$50,000 purchase price with the seller through a hand-written offer to purchase. In error, Jeff Howsam did not use the mandatory Residential Contract of

Purchase and Sale form nor did he give written disclosure to the seller through the mandatory Statement of Disclosure form prior to negotiating the contract. A number of days later, the seller unsuccessfully attempted to cancel the transaction. At no time during the transaction did Jeff Howsam discuss the paperwork with his broker or deliver the paperwork to his brokerage.

The hearing panel reviewed evidence from all witnesses and acknowledged that two years prior, Jeff Howsam had been sanctioned for failing to use the mandatory Statement of Disclosure form. The hearing panel's position is that when registrants are involved in the purchase/sale of their own property, more caution should be taken to ensure that the proper documentation is completed and that the proper steps are taken in the transaction. Jeff Howsam successfully dispelled some allegations against him at the formal hearing which was taken into consideration when ordering the payment of hearing costs.

Janice Rother-Seale, Salesperson, Royal LePage Saskatoon Real Estate

Date of Hearing: July 12, 2007

Date of Written Decision: August 8, 2007

Disposition: Janice Rother Seale received a letter of reprimand; an order to pay a \$500 fine for violating Commission Bylaw 730(f); an order to pay a \$2,500 fine for violating Section 39(1)(a) of *The Real Estate Act*; and an order to pay a \$3,000 fine for violating Section 58(1)(b)(iv) of *The Real Estate Act*.

Violations:

- (i) Commission Bylaw 730(f) states: "The following approved form, provided by the Saskatchewan Real Estate Association, shall be mandatory: Statement of Disclosure."
- (ii) Section 39(1)(a) of the *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 harmful to the best interests of the public, the registrants or the Commission."
- (iii) Section 58(1)(b)(iv) of the *Act* states: "An offer to purchase obtained by a registrant is to clearly show, prior to execution: the price offered by the buyer and the terms and conditions of the offer."

Details: In April 2003, Janice Rother-Seale undertook to dispose of a personal resort property in Saskatchewan by way of a document entitled Lease Option to Purchase. Although at the outset, the document called for a monthly payment schedule, during the term of the agreement Janice Rother-Seale verbally negotiated increases in the monthly payments.

In error, Janice Rother-Seale did not provide the Saskatchewan Real Estate Commission's mandatory Statement of Disclosure to the buyers at the outset of signing the agreement. Also in error, Janice Rother-Seale did not deliver copies of the documents to her brokerage or flow purchase price proceeds through her brokerage's trust account. The transaction started as a sale between friends. During the term of the agreement, the friendship changed and Janice Rother-Seale unilaterally took possession of the property.

In handing down its decision, the hearing panel acknowledged that this was Janice Rother-Seale's second offence dealing in her own personal property that places a higher onus on registrants to make sure that every element of the transaction is properly completed. The hearing panel determined that Janice Rother-Seale did not provide documentation to her brokerage nor was the brokerage's management team aware of the transaction until the complaint arose.

2007 ARELLO Education Award

Several Canadian jurisdictions received the Association of Real Estate Licensed Law Officials (ARELLO) 2007 Education Course Achievement Award.

Larry Gingerich, Saskatchewan Real Estate Commission Chairperson, was very pleased to accept the award for Saskatchewan's participation in the development and delivery of the "Agency Fundamentals" course. The presentation was made at ARELLO's Annual Conference in New York held in September 2007.

The course was developed in conjunction with the Alliance for Canadian Real Estate Education (ACRE). The Commission, through its education provider, the Association of Saskatchewan REALTORS®, is delivering this course to Saskatchewan registrants as a two-day Continuing Professional Development (CPD) education upgrading for the 2006/07 and 2007/08 registration periods.

Upcoming SREC Elections

In January 2008, the Commission will be sending out a nomination form and a notice requesting the nomination of registrants as an elected member of the Commission. An election is required in Region #2 (Regina) to fill two positions that will become vacant June 30, 2008.

Please give careful consideration to this upcoming election process and be prepared to nominate individuals who wish to contribute to the betterment of the industry through service as a Commission member.

On-line Auctions

During a recent investigation, Commission investigators analyzed the activities of an on-line FSBO website from the perspective of a trade in real estate. The website activities did not constitute a trade in real estate under Saskatchewan real estate legislation. However, the activities related to this site appeared to contain elements of an on-line auction.

The Saskatchewan Real Estate Commission requested that Saskatchewan's Consumer Protection Branch review this website to determine if there was a violation relating to *The Auctioneers Act* in Saskatchewan.

The following is an excerpt from Saskatchewan Justice relating to our enquiry: "Please be advised that *The Auctioneers Act* for Saskatchewan does not extend to on-line auctions. The Consumer Protection Branch only regulates live in-person auctions through the *Act*. (The site) ... provides a place that allows people to buy and sell, but does not involved the live, in-person, in the province bidding atmosphere that you see in a regular auction. For example, the successful buyer and seller remain responsible for making arrangements for closing the transaction, unlike a regular auction where that responsibility rests with the auction company."

Visit Our Website

Visit our website at www.srec.ca for information on real estate legislation, registration requirements, recent and past issues of our newsletter, the Commission's Annual Report, investigation procedures, hearing decisions, cease and desist orders, etc.



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.

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
 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

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.

2007 Annual Financial Report

The Annual Financial Report is 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 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 2007. Please note that this report must be completed and returned to the Commission office prior to March 15, 2008. A \$300 late submission fee will be levied against a brokerage whose report is received postmarked later than March 15, 2008.

SREC Contact Info

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