

# The Register



November 2009

## Saskatchewan Real Estate Commission 21st Annual Meeting

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The Saskatchewan Real Estate Commission's twenty-first Annual Meeting was held on Thursday, October 8, 2009 at 1:15 p.m. in Saskatoon. Chairperson, Larry Gingerich welcomed all registrants and guests to the meeting. Vice Chairperson, Cheryl Elliott introduced the Commission members and staff and the Deputy Superintendent of Real Estate. Deputy Superintendent, Elaine Thompson brought greetings on behalf of the Financial Services Commission and the Minister of Justice. Ms. Thompson noted that the Commission works diligently to enhance the industry and protect the public. She extended her thanks to the Commission members and staff for a job well done.

Commission member, Phillip Mack provided an overview of the Commission's activities for 2008-2009 that included:

- integration of the articling courses into the Phase I course;
- revisions to the reciprocity course for registrants coming from another jurisdiction;
- development of a joint Commission/Association database;
- changes to the Residential Contract of Purchase and Sale form;
- implementation of a new Disclosure of Interest in Trade form;
- joint meetings with the Association and other member boards to discuss issues of mutual concern; and
- the start of a major review of all Saskatchewan real estate legislation.

Special presentations were made to Donnett Elder (public appointee from Regina), Scott Musgrave (Lloydminster registrant) and Terry Powell (public appointee from Saskatoon) who were each honoured for their three-year term of service as Commission members. Although the term for Donnett and Terry has expired; pursuant to legislation they continue to serve on the Commission until the Lieutenant-Governor-in-Council re-appoints them or names a replacement. During the election process last spring, Scott Musgrave choose not to run for another term and in his place Marion Piper (Lloydminster registrant) was elected to serve on the Commission. The Commission would like to extend its sincere appreciation and thanks to Donnett, Scott and Terry for their commitment and contribution to the real estate industry and welcome Marion Piper as a new member to the Commission.

Thank you to everyone who took time out of their busy schedules to attend the Commission's Annual Meeting.

## *Commission Honours its Executive Director/ Registrar*

At the Commission's Annual Meeting on October 8, 2009, the Commission honoured its Executive Director/Registrar, Al Jacobson for his twenty years of service to the real estate industry.



Mr. Jacobson joined the Commission as its Compliance Officer in January 1990 after spending 21 years with Canada's federal police agency, the R.C.M.P. which involved several years experience in the Commercial Crime section investigating major white collar crimes. In September 2005, the Commission appointed Mr. Jacobson as its new Executive Director/Registrar.

Mr. Jacobson obtained a Bachelor of Administration Certificate from the University of Saskatchewan in 1988. He successfully completed the Canadian Securities Course and a Forensic Accounting Course for Economic Crime in 1989. In 1992 he received the designation of Certified Real Estate Investigator from ARELLO (Association of Real Estate License Law Officials).

During his years with the Commission, Mr. Jacobson has been responsible for:

- the auditing of brokerages' trust accounts;
- ensuring that financial reports submitted by brokerages relating to trust accounts were submitted promptly and completed accurately and conducting follow-up relating to discrepancies;
- investigating complaints involving possible breaches of real estate legislation;
- acting as a prosecutor at Commission hearings;

- providing input regarding legislative changes;
- assisting registrants and consumers in their inquiries relating to the industry;
- monitoring the financial affairs of the Commission; and
- speaking on behalf of and representing the Commission at numerous seminars and conferences.

The Commission would like to take this opportunity to express their heartfelt thanks to Mr. Jacobson for his dedication and participation in the real estate industry. Mr. Jacobson's commitment to quality is clear in everything he does. His dedication contributes to the success of the industry and his innovative ideas have helped Saskatchewan's industry to keep current with the changing marketplace. Thanks to the knowledge and expertise he brought to his positions with the Commission, Mr. Jacobson has been instrumental in creating an open and transparent approach to meeting the needs of registrants and consumers. We look forward to enjoying Mr. Jacobson's valuable input and assistance for several more years.

## *Upcoming Commission Election*

In January 2010, the Commission will be sending out a nomination form and a notice requesting the nomination of registrants for the upcoming election process. An election is required in Region #1 (Saskatoon) to fill two positions that will become vacant after June 30, 2010.

Serving as a Commission member is an excellent opportunity for registrants to contribute to the betterment of the real estate industry. We encourage you to participate in this very important process.

### *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.**

## *Maternity Leave*

Recently, the Commission office has received several inquiries relating to registrants wishing to take a maternity leave of absence from the industry. The following questions were raised:

**I am a registrant and a member of a local real estate board and I am planning on taking maternity leave. I would like to retain my status as a registrant. What requirements are there?** If you wish to retain your registration status with the Saskatchewan Real Estate Commission to trade in real estate, then your brokerage does not need to terminate your Certificate of Registration when you leave the office on your maternity leave. The registration you received on July 1, 2009 is effective until June 30, 2010. If you and your broker choose to terminate your registration at any time, you have two years to re-instate your registration without being required to re-take the Phase I and Phase II courses. Your registration is not contingent on holding membership in any Association/Board. You would have to contact ASR or the local real estate board to determine the rules relating to membership in your particular circumstance.

**Do I need to take the CPD course in the next year?** Yes, you must continue to complete the CPD course each registration year during your absence from the industry.

**Do I still pay my fees with CREA and SREC?** You will have to contact your local real estate board through which you pay your membership dues for CREA to find out what their requirements are regarding fees. As for the Commission, if you wish to continue to be registered but remain inactive during your leave, then you will have to apply for registration renewal in June 2010 to retain registration status for the 2010-2011 registration year.

**Can you let me know what those fees would be?** Contact the local real estate board regarding your membership dues. Registrants will be notified through the on-line registration process in early May 2010 of the fees for the registration year July 1, 2010 to June 30, 2011.

**My broker and I were also wondering what happens with listings that I have that carry over into the year**

**that I am not working. If I remain registered, do they stay in my name and my broker services those clients on my behalf? Do we cancel those listing and re-list in the broker's name if the clients choose to do so?** No, the listings do not need to be cancelled. The listings belong to the brokerage so if you decide to terminate your registration or no longer wish to actively trade in real estate, then your broker should contact the clients and inform them that you are no longer registered or no longer active with the brokerage and provide the name of the registrant who will now be looking after that listing. In addition, the broker should ensure that all advertising and MLS information relating to that listing is amended to reflect this change.

## *Use of the Revised Residential Contract of Purchase and Sale Form*

In the Commission's February 2009 issue of its newsletter, an article entitled "*Return of Deposits Addressed in Revised Residential Contract of Purchase and Sale Form*" addressed the importance of adopting the immediate implementation of the form for public protection in dealing with the deposit return issue.

The revised Residential Contract of Purchase and Sale form is a mandatory form required under Section 730 of the Commission Bylaws. The Saskatchewan Real Estate Commission's implementation date of this new form was April 1, 2009. Registrants failing to use this form from the implementation date forward are not in compliance with the real estate legislation. The Saskatchewan Real Estate Commission's Director of Audits will be monitoring the use of the form during future brokerage audits.

For audit purposes, the Saskatchewan Real Estate Commission is encouraging brokers to seek a written request for the deposit from the applicable party, buyer or seller prior to the release of the deposit. The Commission is of the opinion that the wording of Section 7 on the contract is sufficient to deal with the issue of how disputed trust funds are to be handled. As a result, the Commission does not see the value of registrants using forms that were designed to provide a mutual release of trust funds between the parties that had been used with older versions of the contract. The mutual release consent between the parties is now included in the contract.

In the spirit of co-operation and the betterment of the real estate industry, the Commission thanks you for your anticipated co-operation in this matter.

## Continuing Professional Development

As part of registration renewal on June 30, 2010, all registrants are required to have attended and successfully completed the *Real Estate Update* workshop. The CPD course, *Real Estate Update* includes: legislative changes, compliance issues, legal updates, elements of risk reduction, professional standards and other current and timely issues. The workshops are being held in ten different locations around the province, with a total of over forty workshops. The cost of the workshop is \$120.00/registrant. Class sizes are approximately 40 participants per workshop and will be filled on a first come, first served basis.

Enrollment forms were sent to all brokerage offices in late July. To enroll in the workshop or for more information, please visit the Association of Saskatchewan REALTORS® website at:  
www.saskatchewanrealestate.com.

## On-Line Registration A Broker's Responsibility

Brokers are reminded that it is their responsibility to process the registration or termination of registrants with their brokerage through the Internet-based on-line registration database.

If you have a new applicant joining your brokerage, please ensure that the applicant completes the Registration Application form. The broker or his/her designate is to log into the Commission's database via the Commission's website at [www.srec.ca](http://www.srec.ca) for the purpose of processing the applicant's Certificate of Registration to represent the brokerage. Care must be exercised to ensure that the information is accurate when it appears in the database.

Likewise, when a registrant ceases to represent the brokerage, that individual's termination should be processed on-line via the Internet within five days of termination pursuant to 54(2)(b) of *The Real Estate Act*.

Please note that brokers should ensure that the criminal record check has been received by the Commission prior to proceeding on-line to process the registration for a new applicant.

## Criminal Record Check

It has come to the attention of the Commission that in many instances students taking the introductory real estate courses for registration purposes are waiting till only a few days prior to making application for registration to proceed with obtaining a criminal record check by fingerprint comparison. This delay could result in the Saskatchewan Real Estate Commission refusing to grant a Certificate of Registration.

The Saskatchewan Real Estate Commission strongly recommends that in those instances where brokerages are working with potential new applicants that every effort is made to encourage these students to obtain a criminal record check immediately after enrollment in the Phase I course.

The following organizations provide electronic fingerprinting service wherein the results can be remitted directly to the Saskatchewan Real Estate Commission in as little as two weeks:

### Commissionaires Offices:

Regina Office  
122 Albert Street  
Regina, SK S4R 2N2  
306-757-0998

Saskatoon Office  
493 – 2<sup>nd</sup> Avenue North  
Saskatoon, SK S7K 2C1  
306-244-6588

### FPS Fingerprint Pardon Services:

Regina Office:  
Tkach Law Building  
100B, 2500 – 13<sup>th</sup> Avenue  
Regina, SK S4P 0W2  
306-205-2532

Saskatoon Office:  
#5 – 39 – 23<sup>rd</sup> Street East  
Saskatoon, SK S7K 0H6  
306-655-4030

## *Commission Disciplinary Action*

The Saskatchewan Real Estate Commission's complete written hearing decisions are available on the website at [www.srec.ca](http://www.srec.ca). Select the menu item "Decisions" in the menu bar at the top of the home page.

### **Glenn Roth, Sutton Group – Norland Realty (Saskatoon)**

**Date of Hearing:** June 18, 2009

**Date of Written Decision:** July 17, 2009

**Disposition:** Glenn Roth received an order of reprimand; an order to pay a \$2,000 fine for violating 39(1)(a) of the *Act*; and an order to pay a \$1,500 fine for violating Commission Bylaw 730(g).

**Violations:**

- (a) 39(1)(a) 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 harmful to the best interests of the public, the registrants or the Commission."
- (b) Commission Bylaw 730(g) of states: "The following approved forms, provided by the Association of Saskatchewan REALTORS®, shall be mandatory: (g) Ancillary Services in the Purchase of Residential Real Estate (applies only to re-sale residential real estate.)"

**Details:** This matter involved a couple emigrating from Ontario interested in buying an acreage in or around Saskatoon. The buyers, at the direction and with the assistance of Glenn Roth, submitted an offer that was accepted by the sellers. Glenn Roth failed to ensure that the Ancillary Services in the Purchase of Residential Real Estate form was completed as required by statute. Mr. Roth stated that the husband commented during the viewing of the property that he was satisfied with his own visual inspection. Consequently, no Surveyor's Certificate was recommended by Mr. Roth even though issues about lot size and encroachments were raised. If the mandatory form had been completed, the buyers would have been afforded the extra protection provided through the use of the Ancillary Services form.

The Hearing Panel identified three noteworthy points in its rationale that warrant attention.

- (a) If the registrant was not sure on what to do, he "should have checked with his broker as to what action he should have taken."
- (b) "Prior fines for a breach of Bylaw 730(g) have not been sufficient to show registrants that mandatory forms are indeed mandatory and not discretionary"... and "We also hope the industry in Saskatchewan will take further note that mandatory forms must be used or the consequences will be significant."
- (c) Brokers should create a checklist to ensure that mandatory forms are completed in every trade in real estate."

### **Kevin Wouters, Century 21 Conexus Realty Ltd. (Prince Albert)**

**Date of Hearing:** November 28, 2008

**Date of Written Decision:** December 19, 2008

**Disposition:** Kevin Wouters received an order of reprimand; an order to pay a \$1,500 fine for violating Commission Bylaw 711; and an order to pay a \$1,000 fine for violating Commission Bylaw 712.

**Violations:**

- (a) Commission Bylaw 711 in part states: "A broker or branch manager shall adequately supervise the activities of the registrants and other personnel for whom he or she is responsible. In determining the adequacy of the supervision, the Commission will consider the following factors, but will not be limited to making a determination on these factors alone:  
(d) whether the broker or branch manager had undertaken all reasonable steps to ensure compliance by all salespersons and other personnel; and  
(e) whether the broker or branch manager took corrective and remedial action when a violation by a salesperson or other personnel was discovered."
- (b) Commission Bylaw 712 in part states: "A broker or branch manager shall be responsible for:  
(b) reviewing and approving all advertising to ensure compliance with the *Act*, the regulations and the bylaws;  
(e) taking reasonable steps to ensure that the brokerage and its registrants are in compliance with the *Act*, the regulations and the bylaws."

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

**Details:** In early May 2008 Branch Manager, Kevin Wouters addressed advertising protocols with registrant, Garry Schriml, who was under Kevin Wouter's supervision. Following this meeting, between May 10, 2008 and July 26, 2008 Gary Schriml advertised or caused to be advertised 42 advertisements in a local newspaper without identifying his brokerage and failed to submit the advertisements to his Branch Manager for approval as required by statute. The subsequent review determined that all advertising was not reviewed and approved by Kevin Wouters and that reasonable steps were not taken "to ensure that the brokerage and its registrants are in compliance with the *Act*."

Kevin Wouters spoke of the difficulty of managing independent contractors and that it is hard to deal with the matter if it does not cross his desk; however, in rendering its decision, the hearing panel recognized that it may be difficult to "deal with advertising not provided to you, there must be procedures and policies to minimize the occurrence of such breaches." The hearing panel clearly announced that "Brokers and Branch Managers are responsible for the actions of their agents pursuant to *The Real Estate Act*."

On appeal, the Commission's hearing decision to the Deputy Superintendent of Real Estate was upheld.

**Garry Schriml, Century 21 Conexus Realty Ltd. (Prince Albert)**

**Date of Decision:** November 28, 2008

**Date of Written Decision:** December 19, 2008

**Disposition:** Garry Schriml received an order of reprimand; an order to pay a \$2,000 fine for violating Section 55(2) of *The Real Estate Act*; and an order to pay a \$3,000 fine for violating Commission Bylaw 729.

**Violations:**

- (a) 55(2) of the *Act* states: "No broker, branch manager, associate broker or salesperson shall advertise a trade in real estate unless the advertisement indicates the name of the brokerage for which the broker, branch manager, associate broker or salesperson is authorized to act."
- (b) Commission Bylaw 729 states: "A salesperson or associate broker shall submit all advertising to his or her broker or branch manager for approval prior to publication."

**Details:** Between May 10, 2008 and July 26, 2008 Mr. Schriml advertised or caused to be advertised 42 advertisements in a local newspaper without identifying his brokerage and failing to submit these advertisements to his Branch Manager for approval. These events took place following a meeting with his Branch Manager within 10 days of discussing advertising protocols.

Mr. Schriml clearly admitted his error and apologized for his transgression. In defense of his actions, Mr. Schriml did advise that he had experienced serious medical problems during this period.

In summary, the Hearing Panel stated that consideration to Mr. Schriml's medical condition was given when rendering its decision and "are a factor in the fines not being higher." The Hearing Panel went on to state that all advertising must be reviewed [by the Broker or Branch Manager] and all advertising must refer to the brokerage. "All registrants must feel confident that such a breach will be dealt with seriously... The Hearing Panel wants this to be a strong message to the registrants that advertising rules must be adhered to or there will be significant sanctions imposed."

On appeal, the Commission's hearing decision to the Deputy Superintendent of Real Estate was upheld. The Deputy Superintendent, in her decision, stated "I also find that the Commission's decision in quantum on both counts is reasonable and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."



## *Stigmatized Properties*

The following article is re-printed here courtesy of the Real Estate Council of British Columbia and parallels the Saskatchewan Real Estate Commission's position on this topic:

*What is a seller's (and seller's agent's) obligation to disclose a stigma if asked directly about it by a buyer or a buyer's agent?*

Unlike the obligation to disclose a material latent defect, a seller and, therefore, a licensee representing that seller does not have an obligation to disclose the existence of stigmas which might affect their property. Therefore, if asked about the possible existence of stigmas, the seller, or licensees representing the seller, may:

- a) answer the question directly; or
- b) decline to answer the question and advise the buyer to conduct their own investigation.

Before responding to such a question on behalf of their seller, a licensee should first seek direction from their seller about whether to answer or to decline to answer. Sellers and their licensees who choose to answer such questions are expected to use reasonable skill and care to ensure the accuracy and completeness of the information provided to buyers.

A refusal to answer questions may raise a warning flag for a prospective buyer who may then wish to find the answers through their own independent research.

*Are the obligations different in dual agency?*

Despite the fact that a seller does not have an obligation at law to disclose the existence of a stigma that affects their property, the seller has, when consenting to the listing brokerage acting as a limited dual agent, agreed that the brokerage will have a duty of disclosure to the buyer, excluding:

- a) that the seller is willing to accept a price or terms other than those contained in the listing;
- b) the motivation of the seller to sell; or
- c) personal information about the seller.

Under the current limited dual agency system, the brokerage has a duty to disclose to the buyer all material information except that which has been excluded by the

limited dual agency agreement with the consent of both the buyer and the seller. Accordingly, where the buyer has made their concern about a stigma known to the brokerage through the buyer's representative, and the brokerage through the listing representative is aware of the existence of such a stigma, the brokerage has a duty to disclose that information to the buyer. Where the brokerage does not have knowledge of the existence of a stigma and an inquiry is made by the buyer, the options set out above related to the first question would apply.

## *Fraud Alert*

Recently the Saskatchewan Real Estate Commission learned of a course of conduct relating to at least half a dozen collapsed trades in real estate that had the potential of placing registrants and other parties to the transaction in jeopardy.

A buyer using the names: Lance Wellsch; Lance Collman and Lance Walsh, approaches registrants for the purpose of writing high-end Residential Contracts of Purchase and Sale. The buyer proposes and often presents a significant deposit cheque (\$10,000, \$20,000 and even \$30,000) as part of the purchase process. For the most part, registrants properly process the deposit cheques into the brokerage's real estate trust accounts. What appears to happen is that the buyer's financial institution(s), upon receipt of the cheque, returns the cheque through their clearing house for any number of reasons: account closed; wrong account; insufficient funds, etc. Based on the known transactions to date, this buyer possesses no financial means to complete the transactions.

The Saskatchewan Real Estate Commission reminds registrants that their FINTRAC disclosure requirements remain federally legislated and are over and above Saskatchewan real estate legislation.

We provide this information to assist registrants in their goal to protect clients from misrepresentation. Registrants writing factually incorrect information on contracts of purchase and sale do so at the risk of causing harm to their clients and facing possible disciplinary action from the Commission.

The Commission encourages registrants to report the criminal nature of the actions to Saskatoon Police Services

who have an ongoing interest in the person using these names for fraudulent use of credit cards and fraud and to have their clients report suspicious activity to the local police authorities. The buyer referred to in this article is of special interest to the Saskatoon Police Service.



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.

## *SREC Contact Info*

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

Our fax number is: **1-306-373-2295**  
Our telephone numbers are:  
1-306-374-5233  
1-877-700-5233 (Toll Free)

Our website address is: [www.srec.ca](http://www.srec.ca) and we may be reached at the following e-mail addresses:

Al Jacobson	<a href="mailto:ajacobson@srec.ca">ajacobson@srec.ca</a>
Chris Mason	<a href="mailto:cmason@srec.ca">cmason@srec.ca</a>
Ed Miller	<a href="mailto:emiller@srec.ca">emiller@srec.ca</a>
Verna Olfert	<a href="mailto:volfert@srec.ca">volfert@srec.ca</a>
Jason Weiler	<a href="mailto:jweiler@srec.ca">jweiler@srec.ca</a>
Allan York	<a href="mailto:ayork@srec.ca">ayork@srec.ca</a>

## *Brokerages' 2009 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 [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 2009. Please note that this report must be completed and returned to the Commission office prior to March 15, 2010. A \$300 late submission fee will be levied against a brokerage whose report is received postmarked later than March 15, 2010.

### *The Saskatchewan Real Estate Commission will be closed on the following days:*

*December 24, 2009 (afternoon)*  
*December 25, 28-31 Christmas Holidays*  
*January 1, 2010 - New Years*

## *Commission Members*

Larry Gingerich (Saskatoon,) Chairperson  
Cheryl Elliott (Prince Albert), Vice Chairperson  
Donnett Elder, Regina  
Richard Jeanneau, Saskatoon  
Phillip Mack, Regina  
Anne Odishaw, Saskatoon  
Marion Piper, Lloydminster  
Terry Powell, Saskatoon  
John Puderak, Saskatoon  
Ron Skinner, Yorkton  
Wayne White, Regina

## *Commission Staff*

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