



THE REGISTER

SREC Newsletter

November 2019

In This Issue...

The Saskatchewan Real Estate Commission's mission is, ***"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."*** Part of the way the Commission manages this duty is to review and audit brokerages and their brokers and branch managers on a regular basis.

The Commission uses the audit process to educate and inform brokers. In addition, the Commission publishes this newsletter on a quarterly basis as a way to update and inform all registrants of important trends and issues.

In this edition, we focus on several items from the Compliance Department:

- 1) 10 common issues that arise during brokerage compliance audits.
- 2) Brokers and Branch Managers' responsibilities.
- 3) Implications of non-cooperative in-house exclusive listings. **AND MORE!**

As always, we enjoy hearing from our registrants. In addition to sending us requests for information you would like to see in upcoming issues of *The Register*, do not hesitate to contact us with any questions or concerns you might have: info@srec.ca.

We hope you enjoy this issue!



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Are you ensuring you are doing what you can to demonstrate your PROFESSIONALISM?

Brokerage Compliance Audits

10 Common Issues

1. The registrant has not obtained copies of any documents authorizing a person to sign on behalf of someone else.

There are several documents that can be used to grant a person the legal authority to sign documents on behalf of someone else. These documents include Powers of Attorney; Letters Probate or Letters of Administration with respect to estates; or simple, written statements indicating that the writer is granting a named person legal authority to sign documents on the writer's behalf. When a registrant allows a person to sign documents on behalf of a client, the registrant should take steps to ensure that the person signing actually has the legal authority to sign documents on the client's behalf. These steps include viewing a copy of the document granting the signing authority and keeping a copy of the document on the real estate file. If a registrant reviews the document and is not sure that the document permits a person to sign on the client's behalf, the registrant should consult legal counsel.

When a registrant is representing a corporation, the registrant should be obtaining copies of the Corporate Registry Profile or some other documentation confirming that the individual with which the registrant is dealing is authorized to make decisions and sign documents on behalf of the corporation.

2. Signatures that do not indicate if they were signed in the morning or evening.

The majority of standard forms used in real estate transactions include a space where buyers and sellers are asked to note the time the document was signed. In many cases, the documents involved in the transaction are time-sensitive. For example, an offer to purchase a property is only open for acceptance until the time indicated in the offer. If the offer is not accepted within the allotted time, the offer expires and can no longer be accepted by the seller. While other documents do not include an expiry date, noting the time they were signed provides important information about the timeline of a transaction.

The forms call for the registrant or the person signing to indicate whether the time of signing was in the morning or evening, but this is not always done. It is very common to see forms that note that a party signed at 8:45, but do not indicate if it was 8:45 a.m. or 8:45 p.m.

3. The "6/4/2" commission notation.

Section 57(2)(d) of *The Real Estate Act* specifies that an agency agreement must show the total amount of commission, as a lump sum or as a percentage, to be paid to the brokerage. It is important that the commission payable be expressed in a manner that complies with this requirement and that is understood by the person signing the agency agreement. While notations such as "6/4/2" are common among registrants, the meaning may not be as clear to members of the public. It is the registrant's responsibility to ensure that the client understands how commission will be calculated and, in case there is disagreement about the commission owing, the registrant would be well-advised to make sure the contract is quite clear with respect to the calculation of commission.

Notations such as "6/4/2" are extremely common on agency agreements in some markets, but this is not a sufficiently clear statement of the commission payable.

4. A lack of witness signatures.

Wherever it is called for by a form, the signature of a party to a trade in real estate should be witnessed by another person. A witness' signature is intended to provide a measure of security. The witness signs his or her name to indicate that he or she was present to observe the party sign the document. This provides independent confirmation that the party named in the document was the one to sign it.

If there are two buyers signing an offer, the witness to the buyers' signatures should sign the offer twice, as witness to each buyer's signature, even if the witness was present while the buyers signed the document at the same time.

Section 57 and 58 of the *Act* specifically state that agency agreements, offers, counter offers and amendments must be signed "in the presence of a witness". This means that a person who signs these documents as a witness must be physically present at the time the document is signed by the buyer or seller. The same holds true when a client is signing documents electronically. The person signing as a witness must be physically present with the client when he or she affixes an electronic signature to the document.

Regardless of the capabilities of electronic signature software, sections 57 and 58 of the *Act* explicitly require that certain documents be executed in the presence of a witness.

5. An improperly worded condition regarding the Property Condition Disclosure Statement.

It is not uncommon to see the following condition regarding a Property Condition Disclosure Statement on an offer to purchase:

Subject to the buyer receiving a satisfactory Property Condition Disclosure Statement, that will be incorporated into and form part of the contract, on or before [date]".

The portion of this condition that states that the PCDS will be "incorporated into and form part of the contract" is actually a term. As the buyer no doubt intends the representations made by the seller in the PCDS to continue to apply after the transaction is complete, this statement should not be included in a condition that must be removed before the transaction can be completed. A more appropriate way to deal with the PCDS is to write a condition requiring that the buyer be presented with a satisfactory PCDS by a specified date and a term indicating that the PCDS will be incorporated into and form part of the Contract of Purchase and Sale.

6. Offers must include the name and address of the buyers and sellers.

Section 58 of the *Act* requires that an offer to purchase clearly show the names and addresses of the buyer and seller and the name, address and telephone number of the brokerage(s).

Offers to purchase that do not include an address for the buyer are not compliant with s. 58 of the *Act*.

7. Handwritten additions to typed documents are not initialled by the parties.

When handwritten material is added to a typed document, all parties should initial the additions to make it clear that they are aware of, and agree to, the handwritten items.

The purpose of having the parties initial handwritten additions is to make it clear that the parties are aware of, and consent to, the inclusion of the handwritten items in the contract of purchase and sale. Without the parties' initials, it could appear that some material was added to the document without the parties' knowledge after the document was signed.

8. The standard FINTRAC forms were not provided.

The federal government has mandated that real estate agents must comply with the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. The legislation is enforced by the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"). A registrant's duties under the *Act* include reporting suspicious transactions and client identification. Failure to comply with the FINTRAC requirements can result in administrative monetary penalties or criminal penalties.

The Commission does not regulate the completion of FINTRAC forms, but the absence of these forms is raised in the compliance audit process to ensure brokerages are aware of their obligations under the federal legislation.

9. The contracts of purchase and sale include terms and conditions that are not clear or that contain errors or contradictory information.

It is important to remember that a Contract of Purchase and Sale is a contract. All of the terms and conditions of the agreement and the rights and obligations of the parties are contained in this document. If a contract is clear and comprehensible to the parties, it is less likely that there will be any future disputes about what each party is entitled to and obligated to do pursuant to the agreement. As the individuals responsible for drafting the Contract of Purchase and Sale, the responsibility for ensuring that the written agreement accurately and coherently sets out the deal the parties intended to make lies with the registrants involved in the transaction.

It is not uncommon to find two terms in different places in the contract of purchase and sale that contradict one another. In other cases, the terms or conditions do not include sufficient detail to clarify the rights and obligations of each of the parties to the contract. For example, a term allowing the seller to leave certain items at a property after possession should be clear as to what those items are and where and how they are to be stored and should include a deadline by which the seller is expected to remove the items.

Sometimes the drafting of an item in a contract of purchase and sale does not make it sufficiently clear whether the item is to be considered a term or a condition. For example, consider the following sentence: "The seller is to provide a completed Property Condition Disclosure Statement to the buyer on or before January 8, 2020." Is this item a term or a condition? Sometimes, the placement of the item in the contract can provide a clue as to how it should be interpreted. If the item is in paragraph 2.2(b) of the Residential Contract of Purchase and Sale with the other conditions it may be more likely that it is intended to be a condition; if it is included on an attached Schedule "A", it may be more likely that it was intended as a term.

However, the reliability of this method is jeopardized by the fact that it is extremely common for registrants to include terms in paragraph 2.2 (b) of the Residential Contract of Purchase and Sale with the conditions rather than adding another page to the contract by putting the term on a schedule.

10. Unless the buyer directs otherwise, all reports or inspections selected on the Ancillary Services form should be included as terms or conditions on the offer.

Buyers are expected to carry out their own due diligence before purchasing a property. Typically, buyers will hire professionals to conduct an inspection of a property or obtain copies of reports relating to a property in order to gather information about the property. The buyer's goal is to find out if there are any issues with the property that would require repair or that would deter the buyer from purchasing the property.

The purpose of the Ancillary Services form is to make buyers aware of the inspections and reports they can request when purchasing a property. As such, it is important that the Ancillary Services form be provided to the buyer before he or she makes an offer to purchase so that the offer can be made subject to the completion or receipt of the selected inspections and reports. All services and reports selected on the Ancillary Services form should be included as conditions on the offer to purchase unless the buyer directs otherwise.

Save the DATE

2019

Commission Meeting
Dec. 5 (Saskatoon)

Professional
Corporation Permit
renewals

Oct. 15-Dec. 31

2020

2019/20 CPD launch
January 2

Commission Meeting
March 5 (Regina)

Brokerage Annual
Financial Reports due
March 15

CPD completion
deadline for 2019/20
May 31

Real Estate
Regulators of Canada
Conference
Quebec, June 3-5

Registration renewals
due
June 30

2020/21 registration
year begins
July 1



Broker & Branch Manager Responsibilities

Over the course of the past several months, the Investigation Committee has become increasingly concerned with brokers and branch managers failing to meet their legislative obligations with regards to adequately supervising registrants.

As such, the Commission would like to take this opportunity to review Bylaw 711 and 712 to reiterate the legislative obligations placed upon brokers and branch managers with regards to registrant supervision. Bylaw 712 requires a broker/branch manager to be responsible for:

- (a) Reviewing and initialling all real estate agreements in a timely manner, including but not limited to those related to agency relationships and accepted offers to purchase;*
- (b) Reviewing and approving all advertising to ensure compliance with the Act, the regulations and the bylaws;*
- (c) Ensuring that the brokerage utilizes only registered personnel to perform the duties of registrants on behalf of the brokerage;*
- (d) Providing all registrants and personnel with written policies and procedures by which they are expected to operate;*
- (e) Taking reasonable steps to ensure that the brokerage and its registrants are in compliance with the Act, the regulations, and the bylaws; and,*
- (f) Complying with the Succession Plan in Schedule C of these Bylaws.*

Bylaw 711 specifically requires a broker or branch manager to adequately supervise the activities of the registrants and other personnel for whom he or she is responsible. The Bylaw outlines the following factors to be considered in determining the adequacy of the supervision:

- (a) Whether the broker or branch manager was physically available to supervise;*
- (b) Whether the broker or branch manager had established written policies and procedures;*
- (c) Whether the broker or branch manager held regular staff meetings to determine that policies or procedures were properly implemented;*
- (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.*

Bylaw 711 also notes, however, that the Commission will not be limited to making a determination on adequacy of supervision on these factors alone.

The Commission is well aware that supervisory capacity varies greatly from brokerage to brokerage and is largely dependent on the number of transactions, branch offices, and registrants within each brokerage. However, this does not absolve one of liability under Bylaws 711 & 712.



Implications of a Non-cooperating In-House Exclusive Listing Agreement

Bylaw 708 requires a registrant, at the time of signing an in-house exclusive written agreement, to have written notification from the seller that the seller requests the registrant's brokerage to cooperate or to not cooperate with other brokerages in the marketing of the seller's property. If the seller directs the brokerage not to cooperate with the other brokerages, the brokerage shall state the implications of this arrangement to the seller in writing.

It is important that registrants understand the importance of providing a client with written explanations of the potential consequences of entering into an in-house exclusive listing when such an agreement is being done.

Members of the public must be confident that the registrants they engage to represent them in trades in real estate are taking all the necessary steps to abide by the legislation and explain all aspects of the transaction to their clients. A registrant serves the interests of his or her clients by using the registrant's specialized knowledge and expertise to ensure the client has the information he or she needs to make an informed decision regarding how to proceed with a transaction. By setting out the potential implications of an in-house exclusive listing, the registrant gives the client the information needed to determine if such a listing is in the client's best interests or not.

Given the uniqueness of an in-house exclusive listing, it is extremely important to provide written notice to consumers of the implications of a non-cooperating listing agreement. Stating these implications orally is not sufficient, as it is possible the consumer did not hear or understand everything stated, or that they will forget or confuse the message. There is also the risk that they may remember a conversation differently from the agent in the event of a problem arising in the future. The client must be aware that this type of agreement may have serious consequences for them and they have to be clear of all the implications. Therefore, the statement is a protection for both the registrant and the consumer in the circumstances.

This becomes exceedingly important if and when a registrant is involved in a transaction. In such a case, there is an obligation to take extreme care in representing the documentation to the public.

The Saskatchewan Real Estate Commission Policies identify the implications of an in-house exclusive listing that must be presented to a seller in writing as:

Implications of a Non-cooperating In-House Listing Agreement

Minimum Consequences for a registrant to disclose to seller

- *Reduced Market Exposure*
- *Fewer Potential Buyers*
- *Sale Price Potentially Reduced*
- *Buyers Restricted from Purchasing*

Commission Decision Summaries

Details of Commission decisions can be found on our website through the links provided at the beginning of each summary.

The Commission is also proud to promote our presence on CanLII, [here](#) (full coverage from 1997).

2018-55 Peter Furlas: On August 28, 2019, Mr. Furlas was issued an order of reprimand and:

- a \$1,750 fine for breaching Bylaw 701(a) by drafting offers to purchase that identified Mr. Furlas, his broker and the brokerage with which Mr. Furlas was registered as representatives of the seller when, in fact, the seller was not represented by a registrant; and
- a \$1,000 fine for breaching s. 58(1)(b)(ii) of *The Real Estate Act* by drafting an offer to purchase that did not clearly show, prior to execution by the buyer, the name of the seller.

2019-25 Christopher Moser: On August 28, 2019, Mr. Moser was issued an order of reprimand and a \$2,000 fine for breaching Bylaw 709 by carrying on negotiations concerning an exclusively listed property with the client directly without the consent of the client's agent.

2019-29 Laurie Lunde: On September 19, 2019, Ms. Lunde was issued an order of reprimand and a \$1,250 fine for breaching Bylaw 728 by failing to take down a "For Sale" sign from the window of a property after the listing had expired.

2019-19A Jenna Schmid: On September 19, 2019, Ms. Schmid was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 726(b) by creating an MLS® Listing that stated the basement walls of a property were concrete when they were, in fact, wood.

2018-29 Vic Jacobucci: On October 7, 2019, Mr. Jacobucci was issued an order of reprimand and:

- a \$1,000 fine for breaching s. 57(2)(c) of *The Real Estate Act* by drafting an agency agreement that included an expiry date that was more than 12 months from the date of the agency agreement; and
- a \$1,500 fine for breaching s. 39(1)(a) of the *Act* by allowing his seller client to sign the agency agreement before the document was fully completed.

2019-24 Roger Wilson: On October 7, 2019, Mr. Wilson was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 702 by failing to protect and promote the interests of his brokerage's client.

2019-02 Justin Morrison: On October 7, 2019, Mr. Morrison was issued an order of reprimand and a \$1,500 fine for breaching Bylaw 702 by failing to protect and promote the interests of his client when he did not incorporate the seller's obligation to complete work on the property into the contract of purchase and sale.

2019-01A Imperial Properties Corp.: On November 6, 2019, Imperial Properties Corp. was issued an order of reprimand and:

- a \$1,250 fine for breaching Bylaw 712(c) by allowing unregistered employees of the brokerage to trade in real estate; and
- a \$1,250 fine for breaching Bylaw 617 by utilizing a property management agreement that did not include several mandatory elements of a property management agreement.

2019-17 James William Tait: On November 6, 2019, Mr. Tait was issued an order of reprimand and a \$2,000 fine for breaching Bylaw 708 by failing to state the implications of an in-house exclusive non-cooperating agreement in writing.

Notes From the Registration Department

Brokerage Annual Financial Reporting

The Commission is, in part, mandated to protect consumers and as such an annual financial report from brokerages is an essential part of substantiating how brokerages manage funds entrusted to their brokerage.

Bylaw 606 states all brokerages must file an annual financial report with the Saskatchewan Real Estate Commission for the previous calendar year. The purpose of these reports is to communicate to the Commission a summary of the brokerage's operations over the past calendar year. The Commission conducts audits of brokerage trust accounts to ensure compliance with the *Act*.

Brokerages will have access to file their report beginning January 1, 2020 from their main screens of the Commission's online registration system. It is important to remember the report is not considered complete until all requested and supporting documentation is received by the Commission and post marked on or prior to March 15, 2020. Documentation may be scanned as high-quality PDFs and emailed to info@srec.ca. You may also submit via fax to 306 373-2295 or mail to 237 Robin Crescent, Saskatoon SK S7L 6M8.

Whichever method you choose to submit your documentation, please send only ONE copy. You should retain all originals with your file records.

Individual Professional Corporation (PC) Permits - **TIME TO RENEW**

All PC Permits issued by the Commission expire on December 31st of the issuing year as per *The Professional Corporations Act*. Renewal notices regarding the upcoming expiry were recently sent to all current PC permit holders.

The Commission started recording the annual return dates of individuals' PCs over this past year. This should help with more of a rolling over renewal. **Make a note that whenever you file your annual return to forward the corporate profile report to the Commission at that time.**

If your PC annual return date has been updated and is after December 31, 2019, you should be able to log onto your personal page through the Commission's online registration system and renew your permit anytime between October 15 and December 31, 2019.

If your PC annual return date has not been updated or is due December 31, 2019, you will need to file your annual return with ISC Corporate Registry and forward an updated profile report to the Commission.

- a. Once the Commission has received your corporate/entity profile report, your annual return date will be updated in the Commission's online registration system.
- b. After the Commission has updated your information, you will be sent an email to proceed with the online portion of the permit renewal.

Each individual is responsible to log onto the Commission's online registration system to their personal page. In the Professional Corporation section, look over to the right for the link "Renew Permit". Clicking on this link takes you to a secure payment section where you may pay by either VISA or MasterCard to renew your PC permit for the 2020 calendar year. The renewal fee is \$200.

Please contact the Commission's Registration Department if you have any questions or concerns about the PC renewal process. **Please forward your PC profile reports to garnstrong@srec.ca.**

The office of the Commission will be **closed** on the following days:

- **12pm, Tues., Dec. 24 - Thurs., Jan. 2** (Christmas Holidays observed)
- **Monday, Feb. 17** (Family Day)

Regular Office Hours:

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



Questions?

Answers to commonly asked questions can be found on the Commission's website under the tab related to the area of inquiry.

Compliance, education, registration, and consumer information all have FAQ sections dedicated to helping answer your questions.

Visit www.srec.ca or email us at info@srec.ca with your questions and we'll direct them to the appropriate department.

Contact Us

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Commission Members

Vern McClelland, Chair
Lloydminster, elected

Tara Faris-Peters, IC&I, Saskatoon, appointed

Cam Bristow, Saskatoon, elected

Doreen Heinbigner, Moose Jaw, elected

Cliff Iverson, Regina, elected

Anne Parker, Regina, appointed

Lori Patrick, Regina, elected

Bill Preston, Saskatoon, appointed

Dean Staff, Saskatoon, appointed

Bob Volk, Regina, appointed

Wayne Zuk, Saskatoon, elected