

The Real Estate Act

being

Chapter R-1.3 of the *Statutes of Saskatchewan, 1995* (effective January 1, 1997) as amended by the *Statutes of Saskatchewan, 1997, c.T-22.2; 1998, c.P-12.1; 2002, c.53; and 2005, c.28.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER R-1.3

An Act respecting Trading in Real Estate, the Real Estate Commission and Brokerages, Brokers, Associate Brokers and Salespersons Trading in Real Estate

PART I

Short title, Interpretation and Exemptions

Short title

1 This Act may be cited as *The Real Estate Act*.

Interpretation

2 In this Act:

(a) “**agency agreement**” means an agreement between a brokerage and a seller or buyer for a trade in real estate;

(a.1) “**associate broker**” means an individual employed, appointed or authorized by a brokerage to trade in real estate and named as an associate broker in a certificate of registration;

(b) “**branch manager**” means an individual employed, appointed or authorized by a brokerage to manage a branch office of the brokerage and named as a branch manager in the certificate of registration of the brokerage;

(c) “**broker**” means an individual employed, appointed or authorized by a brokerage to manage its main office and named as the broker in the certificate of registration of the brokerage;

(d) “**brokerage**” means a person named in a certificate of registration as a brokerage that, for compensation, gain or hope of reward for the brokerage or any other person, either alone or through its broker, branch manager, associate broker or salesperson:

(i) trades in real estate located in Saskatchewan;

(ii) trades in Saskatchewan in real estate located outside Saskatchewan;

(e) “**business name**” means a business name as defined in *The Business Names Registration Act*;

(f) “**buyer**” means a person acquiring an interest in real estate by purchase, exchange, option, lease or otherwise;

(g) “**bylaws**” means the valid and subsisting bylaws of the Commission;

(h) “**Commission**” means the Real Estate Commission continued pursuant to section 4;

(i) “**court**” means the Court of Queen’s Bench;

- (j) **“financial institution”** means:
- (i) a bank;
 - (ii) a credit union; or
 - (iii) a trust corporation or loan corporation that holds a valid licence pursuant to *The Trust and Loan Corporations Act, 1997* and that is a member of or has effected insurance with the Canada Deposit Insurance Corporation;
- (k) **“firm”** means:
- (i) a person who is a sole proprietor of a business who uses as a business name a name other than his or her own name or his or her own name with the addition of some other word or phrase; or
 - (ii) persons who are associated as partners in a business;
- (l) **“fraud”** or **“fraudulent”** include, in addition to their ordinary meanings, in connection with a trade in real estate:
- (i) any intentional misrepresentation by word, conduct or manner of a material fact;
 - (ii) an intentional omission to disclose a material fact;
 - (iii) a promise or representation as to the future that is beyond reasonable expectation and that is not made in good faith;
 - (iv) the failure, within a reasonable time, to properly account for or pay over any money received to the person entitled to it;
 - (v) the failure on the part of a registrant to disclose to all parties concerned whether he or she is acting as a principal or an agent in a trade;
 - (vi) any course of conduct or business calculated or put forward with the intent to deceive the public, the buyer or the seller about the value of any real estate;
 - (vii) the failure on the part of a registrant to disclose to a seller of real estate, for whom he or she acts directly or indirectly, any offer that he or she has received to acquire that real estate;
 - (viii) the failure on the part of a registrant to disclose to a buyer of real estate, for whom he or she acts directly or indirectly, a counter offer made by the seller to that buyer;
 - (ix) the gaining of, or attempt to gain, a commission, fee or gross profit that is so large and so exorbitant that it is unconscionable and unreasonable;
 - (x) generally, any artifice, agreement, device, scheme, course of conduct or business to obtain money, profit or property by any of the means set out in subclauses (i) to (ix) or otherwise contrary to law or by wrongful or dishonest dealing; and
 - (xi) any other activity or practice that is prescribed in the regulations;

- (m) **“fund”** means the Real Estate Assurance Fund continued pursuant to section 47;
- (n) **“lease”** means an agreement by which a landlord, for valuable consideration, conveys real estate to a tenant for a specified period;
- (o) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (p) **“offer to purchase”** means an offer to purchase, exchange, option or lease real estate;
- (q) **“official”**, with respect to a corporation or firm, includes the president, vice-president, secretary, treasurer, secretary-treasurer, managing director, general manager, department manager, branch office manager and any individual acting in a similar capacity whether so designated or not and, in the case of a firm, also includes the sole proprietor or any partner of the firm;
- (r) **“property management”** means:
- (i) negotiating or approving a lease or rental of a landlord’s real estate;
 - (ii) holding money received in connection with a lease or rental mentioned in subclause (i); or
 - (iii) both of the things mentioned in subclauses (i) and (ii);
- (s) **“property management agreement”** means an agreement between a landlord and a brokerage for the purposes of property management;
- (t) **“real estate”** includes:
- (i) real or leasehold property;
 - (ii) any business with premises, and with or without fixtures, stock-in-trade, goods or chattels in connection with the operation of the business; and
 - (iii) a time-share plan;
- (u) **“records”** includes books, documents, papers, communications, correspondence, accounting records and any other information or data that is recorded, stored or retained by any means or device, including electronic means;
- (v) **“registered”** means registered pursuant to this Act;
- (w) **“registrant”** means any person registered pursuant to this Act;
- (x) **“registrar”** means the registrar appointed pursuant to subsection 7(1);
- (y) **“salesperson”** means an individual employed, appointed or authorized by a brokerage to trade in real estate, but does not include a broker, a branch manager, an associate broker or an individual who is not required to be registered;
- (z) **“seller”** means a person disposing of an interest in real estate by sale, exchange, option, lease or otherwise;

- (aa) **“superintendent”** means the superintendent of real estate appointed pursuant to subsection 79(1);
- (bb) **“trade”** means one or more of the following:
- (i) a disposition of, an acquisition of or a transaction in real estate by sale, purchase, exchange, option, lease, or otherwise;
 - (ii) an offering, advertisement, listing or showing of real estate for sale, purchase, exchange, option, lease or otherwise;
 - (iii) an offer to purchase;
 - (iv) property management;
 - (v) the solicitation, negotiation or obtaining of a contract, agreement or any other arrangements to advertise real estate for sale, exchange, option, lease or other disposition of the real estate, either directly or indirectly, through any medium of advertising;
 - (vi) holding oneself out as trading in real estate;
 - (vii) any conduct, act or negotiation, in the furtherance or attempted furtherance of any one or more of the things mentioned in this clause;
- (cc) **“trust account”** means an account described in section 71.

1995, c.R-1.3, s.2; 1997, c.T-22.2, s.90; 2005,
c.28, s.4.

Exemptions

3(1) Subject to subsection (2) and section 74, this Act does not apply to:

- (a) a trade in real estate by an owner of the real estate or a person who has a material interest in the real estate;
- (b) a trade in real estate on behalf of another person and for that person’s account where:
 - (i) no commission or remuneration is paid with respect to the trade; and
 - (ii) the transaction is not made in the course of continued and successive transactions of a like character;
- (c) an assignee, custodian, liquidator, receiver, trustee or other person acting:
 - (i) as directed by an Act or an Act of the Parliament of Canada; or
 - (ii) under the order of any court;
- (d) an executor or personal representative of an estate trading in real estate belonging to the estate or an executor or trustee trading in real estate under the terms of a will or trust;
- (e) a person engaged in the business of home construction trading in real estate owned by the person in connection with that business;

- (f) subject to subsection (3), a lawyer trading in real estate in the course of and as part of his or her practice;
 - (g) subject to subsection (3), an auction sales company or an auctioneer licensed pursuant to *The Auctioneers Act* trading in real estate by auction;
 - (h) a person trading in mineral rights and not otherwise required to be registered;
 - (i) a person showing real estate for residential leasing or rental purposes;
 - (j) a person trading in surface rights within the meaning of *The Surface Rights Acquisition and Compensation Act*;
 - (k) a gas or oil pipe line company trading in real estate where the trade is made in the course of the construction or operation of a pipe line within the meaning of *The Pipe Lines Act, 1998*;
 - (l) any persons or category of persons or trades or category of trades that are exempted in the regulations.
- (2) Subsection (1) does not apply to:
- (a) any person who is a registrant; or
 - (b) a trade by any person who is a registrant.
- (3) A person mentioned in clause (1)(f) or (g) shall advertise the real estate in the name of the owner of the real estate.

1995, c.R-1.3, s.3; 1998, c.P-12.1, s.33.

PART II Real Estate Commission

Real Estate Commission continued

- 4** The Real Estate Commission is continued as a corporation.

1995, c.R-1.3, s.4.

Commission not agent of Crown

- 5** The Commission is not an agent of the Crown, and its powers granted by this Act are to be exercised in its own right only.

1995, c.R-1.3, s.5.

Commission

- 6(1)** The Commission consists of:
- (a) four members appointed by the Lieutenant Governor in Council;
 - (b) six members elected by the registrants in accordance with the bylaws; and
 - (c) one member:
 - (i) who is appointed, in accordance with the bylaws, by the members mentioned in clauses (a) and (b); and
 - (ii) who must be a registrant trading in industrial, commercial or investment real estate or property management.
- (2) A member of the Commission appointed pursuant to clause (1)(a):
- (a) holds office for a period not exceeding three years 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.
- (3) If a vacancy occurs in the membership of the Commission:
- (a) in the case of a person appointed pursuant to clause (1)(a), the Lieutenant Governor in Council may appoint a person to serve the remaining portion of the term;
 - (b) in the case of a person elected pursuant to clause (1)(b), the Saskatchewan Real Estate Association may appoint, in accordance with the bylaws, a person to serve the remaining portion of the term; or
 - (c) in the case of a person appointed pursuant to clause (1)(c), the remaining members of the Commission may appoint, in accordance with the bylaws, a person to serve the remaining portion of the term.
- (4) The members of the Commission may elect one of their number as chairperson and one as vice-chairperson.
- (5) If the chairperson is absent or the office of chairperson is vacant, the vice-chairperson shall act as chairperson and has all of the powers and shall perform all of the duties of the chairperson.
- (6) The Commission shall pay to the members of the Commission any remuneration and allowances for expenses that may be prescribed in the bylaws.
- (7) A vacancy in the membership of the Commission does not impair the power of the remaining members of the Commission to act.
- (8) The persons acting as members of the Commission on the day before the coming into force of this section constitute the Commission until new members are elected or appointed, as the case may be, pursuant to this section.

Registrar and employees

7(1) The Commission shall appoint a registrar.

(2) The Commission may engage any employees that it considers necessary to carry out the duties and functions of the Commission.

(3) Subject to this Act, the regulations and the bylaws, the Commission shall determine the duties, responsibilities and remuneration of employees of the Commission.

1995, c.R-1.3, s.7.

Power to enter into agreements

8 The Commission may enter into any agreements that it considers necessary for exercising its powers or carrying out its duties pursuant to this Act.

1995, c.R-1.3, s.8.

Committees

9(1) The Commission may establish any committees that are provided for in the bylaws or that it considers necessary.

(2) The Commission shall appoint persons to any committees that are provided for by this Act or the bylaws or that it establishes pursuant to subsection (1).

(3) Subject to this Act, the regulations and the bylaws, the Commission, on any terms that it may determine, may delegate any of its powers or duties to a committee that is provided for by this Act or the bylaws or that is established pursuant to subsection (1).

(4) The Commission shall not delegate the power to make bylaws.

(5) Subject to this Act, the regulations and the bylaws, a committee may establish its own procedures.

1995, c.R-1.3, s.9.

Temporary borrowing

10(1) Subject to subsections (3) and (4), the Commission may borrow, by way of temporary loans, bank overdraft or line of credit from any financial institution or from any person or corporation, on any terms, any sums that the Commission may require to carry out its responsibilities.

(2) Any instrument that may be necessary with respect to borrowing money or obtaining advances by way of temporary loans may be executed in any manner that the Commission may determine.

(3) Subject to subsection (4), any sum borrowed pursuant to subsection (1) is to be borrowed on the condition that the sum is to be repaid within the fiscal year in which the loan is made.

(4) Subject to subsection (5), the Commission may, during the fiscal year in which any sum is borrowed and the two succeeding fiscal years, extend the loan and renew or extend the promissory notes or other obligations securing the loan.

(5) The total amount of time from the date a sum is borrowed to the date that the sum is repaid is not to exceed three years unless otherwise authorized in writing by the superintendent.

1995, c.R-1.3, s.10.

Meetings of registrants

11(1) The Commission shall call an annual meeting of registrants in accordance with the bylaws.

(2) On resolution of the Commission, a special meeting of the registrants may be held for the transaction of the business that is specified in the resolution.

(3) An annual or special meeting is to be held at a time and place determined by the Commission in accordance with the bylaws.

(4) The registrar shall send a notice of an annual or special meeting to each registrant at least 14 days before the meeting.

(5) The procedure at annual or special meetings is to be determined by bylaw.

1995, c.R-1.3, s.11.

Annual report

12 In each fiscal year and according to requirements established by the superintendent, the Commission shall prepare and submit to the superintendent, brokerages, and, on request, other registrants, an annual report that:

(a) contains a financial statement summarizing the income and expenditures of the Commission;

(b) states the number of registrants in each registration category;

(c) states the number of persons in each category:

(i) who were refused registration; and

(ii) whose registrations were suspended, cancelled or made conditional;

and the reasons for the action taken;

(d) contains a list of members and officers of the Commission; and

(e) contains any other information that the superintendent may require.

1995, c.R-1.3, s.12.

Register

13(1) In accordance with the bylaws, the Commission shall keep a register in which the name and address of every registrant are recorded.

(2) The register is to be:

(a) kept at the head office of the Commission; and

(b) open for inspection by all persons, without fee, during normal office hours of the Commission.

(3) A certificate purporting to be signed by the registrar and stating that a named person was or was not, on a specified day or during a specified period, a registrant, or an extract from the register that is certified by the registrar, is admissible in evidence as proof, in the absence of evidence to the contrary, of its contents without proof of the registrar's appointment or signature.

1995, c.R-1.3, s.13.

BYLAWS

Passing and review of bylaws

14(1) Subject to this Act and the regulations, the Commission may make bylaws:

- (a) prescribing the seal of the Commission;
- (b) providing for the execution of documents by the Commission;
- (c) respecting the banking and financial dealings of the Commission;
- (d) fixing the fiscal year of the Commission and providing for the audit of the accounts and transactions of the Commission;
- (e) providing for the receipt, management and investment of contributions, donations or bequests;
- (f) respecting the management of the property of the Commission;
- (g) governing procedures for the election of members of the Commission mentioned in clause 6(1)(b) and prescribing their terms of office;
- (g.1) governing procedures for the appointment of the member of the Commission mentioned in clause 6(1)(c) and prescribing his or her term of office;
- (g.2) governing procedures for the appointment of members to the Commission pursuant to clauses 6(3)(b) and (c);
- (h) prescribing the duties of members, officers and employees of the Commission;
- (i) prescribing the organization, powers and procedures of the Commission and regulating the Commission in the performance of its duties;
- (j) establishing any committees that the Commission considers necessary and prescribing the manner of election or appointment of members to those committees;
- (k) prescribing the remuneration and allowances for expenses for members of the Commission and members of committees;
- (l) respecting the reporting and publication of decisions and reports of the Commission and committees;

- (m) respecting the calling, holding and procedures of meetings of the Commission and annual and special meetings of registrants;
- (n) prescribing application forms for persons applying for registration;
- (o) prescribing procedures governing registration;
- (p) respecting the qualifications, standards and tests of competency for obtaining registration;
- (q) prescribing the amounts of registration and other fees payable to the Commission, including prescribing the times of payment and penalties for late payment;
- (r) prescribing terms of registration;
- (s) prescribing the expiry date for registration;
- (t) setting standards of professional conduct, competency and proficiency of registrants;
- (u) providing for a code of ethics for registrants;
- (v) setting standards regarding the manner and method of practice of registrants;
- (v.1) requiring registrants to disclose information to parties and potential parties to trades in real estate, including respecting the information to be disclosed and the manner of disclosure;
- (w) prescribing procedures for:
 - (i) the review, investigation and disposition by the investigation committee of complaints alleging that a registrant is guilty of professional misconduct or professional incompetence;
 - (ii) hearings by the Commission of complaints alleging that a registrant is guilty of professional misconduct or professional incompetence;
 - (iii) reviews pursuant to subsection 28(4);
- (x) prescribing the circumstances under which applicants are required to attend re-entry education programs and courses and approving programs and courses for that purpose;
- (y) prescribing or establishing classes, lectures, courses of study, systems of training, periods of service and examinations for registrants and applicants for registration;
- (z) setting standards for continuing education and the participation of registrants in continuing education;
- (aa) establishing and governing scholarships, bursaries and prizes;
- (bb) governing the reinstatement or registration after cancellation of a person whose registration has been suspended or cancelled;
- (cc) setting requirements for maintenance of registration;

- (dd) regulating advertising by registrants;
- (ee) prescribing the form, content and maintenance of the register and the information to be provided by registrants for the purposes of the register;
- (ff) respecting the investigation and inspection of methods of practice of registrants by the Commission;
- (gg) requiring reports from registrants with respect to their operations and prescribing the content of those reports;
- (hh) prescribing the forms to be used by registrants when trading in real estate;
- (ii) respecting the designation of an individual as the acting broker or acting branch manager in the temporary absence of the broker or branch manager;
- (jj) establishing categories of registration and prescribing the rights and responsibilities of each category;
- (kk) respecting property management agreements;
- (ll) prescribing the conditions under which leases are to be in writing;
- (mm) respecting requirements for agency agreements in addition to those prescribed in this Act and the regulations;
- (nn) respecting the keeping of trust money and trust accounts, including:
 - (i) providing for the investigation of complaints regarding trust money and trust accounts;
 - (ii) providing for the inspection and auditing of trust money and trust accounts;
 - (iii) prescribing the records to be kept by brokerages with respect to trust money and trust accounts;
 - (iv) requiring reports from brokerages with respect to their trust money and trust accounts;
- (oo) fixing the amount of assessment to be levied pursuant to subsection 47(2);
- (pp) respecting the administration of the fund;
- (qq) respecting records to be kept by registrants, including records with respect to trades in real estate;
- (rr) respecting the administration of the interest received by the Commission pursuant to section 71;
- (ss) providing for the charging of fees for any services provided by the Commission;
- (tt) respecting the types of notices and service of notices that may be served electronically;

- (uu) respecting joint participation by the Commission with any educational institution or any person, group, association, organization or body corporate having goals or objectives similar to those of the Commission;
 - (vv) respecting payment to the Commission of interest on trust accounts by financial institutions;
 - (ww) prescribing any other matter or thing that the Commission considers necessary to better carry out the purposes of this Act.
- (2) Within 30 days of making a bylaw or an amendment to a bylaw, the Commission shall file with the superintendent four copies, certified by the registrar to be true copies, of:
- (a) the bylaw made by the Commission; or
 - (b) the amendment to a bylaw together with four certified copies of the bylaw to which the amendment relates.
- (3) No bylaw comes into force until it is:
- (a) approved by the superintendent; and
 - (b) published in the Gazette.
- (4) The bylaws are to be open for inspection by all persons, without fee, during normal office hours of the Commission.

1995, c.R-1.3, s.14; 2002, c.53, s.3; 2005, c.28, s.6.

Procedure

- 15(1)** Within 30 days of receiving copies of a bylaw pursuant to subsection 14(2), the superintendent shall:
- (a) approve the bylaw; or
 - (b) where he or she is of the opinion that the bylaw is unacceptable or prejudicial to the public interest, disapprove the bylaw.
- (2) The superintendent shall notify the Commission in writing of his or her approval or disapproval of a bylaw pursuant to subsection (1).
- (3) Where the superintendent approves a bylaw, he or she shall:
- (a) forward one copy of the bylaw stamped with his or her approval to the Commission;
 - (b) file with the Department of Justice two copies certified by the registrar to be true copies of the bylaw; and
 - (c) where an amendment to a bylaw is filed pursuant to clause (b), file two copies, certified by the registrar to be true copies, of the bylaw with the amendment.

(4) The superintendent may, where he or she considers it to be in the public interest, request the Commission to:

- (a) amend or repeal a bylaw; or
- (b) make a new bylaw.

(5) Where the Commission fails to comply with a request of the superintendent pursuant to subsection (4), within 60 days of that request, the superintendent:

- (a) may amend or repeal a bylaw or make a new bylaw in accordance with the request; and
- (b) shall:
 - (i) file two copies of the bylaw with the Department of Justice; and
 - (ii) deliver a copy of the bylaw to the Commission.

(6) Failure to comply with this section does not, of itself, invalidate a trade in real estate.

1995, c.R-1.3, s.15.

Review by Legislative Assembly

16(1) One copy of all bylaws filed with the Department of Justice pursuant to section 15 is to be laid before the Legislative Assembly by the Minister of Justice in accordance with *The Tabling of Documents Act, 1991*.

(2) Where any bylaw laid before the Legislative Assembly is found by the Assembly to be beyond the powers delegated by the Legislature or in any way prejudicial to the public interest, the bylaw ceases to have any effect and is deemed to have been revoked.

1995, c.R-1.3, s.16.

Record of revocation and notification

17(1) Where it appears from any Votes and Proceedings of the Legislative Assembly that any bylaw has ceased to have effect, the Clerk of the Legislative Assembly shall immediately:

- (a) forward two copies of the Votes and Proceedings to the Deputy Minister of Justice; and
- (b) advise him or her that the copies are forwarded pursuant to this subsection.

(2) On receipt of the copies mentioned in subsection (1), the Deputy Minister of Justice shall immediately:

- (a) file one of the copies with the bylaw to which it relates;
- (b) forward the other copy to the superintendent; and
- (c) advise the superintendent that the copy is forwarded pursuant to this subsection.

(3) On receipt of the copy mentioned in subsection (2), the superintendent shall advise the Commission.

1995, c.R-1.3, s.17.

PART III
Registration

Prohibitions

18(1) No person shall trade in real estate:

- (a) as a brokerage, unless the person is registered as a brokerage;
 - (b) as a broker, unless the person is registered as a broker;
 - (c) as a branch manager, unless the person is registered as a branch manager;
 - (c.1) as an associate broker, unless the person is registered as an associate broker; or
 - (d) as a salesperson, unless the person is registered as a salesperson.
- (2) No person shall trade in real estate for or on behalf of a brokerage unless the person is registered as a salesperson, an associate broker, a branch manager or the broker of that brokerage.

1995, c.R-1.3, s.18; 2005, c.28, s.7.

Application

19 A person who wishes to be registered shall:

- (a) apply to the Commission on a form provided by the Commission;
- (b) pay the fee prescribed in the bylaws and, where the application is for registration as a brokerage, the assessment prescribed in the bylaws for the fund;
- (c) provide the Commission with an address for service in Saskatchewan; and
- (d) produce evidence satisfactory to the Commission that the person has complied with the provisions of this Act, the regulations and the bylaws with respect to registration in the category for which the application is being made.

1995, c.R-1.3, s.19.

Sole proprietor

20(1) A sole proprietor may apply for and obtain registration as a brokerage in his or her name.

- (2) The sole proprietor shall be the broker for his or her brokerage.
- (3) A certificate of registration that is granted to a sole proprietor is to be granted in the name of the sole proprietor as the person carrying on business and is to indicate on it or attachments to it the name of the broker.
- (4) Any change in the ownership of a sole proprietorship suspends its registration.

1995, c.R-1.3, s.20.

Firms

- 21(1)** A firm may apply for and obtain registration as a brokerage in its business name.
- (2) In its application for registration as a brokerage, a firm shall state:
- (a) its business name;
 - (b) in the case of:
 - (i) a sole proprietor, the name of the sole proprietor; or
 - (ii) a partnership, the names of the partners;
 - (c) the name of the individual to be designated by the firm as the broker, and include that individual's application for registration as a broker; and
 - (d) the name of the individual to be designated by the firm as a branch manager for each of its branch offices, if any, and include those individuals' applications for registration as branch managers.
- (3) The broker designated pursuant to clause (2)(c):
- (a) in the case of a sole proprietor, shall be the sole proprietor;
 - (b) in the case of a partnership where all partners are individuals, shall be one of the partners;
 - (c) in the case of a partnership where one or more partners are individuals and one or more are corporations, shall be a partner who is an individual;
 - (d) in the case of a partnership where all partners are corporations, shall be an individual.
- (4) An applicant for registration as a brokerage that is a partnership where all the partners are corporations shall designate an official of the firm who will be accountable to the Commission for the brokerage.
- (5) A certificate of registration granted to a firm is to:
- (a) be granted in its business name;
 - (b) indicate the name of the sole proprietor, or the names of the partners, as the person or persons carrying on business under the business name; and
 - (c) indicate on the certificate or attachments to the certificate:
 - (i) the name of the broker;
 - (ii) where subsection (4) applies, the name of the official; and
 - (iii) where applicable, the name of each branch manager.
- (6) Any change in the membership or ownership of a firm or in its business name suspends the firm's registration.

Corporations

22(1) A corporation may apply for and obtain registration as a brokerage in its corporate name or a business name.

- (2) In its application for registration as a brokerage, a corporation shall state:
 - (a) the name of the official of the corporation who will be accountable to the Commission for the brokerage;
 - (b) the name of the individual to be designated by the corporation as the broker, and include that individual's application for registration as a broker;
 - (c) the name of the individual to be designated by the corporation as a branch manager for each of its branch offices, if any, and include those individuals' applications for registration as branch managers; and
 - (d) where the corporation intends to carry on business under a business name, its business name.
- (3) A certificate of registration granted to a corporation is to:
 - (a) be granted either:
 - (i) in its corporate name; or
 - (ii) in the case of a corporation mentioned in clause (2)(d), in its business name;
 - (b) indicate on the certificate or attachments to the certificate:
 - (i) the name of the official designated pursuant to clause (2)(a);
 - (ii) the name of the broker; and
 - (iii) where applicable, the name of each branch manager; and
 - (c) in the case of a corporation mentioned in clause (2)(d), indicate the name of the corporation as the person carrying on business under the business name.
- (4) Any change in the name of the corporation or, where applicable, its business name, suspends the corporation's registration.

1995, c.R-1.3, s.22.

Brokers and branch managers

23(1) An individual may apply for and obtain registration as a broker or a branch manager where that individual:

- (a) has successfully completed the educational requirements prescribed in the bylaws; and
- (b) either:
 - (i) has been actively employed as a salesperson, associate broker, broker or branch manager for a period of two years during the preceding five years; or
 - (ii) has related experience that, in the opinion of the Commission, is equivalent to the experience described in subclause (i).

(2) Subsection (1) does not apply to an applicant for registration as a broker or branch manager where the applicant:

(a) was registered as a manager or designated as a branch manager pursuant to *The Real Estate Brokers Act, 1987*, as that Act existed on the day before the coming into force of this Act; and

(b) was actively and lawfully trading in real estate in Saskatchewan during the 12 months before the coming into force of this Act.

(3) A broker, branch manager or associate broker may trade in real estate without being registered as a salesperson.

(4) No person, other than a broker, branch manager or associate broker, shall trade in real estate unless that person is registered as a salesperson.

1995, c.R-1.3, s.23; 2005, c.28, s.8.

Associate brokers

23.1(1) An individual may apply to the Commission for registration as an associate broker if he or she has successfully completed the educational requirements prescribed in the bylaws.

(2) An application for registration as an associate broker must include a notice signed by a broker stating that the applicant, if granted registration, is authorized to act as an associate broker representing the brokerage with which that broker is registered.

(3) A certificate of registration granted to an applicant must include the name of the brokerage mentioned in subsection (2).

2005, c.28, s.9.

Salespersons

24(1) An individual may apply for and obtain registration as a salesperson only where that individual has successfully completed the educational requirements prescribed in the bylaws.

(2) An applicant for registration as a salesperson shall forward to the Commission with his or her application for registration a notice signed by a broker stating that the applicant, if granted registration, is authorized to act as a salesperson representing the brokerage.

(3) A certificate of registration granted to a salesperson is to include the name of the brokerage mentioned in subsection (2) that the salesperson represents.

(4) Subsection (1) does not apply to an applicant for registration as a salesperson where the applicant:

(a) was registered as a salesman or a manager or designated as a branch manager pursuant to *The Real Estate Brokers Act, 1987*, as that Act existed on the day before the coming into force of this Act; and

(b) was actively and lawfully trading in real estate in Saskatchewan during the 12 months before the coming into force of this Act.

1995, c.R-1.3, s.24.

Registration

25(1) Where the Commission has received an application for registration and the Commission is satisfied that the applicant has complied with the provisions of this Act, the regulations and the bylaws with respect to the category of registration for which the application is being made, the Commission may register the applicant.

(2) The Commission may grant a temporary registration to an applicant who does not meet the qualifications specified in this Act, the regulations and the bylaws if, in the opinion of the Commission, special circumstances exist.

1995, c.R-1.3, s.25.

Registration – refusal and reinstatement

26(1) Notwithstanding sections 20 to 24, the Commission may refuse to register an applicant pursuant to section 25 or may refuse to reinstate an applicant's registration pursuant to subsection (2) where, in the opinion of the Commission:

(a) the applicant or the applicant's officers or directors cannot reasonably be expected to be financially responsible in the conduct of his, her or their business;

(b) the past conduct of an applicant or an applicant's officers or directors affords reasonable grounds for believing that the applicant will not carry on business in accordance with this Act, the regulations and the bylaws and with integrity and honesty; or

(c) for any other reason relating to an applicant or an applicant's officers or directors, the applicant is not suitable for registration.

(2) Where a registration is suspended pursuant to subsection (5), 20(4), 21(6), 22(4) or 54(2), the Commission may reinstate the registration where the applicant:

(a) applies to the Commission on a form provided by the Commission;

(b) pays the fee prescribed in the bylaws;

(c) provides to the Commission an address for service in Saskatchewan; and

(d) produces evidence satisfactory to the Commission that the applicant has complied with the provisions in this Act, the regulations and the bylaws with respect to registration in the applicable category.

(3) The Commission shall not refuse to register an applicant or refuse to reinstate a registration without giving the applicant an opportunity to be heard.

(4) The Commission shall notify an applicant, in writing, of its decision and provide written reasons for its decision.

(5) Where the registration of a brokerage is cancelled or suspended pursuant to this Act, the registrations of the broker, branch manager, if any, associate broker, if any, and all salespersons of the brokerage are suspended.

(6) Where a registration is cancelled or suspended pursuant to this Act, the registrar shall strike the name of the registrant from the register or indicate the suspension on the register, as the case may be.

(7) Where a registration is suspended or cancelled pursuant to this Act, the registrant's rights and privileges as a registrant are removed for the period during which the registration is suspended or cancelled.

1995, c.R-1.3, s.26; 2005, c.28, s.10.

Terms

27(1) The Commission may register an applicant subject to any terms that it considers necessary.

(2) After giving the registrant an opportunity to be heard, the Commission may, at any time:

- (a) make the registration subject to any new or additional terms; or
- (b) amend or revoke any terms to which the registration is subject.

(3) No registrant shall fail to comply with the terms of his, her or its registration.

1995, c.R-1.3, s.27.

Delegation

28(1) The Commission may delegate to the registrar the power to register or reinstate applicants and grant certificates of registration, except for applications for registration pursuant to section 46.

(2) Where a power is delegated pursuant to this section, the exercise of that power by the registrar is deemed to be an exercise of the power by the Commission.

(3) The Commission may impose any terms that it considers appropriate on a delegation of its powers.

(4) A person who is aggrieved by a decision of the registrar made pursuant to a delegated power may apply to the Commission to review that decision.

(5) On a review pursuant to subsection (4), the Commission shall hear the review and may:

- (a) direct the registrar to exercise the power in a manner that the Commission considers appropriate; or
- (b) confirm the registrar's decision.

(6) On a review pursuant to subsection (4), the person aggrieved by the decision of the registrar has the right to appear in person before the Commission in support of the application.

(7) The Commission shall cause the applicant to be informed in writing of its decision regarding the review.

1995, c.R-1.3, s.28.

Further information

29 The Commission or registrar may:

- (a) require further information or material to be submitted by an applicant for reinstatement or registration or by a registrant within a specified time; and
- (b) require verification of any information or material that has been submitted or that is to be submitted.

1995, c.R-1.3, s.29.

Office requirement of brokerage

30(1) A brokerage shall maintain an office in Saskatchewan:

- (a) that is satisfactory to the Commission; and
 - (b) from which the brokerage conducts its business.
- (2) A brokerage may maintain more than one office in Saskatchewan if:
- (a) the brokerage designates one office as the main office;
 - (b) the brokerage's broker manages the main office; and
 - (c) each additional office is managed by a branch manager who manages only one office.
- (3) A broker is responsible for supervising every branch manager registered with that brokerage.

1995, c.R-1.3, s.30.

Records

31 Every brokerage shall keep proper records at its main office and, where applicable, its branch offices, with respect to all of its trades in real estate, including a trust account ledger, in accordance with the requirements set out in the bylaws.

1995, c.R-1.3, s.31.

Inspection of records

32(1) The Commission, or a person authorized in writing by the Commission, may at any reasonable time inspect the records of a brokerage to determine whether:

- (a) the amount of funds held in trust is the amount for which the brokerage is accountable;
- (b) the brokerage maintains its records as required by this Act, the regulations and the bylaws;
- (c) the brokerage and its registrants are complying with this Act, the regulations and the bylaws.

(2) The person making the inspection may demand the production of the records of the brokerage with respect to which the inspection is being made.

(3) A brokerage shall make its records available for inspection to a person mentioned in subsection (2).

1995, c.R-1.3, s.32.

Notice of changes

33(1) A brokerage shall notify the Commission in writing no later than five days after the occurrence of any of the following:

- (a) a change in the address of its main office or a change in the address of a branch office;
- (b) the opening or closing of a trust account;
- (c) a change in the membership or ownership of the brokerage, if the brokerage is a sole proprietor or firm;
- (d) a change in its business name, if the brokerage is a firm or corporation;
- (e) a change in its officers or directors, if the brokerage is a corporation;
- (f) a change in the designation of the official, if the brokerage is a firm described in subsection 21(4) or a corporation;
- (g) any amalgamation to which it has been a party, if the brokerage is a corporation.

(2) No later than five days after changing his or her address for service, a registrant shall notify the Commission in writing of his or her new address for service.

(3) Where a brokerage intends to discontinue its operation or merge with another brokerage, it shall notify the Commission at least 10 days prior to the discontinuance or merger.

1995, c.R-1.3, s.33.

PART IV
Discipline

Interpretation

34 In this Part, “**registrant**” includes a former registrant.

2005, c.28, s.11.

Proceedings against former registrants

34.1(1) No proceedings pursuant to this Part shall be commenced against a registrant more than two years after the day he or she became a former registrant.

(2) For the purposes of this section, a proceeding is commenced when the Commission receives a complaint or becomes aware of conduct that is or may be professional misconduct or professional incompetence.

2005, c.28, s.11.

Investigation committee

34.2(1) The investigation committee is established consisting of one or more persons appointed by the Commission.

(2) No member of the investigation committee who is a member of the Commission shall hear or determine a complaint that he or she investigated.

2005, c.28, s.11.

Investigation

35(1) Where the investigation committee is requested by the Commission to consider a complaint or is in receipt of a written complaint alleging that a registrant is guilty of professional misconduct or professional incompetence, the investigation committee shall:

- (a) review the complaint; and
- (b) investigate the complaint by taking any steps it considers necessary, including summoning before it the registrant whose conduct is the subject of the complaint.

(2) On completion of its investigation, the investigation committee shall make a written report to the Commission recommending:

- (a) that the Commission hear and determine the formal complaint set out in the written report; or
- (b) that no further action be taken with respect to the matter under investigation.

(3) The formal complaint set out in a written report made pursuant to clause (2)(a) may relate to any matter disclosed in the complaint received pursuant to subsection (1) or the investigation conducted pursuant to subsection (1).

(4) The investigation committee shall provide, or cause the registrar to provide, a copy of a written report made pursuant to clause (2)(b) to:

- (a) the Commission;
- (b) the person, if any, who made the complaint mentioned in subsection (1); and
- (c) the registrant whose conduct is the subject of the complaint mentioned in subsection (1).

1995, c.R-1.3, s.35.

Interim suspension

36(1) Where the investigation committee is of the opinion that, on the basis of the allegations or the nature of the case, the registrant should be suspended pending the outcome of the investigation or hearing, it may, with the prior approval of the Commission, apply to the superintendent for an order temporarily suspending a registrant whose conduct is the subject of an investigation pursuant to subsection 35(1) or against whom a formal complaint has been made pursuant to subsection 35(2).

(2) An order of suspension made pursuant to subsection (1) expires on the earliest of:

- (a) 90 days from the date of the order;
- (b) the date of a report of the investigation committee made pursuant to clause 35(2)(b);
- (c) where the Commission finds that a registrant is not guilty of professional misconduct or professional incompetence, the day of its decision; or
- (d) where the Commission finds that a registrant is guilty of professional misconduct or professional incompetence, the day that an order is made pursuant to section 38.

1995, c.R-1.3, s.36.

Temporary suspension

36.1 The Commission may apply to the court for an order temporarily suspending a registrant whose conduct is the subject of an investigation pursuant to this Part if the Commission is of the opinion that, on the basis of the allegations or the nature of the case:

- (a) the time to complete the investigation and hearing will exceed the expiry date of the suspension mentioned in clause 36(2)(a); and
- (b) the registrant should be suspended pending the outcome of the investigation or hearing.

2005, c.28, s.12.

Discipline hearing

37(1) Where a report of the investigation committee recommends that the Commission hear and determine a formal complaint, the registrar shall, at least 14 days before the date of the hearing:

- (a) send a copy of the formal complaint to the registrant whose conduct is the subject of the hearing; and
- (b) serve notice of the date, time and place of the hearing on the registrant whose conduct is the subject of the hearing.

(2) The investigation committee shall prosecute or direct the prosecution of the complaint, but its members shall not participate in any other manner in the hearing of the complaint, except as witnesses when required.

(3) The Commission shall hear the complaint and shall determine whether or not the registrant is guilty of professional misconduct or professional incompetence, notwithstanding that the determination of a question of fact may be involved, and the Commission need not refer any question to a court for adjudication.

(4) The Commission may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.

- (5) The Commission may employ any legal or other assistance that it considers necessary, and the registrant whose conduct is the subject of the hearing may be represented by counsel at the registrant's expense.
- (6) The testimony of witnesses is to be under oath or affirmation administered by any member of the Commission.
- (7) At a hearing by the Commission, there is to be full right:
- (a) to examine, cross-examine and re-examine all witnesses; and
 - (b) to present evidence in defence and reply.
- (8) On application of the registrant whose conduct is the subject of a hearing, a member of the investigation committee or a member or employee of the Commission and on payment of the appropriate fee, the local registrar of the court at any judicial centre shall issue writs of *subpoena ad testificandum* or *subpoena duces tecum*.
- (9) Where a writ issued pursuant to subsection (8) is disobeyed, the proceedings and penalties are those applicable in civil cases in the court.
- (10) Where the registrant whose conduct is the subject of the hearing fails to attend the hearing, the Commission, on proof of service of the notice mentioned in subsection (1), may proceed with the hearing in his or her absence.
- (11) If, during the course of a hearing, the evidence shows that the registrant whose conduct is the subject of the hearing may be guilty of a charge different from or in addition to any charge specified in the formal complaint, the Commission shall notify the registrant of that fact.
- (12) If the Commission proposes to amend, add to or substitute the charge in the formal complaint, the Commission shall adjourn the hearing for any period that the Commission considers sufficient to give the registrant an opportunity to prepare a defence to the amended formal complaint, unless the registrant consents to continue the hearing.
- (13) The person, if any, who made the complaint pursuant to section 35:
- (a) is to be advised orally or in writing by the registrar of the date, time and place of the hearing; and
 - (b) subject to subsection (15), is entitled to attend the hearing.
- (14) Subject to subsection (15), the Commission shall conduct all hearings in public.
- (15) The Commission may exclude members of the public and the person who made the complaint from any part of the hearing where the Commission is of the opinion that evidence brought in the presence of the person or persons to be excluded will unduly violate the privacy of a person other than the registrant whose conduct is the subject of the hearing.

Disciplinary powers

38(1) Where the Commission finds a registrant guilty of professional incompetence or professional misconduct, it may make one or more of the following orders:

- (a) an order that the registration be cancelled;
 - (b) an order that the registration be suspended for a specified period;
 - (c) an order that the registration be suspended pending the satisfaction and completion of any conditions specified in the order;
 - (d) an order that the registrant may continue to be registered only under conditions specified in the order, which may include, but are not restricted to, an order that the registrant:
 - (i) successfully complete specified classes or courses of instruction;
 - (ii) obtain treatment, counselling or both;
 - (e) an order requiring the registrant to pay restitution to any person as compensation for a loss suffered by that person as a result of the registrant's professional incompetence or professional misconduct;
 - (f) an order reprimanding the registrant;
 - (g) any other order that the Commission considers just.
- (2) In addition to any order made pursuant to subsection (1), the Commission may order:
- (a) that the registrant pay to the Commission within a fixed period:
 - (i) a fine in a specified amount not exceeding \$5,000 for each finding and \$15,000 in the aggregate for all findings; and
 - (ii) the costs of the investigation and hearing into the registrant's conduct and related costs, including the expenses of the investigation committee and the Commission and the costs of legal services and witnesses; and
 - (b) where a registrant fails to make payment in accordance with an order pursuant to clause (a), that the registration be suspended.
- (3) The registrar shall send a copy of an order made pursuant to this section to the registrant whose conduct is the subject of the order and to the person, if any, who made the complaint.
- (4) Where a broker, branch manager, associate broker or salesperson is found guilty of professional misconduct or professional incompetence, the Commission shall inform the registrant's brokerage of the order made against that registrant.
- (5) Where a registrant does not comply with an order pursuant to clause (1)(e) within 15 days after the day on which a copy of the order is sent to the registrant, the person named in the order may file a certified copy of the order with the court and enforce the order as if it were a judgment of the court.

Professional misconduct and professional incompetence

39(1) 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:

- (a) it is harmful to the best interests of the public, the registrants or the Commission;
- (b) it is fraudulent;
- (c) it is a breach of this Act, the regulations or the bylaws or any terms or restrictions to which the registration is subject; or
- (d) it is a failure to comply with an order of the investigation committee or the Commission.

(2) Professional incompetence is a question of fact, but the display by a registrant of:

- (a) a lack of knowledge, skill or judgment; or
- (b) a disregard for the welfare of members of the public served by the real estate industry;

of a nature or to an extent that demonstrates that the registrant is unfit to continue to be registered is professional incompetence within the meaning of this Act.

1995, c.R-1.3, s.39.

Criminal conviction

40 The Commission may, by order, cancel a registration if:

- (a) the registrant has been convicted of an indictable offence pursuant to the *Criminal Code*;
- (b) a report of the investigation committee is made to the Commission respecting the conviction mentioned in clause (a);
- (c) the Commission has given the registrant an opportunity to be heard; and
- (d) the Commission finds that the conduct of the registrant giving rise to the conviction makes the registrant unfit to continue to be a registrant.

1995, c.R-1.3, s.40.

Duty to report

41 Where the investigation committee in its investigation pursuant to subsection 35(1) or the Commission at the conclusion of its hearing pursuant to section 37 believes that the registrant whose conduct is the subject of the investigation or hearing may be guilty of a criminal offence, the committee or Commission may immediately discontinue its investigation or hearing, as the case may be, and shall make a report of its findings to:

- (a) the chairperson of the Commission;
- (b) the superintendent; and
- (c) the Deputy Minister of Justice.

1995, c.R-1.3, s.41.

Suspension

42 A judge of the court, on the application of the Commission, may direct that a registrant be suspended pending the disposition of a criminal charge where:

- (a) a criminal charge is laid against the registrant; and
- (b) the registrant has applied to the court for a stay of any disciplinary proceedings against the registrant.

1995, c.R-1.3, s.42.

APPEALS**Appeal to superintendent**

43(1) Within 30 days of the decision or order, or any further time that the superintendent may allow, the decision or order of the Commission may be appealed to the superintendent by:

- (a) an applicant who has been refused registration or reinstatement of a registration pursuant to section 26;
- (b) a registrant whose registration is made subject to any new, additional or amended terms pursuant to section 27;
- (c) a registrant who has been found guilty of professional misconduct or professional incompetence pursuant to section 37 or is subject to an order pursuant to section 38;
- (d) a registrant whose registration has been cancelled pursuant to section 40; or
- (e) a brokerage whose certificate of acceptance is revoked pursuant to clause 75(2)(a).

(2) An appeal pursuant to subsection (1) is to be commenced by:

- (a) serving the registrar with a copy of a written application for a hearing; and
- (b) filing the application with the superintendent.

(3) Within seven days of receiving an application for a hearing, the superintendent shall fix a date for a hearing.

(4) On receipt of an application for a hearing, the registrar shall file with the superintendent a true copy of:

- (a) the formal complaint and notice served pursuant to subsection 37(1) or the report of the investigation committee pursuant to section 40;
- (b) the transcript of the evidence presented to the Commission;

- (c) all documents and materials that were before the Commission in the making of the decision or order; and
 - (d) the decision or order of the Commission and any reasons provided by the Commission for the decision or order.
- (5) The appellant or the appellant's solicitor or agent may obtain from the registrar a copy of the documents filed pursuant to subsection (4) on payment of the costs of producing them.
- (6) On hearing an appeal, the superintendent may:
- (a) dismiss the appeal;
 - (b) quash a finding of guilt;
 - (c) direct a new hearing or further inquiries by the Commission;
 - (d) vary the order of the Commission;
 - (e) substitute his or her own decision for the decision of the Commission;
 - (f) order the Commission to grant or reinstate a registration;
 - (g) vary any terms imposed by the Commission on the appellant's registration;
 - (h) order the Commission to issue a certificate of acceptance;
 - (i) make any order as to costs that he or she considers appropriate.
- (7) The Commission is entitled to be heard, by counsel or otherwise, on the hearing of an appeal and on an application pursuant to subsection (9).
- (8) The superintendent shall provide the appellant and the Commission with a decision, in writing, including reasons for the decision.
- (9) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order appealed from, but on five days' notice to the registrar, the appellant may apply to the superintendent for a stay of the decision or order pending the disposition of the appeal.

1995, c.R-1.3, s.43.

Appeal to court

- 44(1) Within 30 days of the decision or order, a person who is the subject of a decision or order of the superintendent pursuant to section 36 or 43 may appeal the decision or order to a judge of the court by serving the superintendent and the registrar with a notice of appeal and filing the notice of appeal with the local registrar of the court.
- (2) The Commission is entitled to be heard, by counsel or otherwise, on the hearing of an appeal and on an application pursuant to subsection (5).
- (3) On receipt of a notice of appeal, the superintendent shall file with the local registrar true copies of:
- (a) all documents and materials that were before the superintendent in the making of the decision or order;

- (b) the superintendent's decision or order; and
 - (c) any reasons for the decision as required by subsection 43(8).
- (4) On hearing an appeal, the judge may:
- (a) dismiss the appeal;
 - (b) allow the appeal;
 - (c) allow the appeal subject to terms;
 - (d) vary the decision or order of the superintendent;
 - (e) refer the matter back to the superintendent for further consideration and decision;
 - (f) make any order as to costs that the judge considers appropriate;
 - (g) make any other order that the judge considers appropriate.
- (5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order appealed from, but on five days' notice to the registrar, the appellant may apply to the court for a stay of the decision or order pending the disposition of the appeal.

1995, c.R-1.3, s.44.

Court of Appeal

45 The Commission or a person mentioned in subsection 44(1) may appeal a decision or order of a judge of the court to the Court of Appeal, on a question of law, within 30 days of the decision or order.

1995, c.R-1.3, s.45.

Registration after cancellation

46(1) A person whose registration has been cancelled pursuant to section 38 or 40 may apply to the Commission for registration.

(2) Subject to the bylaws, on receipt of an application pursuant to subsection (1), the Commission shall:

- (a) review the application; and
- (b) investigate the application by taking any steps it considers necessary.

(3) On completion of its investigation, the Commission may:

- (a) where it is satisfied that the person's subsequent conduct and any other facts warrant registration, order that registration be granted to the applicant on any terms that the Commission considers appropriate; or
- (b) by order, refuse to register the applicant.

(4) Where, on an application pursuant to subsection (1), the Commission refuses to register an applicant, that applicant, within 30 days after the date of the order, may appeal the order of the Commission to the superintendent, and the superintendent may allow or disallow the appeal.

- (5) On an appeal pursuant to subsection (4), the superintendent shall consider:
- (a) the proceedings before the Commission on the application pursuant to subsection (1);
 - (b) the past record of the appellant as shown by the register and records of the Commission; and
 - (c) the evidence taken before the Commission and any committee that dealt with the cancellation and application pursuant to subsection (1) and the report of that committee.
- (6) Where, on an appeal pursuant to subsection (4) the superintendent refuses to order that an applicant be registered, the applicant, within 30 days after the date of the order, may appeal the order of the superintendent to a judge of the court, and the judge may allow or disallow the appeal.
- (7) On an appeal pursuant to subsection (6), the judge shall consider the matters mentioned in subsection (5).
- (8) A person whose application pursuant to subsection (1) is refused or whose appeal of a refusal is dismissed may make another application for registration, based on new information, at any time.

1995, c.R-1.3, s.46.

PART V Real Estate Assurance Fund

Fund continued

- 47(1) The Real Estate Assurance Fund is continued.
- (2) There is to be credited to the fund:
- (a) the money collected by the levy of an assessment:
 - (i) on every applicant for registration as a brokerage; and
 - (ii) on every brokerage;
 - (b) subject to subsection 48(4), any income from the fund; and
 - (c) any money recovered by the Commission pursuant to section 50, less the costs of recovery.

1995, c.R-1.3, s.47.

Administration of fund

- 48(1) The Commission holds in trust all money received pursuant to subsection 47(2) and shall immediately deposit that money in an account in a financial institution in Saskatchewan, separate and apart from any other money of the Commission.
- (2) The Commission may invest the fund in investments in which trustees are authorized to invest pursuant to *The Trustee Act*, and may sell or otherwise dispose of those investments and reinvest the proceeds in similar investments.

- (3) Notwithstanding subsection (1), the Commission may:
- (a) recover any money advanced to the fund; and
 - (b) take a fee for the administration of the fund in any amount that may be prescribed in the regulations.
- (4) Income from the fund becomes the property of the Commission to be used for any purposes that the Commission considers proper when the amount of the fund exceeds:
- (a) \$250,000; or
 - (b) any greater amount that may be prescribed in the regulations.

1995, c.R-1.3, s.48.

Claims on fund

49(1) In accordance with the amounts set out in the regulations, the Commission may make a payment out of the fund to or for the benefit of a claimant where:

- (a) there is a deficiency in the money held in trust by a brokerage in connection with a trade;
 - (b) the claimant has submitted a claim for that deficiency to the brokerage within two years of depositing with the brokerage the money that is the subject of the claim;
 - (c) the claim mentioned in clause (b) remains unpaid:
 - (i) in the case of an undisputed claim, 60 days after the brokerage receives notice of the claim; or
 - (ii) in the case of a disputed claim, 60 days after the claimant obtains judgment with respect to the claim;
 - (d) the claim arises out of a trade that occurred no more than 90 days after the date on which the registration of the brokerage against which the claim is made is cancelled;
 - (e) the notice of claim is received by the Commission before the maximum amount payable with respect to that brokerage has been disbursed; and
 - (f) the notice of claim is received by the Commission no more than 60 days after the expiration of the appropriate time period mentioned in clause (c).
- (2) Where a judgment mentioned in subclause 49(1)(c)(ii) is appealed, the time period mentioned in that subclause runs from the date that the appeal is determined or abandoned.

1995, c.R-1.3, s.49.

Commission rights of subrogation

50(1) Where a payment is made to a person pursuant to section 49, the Commission is subrogated in the amount of the payment to any rights or remedies of that person.

- (2) In exercising its rights pursuant to subsection (1), the Commission may:
- (a) bring an action to recover the amount of the payment; or
 - (b) join with the person to whom the payment is made to bring an action in the name of that person for recovery of the total amount of the claim.
- (3) On notice that the Commission has commenced or is commencing a proceeding pursuant to subsection (1):
- (a) no person shall negotiate a settlement of any claim to the prejudice of the Commission; and
 - (b) no person to whom payment was made pursuant to section 49 shall interfere in any negotiations for settlement or in any legal proceedings.
- (4) A person to whom a payment is made pursuant to section 49 shall:
- (a) assist the Commission in securing information, evidence and the attendance of any witness; and
 - (b) co-operate with the Commission in any action, proceeding or appeal.

1995, c.R-1.3, s.50.

Annual report re fund

51(1) The Commission shall:

- (a) not later than 90 days following the end of its fiscal year, prepare a report in the form and manner required by the superintendent with respect to the fund and all dispositions made during the preceding year; and
 - (b) not later than 120 days following the end of its fiscal year, deliver a copy of the report mentioned in clause (a) to the minister.
- (2) The report mentioned in subsection (1) is to include audited financial statements of the fund.
- (3) The superintendent may investigate and inquire into any matter relating to the fund, and sections 80 to 82 apply, with any necessary modification, to the investigation or inquiry.

1995, c.R-1.3, s.51; 2002, c.53, s.4.

PART VI
Regulation of Trading Practices

Prohibition re names

52(1) No sole proprietor who is registered as a brokerage shall carry on business as a brokerage under a name other than the name on his or her certificate of registration.

(2) No firm that is registered as a brokerage shall carry on business as a brokerage under a name other than the business name on its certificate of registration.

(3) No corporation that is registered as a brokerage shall carry on business as a brokerage under a name other than the name on its certificate of registration.

1995, c.R-1.3, s.52.

Deemed authorization to act for brokerage

53(1) A broker, branch manager, associate broker or salesperson is deemed to be authorized by the brokerage specified in his or her certificate of registration to act for or on behalf of that brokerage.

(2) No broker, branch manager, associate broker or salesperson shall trade in real estate other than for or on behalf of the brokerage stated on his or her certificate of registration.

1995, c.R-1.3, s.53; 2005, c.28, s.14.

Certificate of registration not transferable

54(1) A certificate of registration of a broker, branch manager, associate broker or salesperson is not transferable from one brokerage to another.

(2) If a broker, branch manager, associate broker or salesperson ceases to represent a brokerage:

(a) the registration of that broker, branch manager, associate broker or salesperson is suspended; and

(b) the brokerage shall, not later than five days after the broker, branch manager, associate broker or salesperson has ceased to represent the brokerage, give notice in writing to the Commission that the broker, branch manager, associate broker or salesperson has ceased to represent the brokerage together with the reasons.

(3) A broker, branch manager, associate broker or salesperson whose registration is suspended pursuant to this section shall apply for reinstatement pursuant to subsection 26(2) when he or she is employed, appointed or authorized by a brokerage.

1995, c.R-1.3, s.54; 2005, c.28, s.15.

Advertising

55(1) No brokerage shall advertise a trade in real estate unless the advertisement shows the brokerage's name as set out on its certificate of registration.

(2) 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.

1995, c.R-1.3, s.55; 2005, c.28, s.16.

Prohibited advertising

56 No registrant shall in any manner represent or hold himself or herself out as being registered or bonded pursuant to this Act.

1995, c.R-1.3, s.56.

Agency agreement

57(1) Every written agency agreement is to be executed in the presence of a witness.

(2) A written agency agreement is not valid unless:

- (a) it contains an expiry date;
- (b) it contains only one expiry date;
- (c) the expiry date is less than 12 months from the date of the agency agreement;
- (d) it shows the total amount of commission, as a lump sum or as a percentage, to be paid to the brokerage; and
- (e) a true copy of the agency agreement is immediately delivered to the seller or buyer who signed the agency agreement.

1995, c.R-1.3, s.57.

Offer to purchase

58(1) An offer to purchase obtained by a registrant:

- (a) is to be in writing, dated and signed by the buyer in the presence of a witness; and
- (b) is to clearly show, prior to execution by the buyer:
 - (i) the date on which the offer is made;
 - (ii) the names and addresses of the buyer and seller;
 - (iii) the street address or legal description of the real estate;
 - (iv) the price offered by the buyer and the terms and conditions of the offer;
 - (v) the amount of deposit, if any, made at the time of the offer and whether or not that deposit is to form part of the price;

- (vi) a brief description and list of any chattels that are to be included in the price;
 - (vii) the date of possession by the buyer and whether possession is to be vacant or otherwise;
 - (viii) the date of adjustments;
 - (ix) the time and date by which the offer is to be accepted;
 - (x) the name, address and telephone number of the brokerage; and
 - (xi) any other information prescribed in the bylaws.
- (2) A registrant who obtains an offer mentioned in subsection (1) shall immediately deliver a copy of the offer to the seller or to his or her agent, in accordance with the bylaws.
- (3) Where a registrant presents an offer mentioned in subsection (1) and the offer is accepted:
- (a) the acceptance is to be in writing, and to be dated and signed by the seller in the presence of a witness who shall also sign the acceptance;
 - (b) the registrant shall leave one copy of the acceptance with the seller; and
 - (c) the registrant shall immediately deliver a copy of the acceptance to the buyer.
- (4) Where a registrant presents an offer mentioned in subsection (1) to a seller and the seller does not accept the offer, subsections (2) and (3) apply with respect to any amendment to the offer or counter offer, with any necessary modification.

1995, c.R-1.3, s.58.

Effect of non-compliance with section 58

59 Non-compliance with section 58 does not of itself render an offer to purchase and its acceptance invalid, but where the non-compliance is by a registrant acting in bad faith, the brokerage forfeits its right to any commission that might otherwise be payable to the brokerage.

1995, c.R-1.3, s.59.

Representations

60(1) Where a registrant, as an inducement to a person to trade in real estate, makes any representation or promise described in subsection (2), the registrant shall sign and deliver to the person to whom the representation or promise is made a statement clearly setting out all the details of the representation or promise, prior to the person executing any document with respect to the trade.

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(2) Subsection (1) applies to a representation or promise that a registrant or any other person will:

- (a) trade or guarantee or promise to trade any of that person's real estate;
- (b) procure a loan, mortgage, extension of a mortgage, lease or extension of a lease; or
- (c) purchase or sell a mortgage or an agreement for sale.

(3) Any advertising with respect to a representation or promise mentioned in this section is to be in accordance with any requirements that may be set out in the bylaws.

1995, c.R-1.3, s.60.

Prohibitions on brokerages

61(1) No brokerage shall employ, appoint, authorize or permit:

- (a) the broker, branch manager, associate broker or salesperson of another brokerage to trade in real estate; or
- (b) a person to trade in real estate who is not registered.

(2) No brokerage shall pay commission or other remuneration to the broker, branch manager, associate broker or salesperson of another brokerage.

1995, c.R-1.3, s.61; 2005, c.28, s.17.

Payment prohibited

62 No registrant shall pay commission or other remuneration to a person who is required to be registered but who is not registered.

1995, c.R-1.3, s.62.

Restrictions on registrants

63 No salesperson, associate broker, branch manager or broker shall:

- (a) trade in real estate on behalf of a brokerage other than the brokerage with which the salesperson, associate broker, branch manager or broker is registered; or
- (b) accept any commission or other remuneration for trading in real estate from any person other than the brokerage with which the salesperson, associate broker, branch manager or broker is registered.

2005, c.28, s.18.

Prohibition re agency agreements

64(1) No registrant shall induce a party to a written agency agreement to break the agreement for the purpose of entering into another agency agreement.

(2) Unless agreed to in writing by the buyer or seller, as the case may be, no brokerage is entitled to claim any commission or other remuneration from a buyer or seller with respect to a trade in real estate if the real estate is, to the knowledge of the brokerage, covered by an unexpired exclusive agency agreement with another brokerage.

1995, c.R-1.3, s.64.

Disclosure of information

65(1) In this section:

(a) **“associate”** of a brokerage means:

(i) where the brokerage is a partnership of individuals, a partner, other than a limited partner;

(ii) where the brokerage is a corporation or a partnership of corporations, an officer or director of any of the corporations or any person that beneficially owns, directly or indirectly, more than 5% of any class of voting equity securities, for the time being outstanding, of any of the corporations;

(iii) a broker, branch manager, associate broker or salesperson of the brokerage;

(iv) a corporation, firm, partnership, association, syndicate or other unincorporated organization in which the brokerage or any person mentioned in subclauses (i) to (iii) holds not less than 5% of its capital or is entitled to receive not less than 5% of its profits;

(v) the spouse of an individual mentioned in subclauses (i) to (iii);

(b) **“spouse”** means:

(i) the husband or wife of a person; or

(ii) a person with whom that person cohabits and has cohabited:

(A) continuously for a period of not less than two years; or

(B) in a relationship of some permanence, if they are the parents of a child.

(2) Where a brokerage or an associate of a brokerage directly or indirectly purchases or offers to purchase real estate or an interest in real estate, the brokerage or the associate, as the case may be, shall disclose to the seller, in writing, at the time of the offer:

(a) that:

(i) it is a brokerage; or

(ii) he or she is an associate of a brokerage and the details of the relationship;

- (b) any information within the knowledge of the brokerage or associate that could materially affect the value of the real estate;
 - (c) whether or not the brokerage or associate, as the case may be, intends to negotiate, is negotiating or has negotiated a further trade of the real estate or his or her interest in it and, if so, details of those negotiations; and
 - (d) the amount, less any commission payable by the seller to the brokerage, that is being offered for the real estate.
- (3) Clauses (2)(b) and (c) do not apply where a brokerage purchases or offers to purchase real estate or an interest in real estate as agent for another person, and:
- (a) the other person is not a brokerage or an associate of a brokerage;
 - (b) the compensation paid or payable to the brokerage does not exceed that usually paid for that service; and
 - (c) the brokerage discloses to the seller that it is acting as agent for a principal, whether or not the name of the principal is disclosed.
- (4) Where a brokerage or an associate of a brokerage trades in real estate owned by the brokerage or by the associate, or where a brokerage or an associate of a brokerage trades in real estate in which the brokerage or the associate has a material interest, the brokerage or the associate, as the case may be, shall disclose, in writing, to a buyer prior to receiving an offer to purchase:
- (a) that the real estate is so owned;
 - (b) that:
 - (i) it is a brokerage; or
 - (ii) he or she is an associate of a brokerage and the details of the relationship; and
 - (c) any information within the knowledge of the brokerage or associate that could materially affect the value of the real estate.
- (5) Where a brokerage fails to comply with subsection (2) or (4), the brokerage is liable to compensate the buyer or seller for any loss suffered as a direct result of the failure to comply with subsection (2) or (4).
- (6) Where an associate fails to comply with subsection (2) or (4), he or she is liable to compensate the buyer or seller for any loss suffered as a direct result of the failure to comply with subsection (2) or (4).

COMMISSION ON REAL ESTATE TRADES

Commission arrangements

66(1) In this section:

(a) **“lump sum”** means an amount of commission or remuneration to be paid to a brokerage by a buyer or seller with respect to a trade in real estate that is not based directly on the price at which the real estate is listed for sale, its sale price or any combination of the price at which it is listed for sale and its sale price;

(b) **“sale price”** means the payment agreed on between a buyer and a seller with respect to a trade in real estate.

(2) Any commission or other remuneration payable to a brokerage with respect to a trade in real estate is to be expressed as a lump sum or as a percentage of the sale price.

(3) No brokerage shall enter into an arrangement for or retain any commission or other remuneration unless it is computed in a manner permitted by this section and is agreed to in writing by the person liable to pay it.

1995, c.R-1.3, s.66.

Registration required

67 No brokerage shall collect or attempt to collect any commission or other remuneration for services rendered in connection with a trade in real estate unless at the time of rendering the services:

(a) it was registered as a brokerage; and

(b) where the services were rendered by a broker, branch, associate broker manager or salesperson of that brokerage, the broker, branch manager, associate broker or salesperson and the brokerage were registered.

1995, c.R-1.3, s.67; 2005, c.28, s.20.

When commission not payable

68(1) This section does not apply to real estate that is:

(a) a business with premises; or

(b) real or leasehold property used for a business.

(2) No brokerage shall collect or attempt to collect any commission or other remuneration for services in connection with a trade in real estate unless:

(a) any one of the following applies:

(i) a written agency agreement has been entered into with the buyer or seller;

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- (ii) the brokerage has obtained a written offer to purchase that is accepted in writing by the person liable to pay the commission or other remuneration; or
 - (iii) the brokerage has obtained a written acceptance of an offer to purchase signed by the person liable to pay the commission or other remuneration; and
- (b) subject to subsection (3), the trade in the real estate has been completed by the parties.
- (3) Clause (2)(b) does not apply:
- (a) where the person liable for the payment of the commission or other remuneration refuses or fails to execute any instrument necessary to complete the trade; or
 - (b) where:
 - (i) the person who submitted the offer mentioned in subclause (2)(a)(ii) forfeits the deposit by reason of that person's refusal or failure to complete the trade; and
 - (ii) the commission or other remuneration sought to be collected by the brokerage does not exceed one-half of the forfeited deposit.

1995, c.R-1.3, s.68.

Recovery

69 No action or proceeding shall be commenced for the recovery of any commission or other remuneration for services in connection with a trade in real estate mentioned in subsection 68(1) unless the contract on which recovery is sought or some note or memorandum of the trade:

- (a) has been obtained; and
- (b) is in writing signed by the person liable for the payment of the commission or other remuneration or by some person authorized to sign on behalf of the person liable for payment of the commission or other remuneration.

1995, c.R-1.3, s.69.

TRUST ACCOUNTS

Money to be turned over

70 On receipt of money tendered in connection with a trade in real estate, every broker, branch manager, associate broker and salesperson shall immediately pay that money to his or her brokerage.

1995, c.R-1.3, s.70; 2005, c.28, s.21.

Trust accounts

71(1) Every brokerage shall:

- (a) maintain one or more interest-bearing trust accounts in a financial institution in Saskatchewan;
 - (b) deposit into a trust account all money received by the brokerage in trust for other persons in connection with a trade in real estate, within two business days after the later of:
 - (i) the day on which an offer to purchase is accepted; and
 - (ii) the day on which the money is received by the brokerage;
 - (c) at all times, keep the money that it receives in trust for other persons in connection with a trade in real estate separate and apart from other money; and
 - (d) disburse trust money only in accordance with the terms of the trust pursuant to which the money is received.
- (2) In accordance with the requirements set out in the bylaws, every brokerage shall instruct its financial institution to remit the interest earned on its trust accounts to the Commission, less any charges of the financial institution for servicing the accounts.
- (3) Interest earned on a trust account is the property of the Commission and is recoverable as a debt owing to the Commission.
- (4) A brokerage that deposits money in a trust account pursuant to subsection (1) is not required to account to any person, other than the Commission, for the interest earned on the account.
- (5) Nothing in this section relating to interest applies to interest earned on money held in trust by a brokerage after the brokerage removes the money from a trust account and invests it in accordance with an arrangement, in writing, between a buyer and a seller regarding the application of interest on that money.
- (6) Where a brokerage holds money in trust pursuant to subsection (5), the brokerage may, where payment of a fee has been agreed to in writing between the brokerage and the buyer or seller, charge the buyer or seller, as the case may be, an administration fee in the amount prescribed in the regulations.
- (7) Where pursuant to subsection (5) a brokerage removes money held in trust from a trust account to invest the money pursuant to the arrangement between the buyer and the seller, that amount of money must be returned to that trust account before being paid out of trust.
- (8) This section does not apply to a security deposit within the meaning of *The Residential Tenancies Act*.

Use of trust account interest

72 Subject to the approval of the superintendent, interest received by the Commission pursuant to section 71 may be used for any of the following purposes:

- (a) to promote continuing education of brokers, branch managers, associate brokers and salespersons;
- (b) to sponsor, support and promote research and to make recommendations affecting real estate and the business of trading in real estate;
- (c) to pay any cost associated with the administration of the interest received by the Commission pursuant to section 71;
- (d) to pay the cost of conducting audits and investigations of trust accounts;
- (e) for any other purpose prescribed in the regulations.

1995, c.R-1.3, s.72; 2005, c.28, s.23.

Unclaimed trust money

73(1) Subject to subsection (2), where a brokerage holds money in trust for more than two years, the brokerage shall pay it to the Minister of Finance.

(2) A brokerage shall not make a payment to the Minister of Finance pursuant to subsection (1) where the brokerage has express authorization from the person who is entitled to receive payment of it to continue to hold the money in trust.

(3) If at any time a person establishes that he or she is entitled to any money paid to the Minister of Finance pursuant to subsection (1), the Minister of Finance shall pay an equivalent amount to him or her out of the general revenue fund.

(4) A dispute with respect to a person's entitlement to money mentioned in this section may be determined on application to the court.

1995, c.R-1.3, s.73.

REAL ESTATE OUTSIDE SASKATCHEWAN

Exemption, prospectus and certificate

74(1) This section does not apply to a brokerage that engages in an isolated trade in real estate located outside Saskatchewan.

(2) No person other than a brokerage shall trade in real estate with respect to which a prospectus is required to be filed pursuant to this section.

(3) No brokerage shall trade in Saskatchewan in real estate that is located outside Saskatchewan until the brokerage:

- (a) files with the Commission a prospectus, in the form and manner prescribed in the regulations, and containing any other information that the Commission may require; and
- (b) obtains a certificate of acceptance from the Commission with respect to that prospectus.

- (4) The Commission shall not issue a certificate of acceptance where:
- (a) the prospectus contains any statement, promise or forecast that is misleading, false or deceptive or has the effect of concealing material facts; or
 - (b) there is not adequate provision for:
 - (i) the protection of deposits or other funds of buyers; or
 - (ii) the assurance of title or any other interest contracted for.
- (5) Before issuing a certificate of acceptance, the Commission may make any inquiries that it considers necessary, which may include obtaining reports from qualified persons in the jurisdiction in which the real estate is located.
- (6) The brokerage that filed the prospectus shall bear the cost of any inquiries made or reports obtained pursuant to subsection (5).
- (7) The Commission shall not issue a certificate of acceptance unless securities in the amount and kind and subject to the terms that may be prescribed in the regulations are deposited with it.
- (8) Where real estate to which a prospectus refers is located outside Canada, the Commission may refer the prospectus to the superintendent, who may direct that a certificate of acceptance is not to be issued, and in that case, the Commission shall not issue a certificate of acceptance with respect to that prospectus.
- (9) Every certificate of acceptance issued by the Commission expires 12 months after the date of its issuance.

1995, c.R-1.3, s.74.

Change in prospectus

- 75(1)** The brokerage that filed the prospectus pursuant to section 74 shall immediately notify the Commission and every buyer who has entered into a contract to which subsection 78(1) applies, in writing, when a change occurs with regard to any of the matters set out in the prospectus with respect to which a certificate of acceptance is issued:
- (a) that would have the effect of rendering a statement in the prospectus false or misleading; or
 - (b) that brings into being a fact or proposal that should have been disclosed in the prospectus if the fact or proposal had existed at the time the prospectus was filed.
- (2) The Commission may, with or without notice:
- (a) revoke a certificate of acceptance; or
 - (b) require that a new prospectus be filed within a specified time.
- (3) Trading in the real estate shall immediately cease where:
- (a) a certificate of acceptance is revoked pursuant to clause (2)(a); or
 - (b) no prospectus is filed pursuant to clause (2)(b) within the time specified.

1995, c.R-1.3, s.75.

Representations

76 No person shall make any representation, written or oral, that the Commission has reviewed the financial standing, fitness or conduct of any person in connection with any prospectus or the merits of any prospectus.

1995, c.R-1.3, s.76.

Additional material

77 Each prospectus filed with the Commission is to be accompanied by the following:

- (a) an affidavit of the owner of the real estate, or, where the owner is a corporation, a majority of the directors of it, as to the correctness of every statement in the prospectus;
- (b) a copy of every plan referred to in the prospectus;
- (c) a copy of every form of contract referred to in the prospectus;
- (d) any document that the Commission may require to support any statement, proposal or estimate set out in the prospectus;
- (e) any financial particulars of the owner that the Commission may require; and
- (f) any fees that may be prescribed in the regulations.

1995, c.R-1.3, s.77.

Buyer to receive prospectus

78(1) No person shall enter into or negotiate in Saskatchewan any contract to trade in real estate located outside Saskatchewan unless:

- (a) a copy of the prospectus mentioned in section 74 and any information required to be filed pursuant to subsection 75(1) has been delivered to the prospective buyer; and
 - (b) the prospective buyer has acknowledged in writing that he or she has received a copy of the material mentioned in clause (a) and has been given an opportunity to read it.
- (2) The seller or brokerage shall:
- (a) retain each acknowledgement mentioned in subsection (1) for at least six years; and
 - (b) make any acknowledgement available for inspection by the Commission.
- (3) A buyer who has entered into a contract to which subsection (1) applies is entitled to rescission of the contract if:
- (a) subsection (1) has not been complied with; and
 - (b) written notice of exercising the right of rescission is served on the seller or brokerage within 90 days of the date the contract is signed.

(4) The onus of proving compliance with subsection (1) rests on the seller or brokerage, as the case may be.

(5) The right of rescission mentioned in subsection (3) is in addition to any other right that the buyer may have at law or by contract or that may be prescribed in the regulations with respect to the contract.

1995, c.R-1.3, s.78.

POWERS OF SUPERINTENDENT

General supervision

79(1) The minister may appoint a superintendent of real estate to supervise the administration of this Act.

(2) The superintendent may require any information or material from the Commission or members of the Commission with respect to any activity of the Commission or with respect to the administration of this Act.

(3) Every decision of the Commission is subject to review by the superintendent on the superintendent's own initiative or at the request of a person who, in the opinion of the superintendent, has an interest in the decision.

(4) On completion of a review mentioned in subsection (3), the superintendent may direct the Commission to take any action that the superintendent considers appropriate, and the Commission shall act in accordance with the superintendent's direction.

(5) The superintendent may charge any fee that he or she considers necessary for services provided pursuant to this Act.

1995, c.R-1.3, s.79.

Power to demand production of documents, etc.

80 The superintendent may, at all reasonable times, demand the production of and inspect the records that a brokerage is required to keep pursuant to section 31 and all or any documents relating to a trade in real estate.

1995, c.R-1.3, s.80.

Power to investigate

81(1) The superintendent, on his or her own motion or on the complaint of any interested person, may:

(a) inquire into or investigate any matter the superintendent considers necessary respecting:

(i) the administration of this Act or the regulations; or

(ii) any trade in real estate; and

- (b) by order, appoint a person to inquire into or investigate any matter the superintendent considers necessary respecting:
- (i) the administration of this Act or the regulations; or
 - (ii) any trade in real estate.
- (2) In an order pursuant to clause (1)(b), the superintendent shall prescribe the scope of the inquiry or investigation that is to be carried out pursuant to the order.
- (3) For the purposes of subsection (1), the superintendent or a person appointed pursuant to clause (1)(b) may investigate, inquire into and examine all or any of the following:
- (a) the business affairs of the person being investigated;
 - (b) any records, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of, in relation to or in connection with the person being investigated;
 - (c) any property, assets or things owned, acquired or alienated in whole or in part by the person being investigated or by any person acting on behalf of or as agent for the person being investigated;
 - (d) the assets at any time held by, the liabilities, debts, undertakings and obligations at any time existing and the financial or other conditions at any time prevailing with respect to the person being investigated;
 - (e) the relationship that may, at any time, exist or have existed between the person being investigated and any other person by reason of:
 - (i) investments;
 - (ii) commissions promised, secured or paid;
 - (iii) interests held or acquired;
 - (iv) the loaning or borrowing of money, securities or other property;
 - (v) common control;
 - (vi) undue influence or control; or
 - (vii) any other relationship.
- (4) The superintendent or a person appointed pursuant to clause (1)(b) has the same power as is vested in the court for the trial of civil actions to:
- (a) summon and enforce the attendance of witnesses;
 - (b) compel witnesses to give evidence on oath or otherwise; and
 - (c) compel witnesses to produce records and other property.

(5) The failure or refusal of a person summoned as a witness pursuant to subsection (4) to:

- (a) attend;
- (b) answer questions; or
- (c) produce records or other property that are in his or her custody or possession;

makes that person, on application to a judge of the court by the superintendent or a person appointed pursuant to clause (1)(b), liable to be committed for contempt by the court in the same manner as if that person were in breach of an order or judgment of the court.

(6) A person giving evidence at an investigation pursuant to this section may be represented by legal counsel at that person's own expense.

(7) If a judge of the Provincial Court of Saskatchewan is satisfied by information given under oath that there are reasonable grounds to believe that a contravention of this Act or the regulations has occurred and that there is evidence to be found at the place to be searched, the judge may issue a warrant authorizing a person to enter the place named in the warrant and every part of the place named in the warrant and of the premises connected with that place to:

- (a) examine the place and connected premises; and
- (b) search for and seize and take possession of any records and other property that the person has reasonable grounds to believe may constitute evidence of the contravention of this Act or the regulations.

(8) A person authorized to execute a warrant issued pursuant to subsection (7) may employ other persons to assist him or her.

(9) An application for a warrant pursuant to subsection (7) may be made *ex parte* unless the judge of the Provincial Court of Saskatchewan otherwise directs.

(10) The superintendent or a person appointed pursuant to clause (1)(b) shall make the records or other property available for inspection and copying where:

- (a) the superintendent or a person appointed pursuant to clause (1)(b) has seized records or other property pursuant to this section; and
- (b) the person from whom the records or other property were seized requests an opportunity to inspect or copy those records or other property.

(11) On the application of the person from whom the records or other property were seized pursuant to this section, the superintendent may order that all or any of the records or other property be copied and the originals be returned to the person from whom they were seized.

(12) A document certified by the superintendent, or by a person appointed pursuant to clause (1)(b), to be a copy made pursuant to this section:

(a) is admissible in evidence, without proof of the office or signature of the person appearing to have certified the document, in any proceedings before:

(i) the superintendent or any person appointed pursuant to clause (1)(b); or

(ii) any court; and

(b) has the same probative force as the original document.

(13) Where an investigation is ordered pursuant to this section, the superintendent may appoint an expert to examine records, properties and matters of the person being investigated.

(14) Where the condition or value of any land, building or work is relevant in any investigation:

(a) the superintendent; or

(b) where authorized by the superintendent, the person appointed pursuant to clause (1)(b) or an expert appointed pursuant to subsection (13);

may, on reasonable notice to the owner or occupier of the land, building or work, enter on and inspect that land, building or work.

(15) Every person appointed pursuant to clause (1)(b) shall provide the superintendent with:

(a) a full and complete report of the investigation;

(b) all transcripts of evidence and material in his or her possession relating to the investigation on request; and

(c) interim reports on request.

1995, c.R-1.3, s.81.

Application to freeze funds

82(1) The superintendent may do any of the things described in subsection (2) where:

(a) he or she is about to investigate or is investigating a person pursuant to section 81;

(b) the registration of a brokerage is suspended or cancelled;

(c) criminal proceedings or proceedings with respect to a contravention of this Act or the regulations that, in the opinion of the superintendent, are related to or arise out of a trade in real estate are about to be or have been instituted against any person;

(d) he or she has reason to believe that the trust funds in the trust account of a brokerage are less than the amount for which the brokerage is accountable; or

(e) it is the opinion of the superintendent that it is in the public interest.

(2) Where any of the circumstances described in subsection (1) exist, the superintendent may:

- (a) apply to the court for the appointment of a receiver, receiver manager or trustee to hold or manage, as the case may be, all or part of the property of the person or brokerage mentioned in subsection (1);
- (b) in writing:
 - (i) direct any person having on deposit or under his or her control or for safekeeping any funds or securities of any person mentioned in clauses (1)(a) to (d) to hold those funds or securities;
 - (ii) direct any person mentioned in clauses (1)(a) to (d) to refrain from withdrawing funds or securities mentioned in subclause (i) from any person who has them on deposit, under control or for safekeeping; or
 - (iii) direct any person mentioned in clauses (1)(a) to (d) to hold any funds or securities of clients or others that he or she has in his or her possession or control in trust for a receiver appointed pursuant to clause (a) or for an interim receiver, custodian, trustee, receiver, receiver and manager or liquidator appointed pursuant to the *Bankruptcy and Insolvency Act* (Canada), *The Business Corporations Act* or the *Winding-up Act* (Canada), as the case may be, or otherwise lawfully appointed;
- (c) direct any person to:
 - (i) cease trading in real estate; or
 - (ii) cease contravening this Act or the regulations.

(3) A direction made pursuant to clause (2)(b) or (c) remains in effect until the superintendent, in writing, revokes the direction, consents to release any particular funds or securities from the direction or directs that the funds be released to the Commission.

(4) An order made pursuant to this section may be enforced in the same manner as an order of the court and may be varied or discharged on application to the court made on notice to the superintendent.

1995, c.R-1.3, s.82.

PART VII Regulations and Miscellaneous

Regulations

83(1) The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word used in this Act but not defined in this Act;
- (b) prescribing requirements of eligibility for persons to be members of the Commission;
- (c) respecting the powers and duties of the Commission;

- (d) respecting committees of the Commission established pursuant to this Act;
- (e) respecting procedures to be followed in the investigation of complaints respecting a registrant;
- (f) respecting investigations pursuant to section 81;
- (g) respecting the records to be maintained by a brokerage;
- (h) respecting hearings by the Commission or the superintendent;
- (i) respecting the delegation of the powers of the Commission;
- (j) prescribing the fees that the Commission may take for administration of the fund;
- (k) respecting the fund, including audits of the fund;
- (l) exempting persons or any category of persons, or trades in real estate or any category of trades in real estate, from this Act or any provision of this Act;
- (m) respecting agency agreements;
- (n) respecting trust accounts;
- (o) respecting interest received by the Commission pursuant to section 71;
- (p) prescribing the fees a brokerage may charge pursuant to subsection 71(6);
- (q) respecting financial security arrangements for registrants, including requiring a registrant or any category of registrant to be bonded or insured or to have collateral security;
 - (q.1) for the purposes of clause (q), prescribing:
 - (i) the minimum amount of insurance for which a registrant or any category of registrant must be insured; and
 - (ii) the insurer with which a registrant or any category of registrant must be insured;
- (r) respecting the amount and kind of securities to be deposited pursuant to subsection 74(7) and terms governing those securities;
- (s) respecting information to be included in a prospectus for trades or a category of trades in real estate;
- (t) prescribing fees to be paid for the filing of a prospectus;
- (u) respecting the form and contents of a prospectus;
- (v) respecting the maximum amount that may be paid from the fund with respect to a claim or category of claims;

- (w) respecting the trade in Saskatchewan of time-share plans involving property located both in and outside Saskatchewan, including, without limiting the generality of the foregoing:
 - (i) forms and materials to be filed with the Commission or the superintendent, including the form and content of a prospectus;
 - (ii) the effect of a prospectus pertaining to a time-share plan;
 - (iii) registration of persons trading in time-share plans;
 - (iv) rescission rights of buyers;
 - (v) financial protection for buyers;
 - (vi) terms that may be applied to time-share plans;
 - (vii) reasons for refusal to accept a prospectus or for suspending acceptance of a prospectus;
 - (viii) enforceability of contracts for a trade in a time-share plan;
 - (ix) charges for costs of investigations;
 - (x) advertisements for time-share plans; and
 - (xi) fees to be paid and penalties for non-payment of fees;
 - (x) respecting the service of documents;
 - (y) prescribing any activity or practice, in addition to the activities and practices set out in clause 2(l) that constitutes fraud or a fraudulent act in connection with a trade in real estate;
 - (z) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;
 - (aa) respecting any other matter or thing the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purpose of this Act.
- (2) Where there is a conflict between the regulations and the bylaws, the regulations prevail.

GENERAL

Immunity

84 No action lies or shall be instituted against:

- (a) the superintendent;
- (b) any person acting under the authority of the superintendent;
- (c) the Commission or any member of the Commission; or
- (d) any person acting under the authority of the Commission;

for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them pursuant to or in the exercise or supposed exercise of any power conferred by this Act, the regulations or the bylaws or in the carrying out or supposed carrying out of any decision or order made pursuant to this Act, the regulations or the bylaws or any duty imposed by this Act, the regulations or the bylaws.

1995, c.R-1.3, s.84.

Restrictions on access to information

85(1) Notwithstanding *The Freedom of Information and Protection of Privacy Act*, any information submitted or provided to the superintendent or the Commission, or obtained through an audit, examination, investigation or inspection pursuant to this Act, is not open to inspection or available for access by any person except by the following:

- (a) those members of the public service of Saskatchewan employed in the office of the superintendent or those employees of the Commission whose responsibilities require them to inspect or have access to the information;
- (b) those persons who are authorized, in writing, by the superintendent or the Commission to inspect or have access to the information.

(2) Unless authorized by this Act or by any other Act or law, or with the consent of the person to whom the information relates, no member of the public service of Saskatchewan employed in the office of the superintendent and no employee of the Commission and no person authorized by the superintendent or by the Commission to inspect or have access to the information shall:

- (a) disclose or communicate or allow to be disclosed or communicated any information obtained pursuant to this Act to any person who is not legally entitled to the information; or
- (b) allow any person who is not legally entitled to the information obtained pursuant to this Act to inspect or have access to it.

(3) Notwithstanding subsections (1) and (2), in the circumstances set out in subsection (4) the superintendent or the Commission may authorize the release or inspection of, or access to, the information mentioned in those subsections to or by the following persons or category of persons:

- (a) any person employed by a government or regulatory authority either inside or outside Canada;
- (b) a law enforcement agency or investigative body either inside or outside Canada;
- (c) a real estate commission or its employees, or an equivalent body in another jurisdiction or its employees.

(4) For the purposes of subsection (3), the superintendent or the Commission may authorize the release or inspection of, or access to, the information mentioned in subsections (1) and (2) to or by the persons or category of persons mentioned in subsection (3) where:

- (a) in the case mentioned in clause (3)(a), the information will be used solely for the purpose of administering or enforcing an Act or law of Saskatchewan, of Canada or of another jurisdiction inside or outside Canada;
- (b) in the case mentioned in clause (3)(b), the information will be used solely for the purpose of enforcing an Act or law of Saskatchewan, of Canada or of another jurisdiction inside or outside Canada;
- (c) in the case mentioned in clause (3)(c), the information will be used solely for the purpose of administering or enforcing this Act or any Act or law of another jurisdiction similar to this Act;
- (d) the release, inspection or access is pursuant to an agreement made pursuant to section 85.1; or
- (e) in the opinion of the superintendent or the Commission, it is in the public interest to allow the release, inspection or access.

(5) Notwithstanding subsections (1) and (2), the superintendent or the Commission may authorize the publication of or make available to the public the information mentioned in those subsections, where in the opinion of the superintendent or the Commission, it is in the public interest to do so.

(6) No person who is provided information pursuant to this section is compellable to give evidence in any court or in any proceeding concerning that information unless:

- (a) a consent is obtained from the person to whom the information relates; or
- (b) the court orders the evidence to be given.

- (7) When an application is made to the court for an order pursuant to clause (6)(b):
- (a) the superintendent, the Commission and the person to whom the information relates are entitled to:
 - (i) appear before the court; and
 - (ii) make submissions to the court; and
 - (b) the person seeking the order compelling the evidence has the onus of showing why it is in the public interest that the order be made.

2002, c.53, s.6.

Agreements with other jurisdictions

85.1(1) In this section, “**regulatory authority**” means a regulatory authority, real estate commission, law enforcement agency, investigative body or person fulfilling duties similar to those imposed on the Commission by this Act that is either inside or outside Canada.

(2) The Commission may enter into an agreement with any other regulatory authority:

- (a) for the purpose of administering or enforcing this Act or any Act or law of another jurisdiction that is similar to this Act, including:
 - (i) an agreement authorizing the Commission to perform responsibilities and exercise powers on behalf of the other regulatory authority; and
 - (ii) authorizing the other regulatory authority to perform responsibilities and exercise powers on behalf of the Commission; or
- (b) for any other purpose that, in the opinion of the Commission, is in the public interest.

2002, c.53, s.6.

Delegation by superintendent

85.2(1) The superintendent may appoint any person to perform any of the responsibilities imposed on or to exercise any of the powers conferred on the superintendent by this Act.

(2) The performance or exercise by a person appointed pursuant to subsection (1) of the responsibilities imposed or powers conferred on the superintendent by this Act is deemed to be an act performed or exercised by the superintendent.

(3) The superintendent may, in writing, set any limit or condition on an appointment pursuant to this section that the superintendent considers reasonable.

2002, c.53, s.6.

Common law

86 The rules of the common law, except to the extent that they are inconsistent with this Act, and in particular the rules relating to the law of principal and agent, continue to apply to trades in real estate.

1995, c.R-1.3, s.86.

Service

87(1) Unless otherwise provided for in this Act, the regulations or the bylaws, any notice, or other document that is required to be served pursuant to this Act, the regulations or the bylaws may be served by:

- (a) personal service made:
 - (i) in the case of an individual, on that individual;
 - (ii) in the case of a partnership, on any partner; or
 - (iii) in the case of a corporation, on any officer or director; or
- (b) registered mail addressed to the last business or residential address of the person to be served known to the registrar.

(2) A notice or document sent by registered mail is deemed to have been served on the seventh day following the date of its mailing unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive it or received it at a later date.

1995, c.R-1.3, s.87.

OFFENCES AND PENALTIES**Offence**

88(1) No person shall fail to comply with any provision of this Act or the regulations.

(2) No person shall commit a fraudulent act in connection with any trade in real estate.

(3) Every person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction:

- (a) in the case of an individual, to a fine of not more than \$10,000 for a first offence and to a fine of not more than \$20,000 for a second or subsequent offence;
- (b) in the case of a corporation, to a fine of not more than \$50,000; and
- (c) where the convicting court considers it appropriate, to pay restitution to any person as compensation for a loss suffered by that person as a result of the offence.

1995, c.R-1.3, s.88.

Limitation on prosecution

89 No prosecution for a contravention of this Act or the regulations is to be commenced after the expiration of 24 months from the date of the alleged contravention.

1995, c.R-1.3, s.89.

TRANSITIONAL, REPEAL AND COMING INTO FORCE

Transitional

90(1) *The Real Estate Brokers Act, 1987*, as that Act existed on the day before the coming into force of this Act, applies to an offer to lease, option, rent or exchange real estate that was made prior to the coming into force of this Act.

(2) Registration granted prior to the coming into force of this Act as:

(a) a broker is deemed to be registration as a brokerage until the registration expires or is cancelled, suspended or otherwise terminated; and

(b) a salesman is deemed to be registration as a salesperson until that registration expires or is cancelled, suspended or otherwise terminated.

(3) Where a certificate of registration as a broker granted prior to the coming into force of this Act contains the name of an individual designated as the manager for the broker, that manager is deemed to be registered as a broker for purposes of this Act until the broker's registration expires or is cancelled, suspended or otherwise terminated.

(4) An individual who is designated as a branch manager by a broker prior to the coming into force of this Act is deemed to be registered as a branch manager for purposes of this Act until the registration of the broker expires or is cancelled, suspended or otherwise terminated.

(5) Any outstanding claims against the fund arising out of a trade in real estate against a person who is or who was a registrant pursuant to *The Real Estate Brokers Act, 1987*, as that Act existed on the day before the coming into force of this Act, are to be dealt with in accordance with this Act.

1995, c.R-1.3, s.90.

S.S. 1986-87-88, c.R-2.1 repealed

91 *The Real Estate Brokers Act, 1987* is repealed.

1995, c.R-1.3, s.91.

Editorial Appendix (Amendments)

The following table contains amendments to be proclaimed and/or effective at a future date, as follows: (Please refer to the Tables of Saskatchewan Statutes and Regulations for complete historical/archival information on this publication)

Amending Year	Chapter	Section	Effective
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