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**Policy**

**Register**

**2010**





# COMMISSION POLICIES

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## I. COMMISSION

- A. The newly elected members to the Commission will be invited to the May meeting as observers to become orientated.

Following the regular May business meeting, a separate meeting of the new Commission shall take place for the election of a Chairperson and Vice Chairperson.

Nomination forms will be circulated prior to this meeting.

The Chairperson will recommend to the Commission the Committee appointments for the next fiscal year.

- B. A member of the Saskatchewan Real Estate Commission shall be required to declare a conflict of interest whenever the Commission is discussing a matter that has personal and/or financial implications on the member.

1. The member may, at the request of the Commission, be required to leave the meeting while the matter is being discussed.
2. The member shall not attempt, in any way, whether before, during or after the meeting, to influence the voting on the matter.
3. The minutes of a meeting at which a conflict is declared, shall make note of the fact.

- C. The Saskatchewan Real Estate Commission shall maintain the following records for a period of six years after which the records may be destroyed:

- Registration Application Forms and/or Certificates of Registration
- Unfounded Investigation Files
- Brokerages' Interest Bearing Trust Account Reports, Annual Financial Reports, Audit Reports and miscellaneous correspondence
- Saskatchewan Real Estate Commission financial records (i.e. cancelled cheques, bank statements, invoices, bills, etc.)

Investigation files that resulted in a hearing decision shall be maintained in their entirety for a period of six years. After the six-year period, the statement of facts and admissions (if applicable), the hearing decision and appeal documentation from the Superintendent of Real Estate (if applicable) shall be permanently retained. The remaining miscellaneous correspondence will be destroyed.

All issues of *The Register* will be removed from public access after a three-year

period from the date of publication. Formal and Mitigation Hearing Decisions will be posted on the Commission's website for a period of three years from the date of the hearing decision; or three years from the date of the Superintendent's/Deputy Superintendent's decision following an appeal of the Commission's hearing decision.

The following documents shall be permanently preserved:

- Saskatchewan Real Estate Commission Annual Reports
- Minute Books of the Commission
- Saskatchewan Real Estate Commission Audit Files
- Insurer and Policy Files
- Annual Financial Report Yearly Spreadsheets
- Interest Bearing Trust Account Report Annual Spreadsheet
- Saskatchewan Justice Registration History (prior to July 1, 1988) Card Files
- SREC Registration History Computer Print-out from July 1, 1988 to December 31, 1999
- Decisions of the Registrar including correspondence re: granting equivalencies, terms and conditions and denial of registrations
- Investigation files where the investigation was suspended because a registrant left the industry prior to or during the investigation/review process
- Criminal Record Checks

D. The Saskatchewan Real Estate Commission may invest its operating monies in accordance with Section 3 of *The Trustee Act* which reads as follows:

- 3(1) A trustee may invest trust property in any form of property or security in which a reasonable, prudent investor would invest, including a security issued by a mutual fund as defined in *The Securities Act, 1988* or similar investments.
- 3(2) Subsection (1) does not authorize a trustee to invest trust property in a manner that is inconsistent with the instrument creating the trust.
- 3(3) In planning the investment of trust property, a trustee shall have regard to the following factors in addition to any others that are relevant in the circumstances:
  - (a) general economic conditions;
  - (b) the possible effects of inflation or deflation;
  - (c) the expected tax consequences of investment decisions or strategies;
  - (d) the role that each investment or course of action plays within the overall portfolio of trust property;

- (e) the expected total return from income and appreciation of capital;
- (f) other resources of the beneficiaries;
- (g) needs for liquidity, regularity of income and preservation or appreciation of capital; and
- (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

3.1 In investing trust property, a trustee must exercise the care, skill, diligence and judgement that a reasonable, prudent investor would exercise in making investments.

3.2 A trustee must diversify the investment of trust property to an extent that is appropriate having regard to:

- (a) the terms on which the trust property is held; and
- (b) general economic and investment market conditions.

3.3(1) A trustee may obtain advice respecting the investment of trust property.

- (2) A trustee is not in breach of trust for relying on advice obtained pursuant to subsection (1) if a reasonable, prudent investor would rely on the advice in comparable circumstances.

## II. CONDUCT & TRADE PRACTICES

### A. NON-REGISTERED REGISTRANTS' ASSISTANTS

In order to provide guidance to registrants with regard to what activities, related to real estate transactions, unregistered persons can and cannot perform; the Saskatchewan Real Estate Commission established the following policy:

Activities that CAN be performed by unregistered persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc.:

1. Any clerical or administrative activities such as preparation of documents or reports.
2. Scheduling of appointments for registrants to show listed property.
3. Setting up and removing signs and lock boxes.
4. Writing and preparation of ads, flyers and promotional information and placement of such advertising approved by the broker.
5. Contacting registrants for results on showings of listings.
6. Contacting solicitors on transactions.
7. Responding to advertising inquiries made by other registrants.
8. Witnessing of documents already discussed and presented by a registrant.
9. Following up on financing commitments after a contract has been negotiated.
10. Acting as a courier service to deliver documents, pick up keys, etc.
11. Securing public information documents such as Certificates of Title from Land Titles, tax notices, etc.

Activities that CANNOT be performed by unregistered persons include, but are not necessarily limited to:

1. Host public open houses, kiosks, home show booths or fairs or hand out materials at such functions.
2. Present, discuss or explain to consumers any documents dealing with a real estate transaction.
3. Solicit a contract to trade in real estate or telephone solicitations designed to procure buyers, listing or appointments for listing presentations.
4. Advertise real estate.
5. Respond to seller inquiries on the results of registrant showings of the seller's property.
6. Respond to inquiries from consumers, including advertising inquiries.
7. Be paid on the basis of real estate activity, such as a lump sum or percentage of commission on a real estate transaction.

- B. Following the completion of an investigation in which:
- a registrant was found to be in violation of the Act, regulations and/or Commission Bylaws;
  - a sanction has been applied to the registrant;
  - the thirty-day appeal period has expired; and
  - the sanction is in force
- the Saskatchewan Real Estate Commission will publish the name, date of decision, sanction and violation committed by all registrants in its newsletter, **The Register**.
- C. A registrant, who advertises real estate for sale using the phrase: "For Sale By Owner", is considered to have violated Section 726(c) of the Commission Bylaws.
- D. Anyone who collects, holds or disburses monies relating to condominium fees is not considered to be carrying out a property management function as defined in Section 2(r) of *The Real Estate Act*.
- E. The Saskatchewan Real Estate Commission does not recognize the use of the abbreviation "P.T." to denote part-time and all registrants must use the full term "part-time" pursuant to Bylaw 713.
- F. Notwithstanding the Saskatchewan Real Estate Commission's advertising Bylaw 726, a registrant is not acting in a false, inaccurate or misleading manner when placing sold signs on a seller's property provided that all conditions have been removed on the related accepted offer to purchase.
- G. Notwithstanding Section 2(bb)(vii) of *The Real Estate Act*:
1. any person who engages in a business practice and who restricts his or her activities to that practice provided that the activity or practice is not related directly to the negotiating, obtaining or completing of a listing or an offer to purchase; or
  2. any person who provides a registrant with information unless it is obtained through solicitation or negotiation
- will not be deemed to be carrying out any conduct, act or negotiation in the furtherance or attempted furtherance of a trade. [Some examples are: appraisers, mortgage officers, surveyors, building inspectors and advertising medium providers.]
- H. A person who engages in telephone solicitations of any kind designed to procure buyers, listings or appointments for listing presentations is deemed to be carrying on a conduct, act or negotiation in the furtherance or attempted furtherance of a trade in real estate. (i.e. telemarketing)

- I. When a registrant receives compensation as a result of an ancillary service (i.e. home inspectors, mortgage lenders, etc.) that has been provided to the transaction, the Saskatchewan Real Estate Commission deems that this is **not** a trade in real estate and existing legislation does not contain a requirement that remuneration received for this type of service must be paid through the brokerage.
- J. The buyer(s) brokerage and seller(s) brokerage legal name that is registered with the Saskatchewan Real Estate Commission must be the brokerage name that is used when trading in real estate.
- K. Notwithstanding the requirements of Section 58(1)(b)(ii), to clearly show the name and address of the buyer on an offer to purchase prior to execution by the buyer, the Saskatchewan Real Estate Commission will permit the practice of using unnamed or undisclosed buyers on offers to purchase.
- L. A registrant has a material interest in real estate where the registrant:
- (a) is an officer or director of the corporation holding title to the real estate or that beneficially owns, directly or indirectly, more than 5% of any class of voting equity securities, for the time being outstanding, of the corporation; and/or
  - (b) holds not less than 5% of the capital or is entitled to receive not less than 5% of the profits of a corporation, firm, partnership, association, syndicate or other unincorporated organization that holds the title of the real estate.
- M. **FARMING** includes livestock raising, poultry raising, dairying, tillage of the soil, bee keeping, fur farming or other activity undertaken to produce primary agricultural produce and animals.
- N. **Electronic Marketing – Internet Guidelines**

As a general principle, registrants should be aware that all real estate legislation and policies respecting advertising apply equally to the Internet. The following recommended ARELLO guidelines have been adopted by the Saskatchewan Real Estate Commission.

The requirements for registrants using the internet as a business tool fall under several general categories:

- proper identification of brokerage and registrant doing the advertising/providing information;
- registrants having permission to use/provide information;
- accuracy and currency of information; and
- permission to link to other websites.

The Internet offers tremendous opportunities to streamline, enhance and create efficiencies in the real estate services arena for both consumers and registered entities. The goal of ARELLO is to provide jurisdictions with guidelines to adequately protect online consumers and avoid encumbering registered brokerages and individuals with unnecessary, burdensome and inconsistent regulatory constraints.

These guidelines are described under the following headings:

- Definitions
- Jurisdictional Intent
- Registration and Jurisdictional Intent
- Brokerage and Registrant Disclosure
- Regulatory Intent of Online Disclosure Guidelines
- Online Disclosure Guidelines
- Active Solicitation
- Advertising and the Internet
  - Domain Names, E-mail Addresses and Meta Tags
  - Currency and Accuracy of Information
  - Links, Deep Links and Frames
  - Registrant Jurisdiction
  - Office Policies Regarding Internet Use
- Social Networking

## **DEFINITIONS**

As used in these guidelines, the term:

- "Active communication" means the intent of contacting specifically identifiable individuals or groups of individuals.
- "Active solicitation" means active communication with consumers about real estate services with intent to form a brokerage relationship.
- "Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to registered real estate activity.
- "Jurisdictional intent" means a reasonable body of evidence, which points to intentional activity on the part of a legal entity or individual to perform services or offering to perform services requiring a real estate registration in a jurisdiction.
- "Registered brokerage disclosure" means advertising or messaging that contains the following information:
  - the brokerage's name as registered within a jurisdiction;
  - the city where the brokerage's business office is located; and
  - the other jurisdictions (e.g. countries, provinces or states) in which the brokerage holds a real estate brokerage registration.

- "Registered entity" refers to both registrants and registered brokerages.
- "Registrant" means a broker, associate broker and salesperson.
- "Registrant disclosure" means advertising or messaging that contains the following information:
  - the registrant's name as it appears on the Certificate of Registration issued by the jurisdiction;
  - the name of the brokerage with which the registrant is registered;
  - the city where the registrant's office is located; and
  - the other jurisdictions (e.g. countries, provinces or states) in which the registrant holds a real estate license.
- "*Messaging*" means all forms of communication in any manner and by any means of communication to the public for any purpose, other than advertising, related to registered real estate activity.
- "*Passive communication*" means communication available to the general public with no intent to contact specifically identifiable individuals or groups of individuals.

### **JURISDICTIONAL INTENT**

Regulatory "Intent" of Determining Jurisdiction - Since the Internet is cross-jurisdictional in nature, it is important to address the issue of what constitutes online registration activity from a jurisdictional standpoint. The determination of this issue is based on the concept of "*jurisdictional intent*."

For example, jurisdictional intent may occur when an individual or company uses the Internet to solicit relocation customers in the hopes of referring them to licensed entities, for a fee, in other jurisdictions. Jurisdictional intent probably exists in cases where multiple Web sites are used to attract consumers moving to many different parts of the country. This activity is distinct from the casual referral fee common in the industry when a consumer (whether a visitor to a licensed entity's Website or not) contacts a licensed entity for a recommendation as to which broker they should use when moving to another area.

### **REGISTRATION AND JURISDICTIONAL INTENT**

Any online activity meeting the test of jurisdictional intent is subject to the laws governing trading in real estate in a specific jurisdiction. An appropriate Certificate of Registration is required for each jurisdiction in which registered online activity meets the test of jurisdictional intent.

### **REGISTRANTS AND REGISTERED BROKERAGE DISCLOSURE**

Registered entities can use the Internet in multiple ways to contact consumers about real estate services and to advertise. The ways in which this is done will continually evolve. "Registrant" and "registered brokerage" disclosure will help to ensure that

online consumers know when they are dealing with a registered entity, who they are and where their primary business office is located.

*NOTE: for the rest of this section, the term "full disclosure" refers to both "registered brokerage disclosure" and "registrant disclosure."*

### **REGULATORY INTENT OF ONLINE DISCLOSURE GUIDELINES**

All Internet related advertising that consumers can view or experience as a separate unit (for example, e-mail messages or Web pages) requires full disclosure. At some point during an exchange of direct online messages (of any nature) between consumers and a registered entity, the registered entity should make full disclosure in some written form that is understandable and easily available to the recipient prior to providing, or offering to provide, registrant services. The burden of proof of such prior full disclosures falls on the registered entity when addressing a consumer complaint.

### **ONLINE DISCLOSURE GUIDELINES**

The Web: Whenever a registered entity owns a Web "page" or controls its content, every viewable page should include (or link to) a full disclosure. A "viewable page" is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

E-mail, Newsgroups, Discussion Lists, Bulletin Boards: Such formats should include a full disclosure at the beginning or end of each message.

Instant Messages: Full disclosure is not necessary in this format if the registered entity provided the written full disclosures via another format or medium (e.g. e-mail or letter) prior to providing, or offering to provide, registrant services.

Chat: Full disclosure prior to providing, or offering to provide, registrant services during the chat session or in text visible on the same Web page that contains the chat session if the registered entity controls the Website hosting the chat session.

Von (Voice Over Net):

- Advertising – “audible” full disclosure prior to the advertising message or disclosure text visible on the same Web page that contains the VON session (if applicable).
- Messaging – Audible” full disclosure is not necessary if full written disclosure was provided via another medium (i.e. e-mail, letter) prior to providing, or offering to provide, registrant services.

Multimedia Advertising (e.g. Web based, executable e-mail attachments, etc.): Full disclosure should be visible as part of the advertising message.

Banner Ads: Should link to a Web page that has full disclosure, unless the banner ad has said disclosure.

### **ACTIVE SOLICITATION**

Registered entities can contact consumers about real estate services in multiple ways on the Internet, any of which could reasonably be considered “active solicitation”.

### **REGULATORY “INTENT” OF ONLINE ACTIVE SOLICITATION GUIDELINES**

Active solicitation occurs whenever a registered entity establishes active on-line communication with a consumer about real estate services with the intent to form a brokerage relationship. Active on-line communication methods include e-mail, chat, VON, instant messaging and any other form of contact with specifically identifiable individuals or groups of individuals. Other forms of online communications (such as Web pages, discussion lists, bulletin board, banner ads and multimedia advertising) are usually not considered “active solicitation” because they are forms of “passive” communication.

### **ONLINE ACTIVE SOLICITATION GUIDELINES**

The provisions of the rules and regulations of a jurisdiction that relate to provision of information, marketing, advertising and communicating with customers and clients continue to apply to any registered entity engaged in “active solicitation” using the Internet or at any time a registrant establishes on-line communication with consumers about real estate services with intent to form a brokerage relationship.

### **ONLINE LISTING INFORMATION - REGULATORY “INTENT” OF GUIDELINES FOR LISTINGS ADVERTISED ONLINE**

The primary issues with online listing information relate to "currency" of online information (i.e. keeping all online sources of the same listing information current and consistent) and advertising of other registered entity's listing information.

The public should be able to assume that the information provided in the online listing is current and accurate. This principle applies to all forms of advertising or marketing media. For example, online listing information should be consistent with the property description and actual status of the listing. Material changes to the listing status or property description should be updated in a timely manner.

Written permission should be obtained to display other registered entities listing information as well as displaying any material changes to the display or nature of said information. Registered entities should avoid using online means of displaying listing information that are not directly controlled by them.

### **GUIDELINES FOR LISTINGS ADVERTISED ONLINE**

Online listing information should be consistent with the property description and actual status of the listing. When a registered entity controls the online site, material changes to the listing status authorized by a seller or property description should be updated in a timely manner.

When a third party online listing service controls the Website (e.g. mls.ca or Homeadvisor.com), registered entities to whom the listing belongs should submit written requests (e.g. e-mail, online forms or fax) for updates reflecting material changes to the listing status or property description in a timely manner.

All listing information should indicate, in a readily visible manner, the date that the information was last updated. Registered entities should not advertise other registered entities' listings without written permission and, if given, should not alter the online display or any informational part of the listing without written permission of the listing owner.

### **ADVERTISING AND THE INTERNET**

As a general principle, registrants should be aware that all regulations and policies respecting advertising apply equally to the Internet. This includes websites, e-mail and any other potential on-line identification, representation, promotion or solicitation to the public that is related to registered real estate activity.

**The name of the brokerage must appear on all advertisements** with the public in the course of trading in real estate. This applies to the electronic advertisements carried out by a broker, associate broker or salesperson. This includes each individual page and/or frame of a website, e-mail messages, e-mail discussion groups, bulletin boards, etc.

Due to the global nature of Internet advertising, adequate contact information with respect to the brokerage should also be included (e.g. the telephone number including area code). Where the brokerage has a company home page and/or e-mail address, the links to these should also be included.

The Internet poses additional potential problem areas that require caution on the part of licensees, both individuals and their employing agents.

### **DOMAIN NAMES (URL'S), E-MAIL ADDRESSES AND META TAGS**

A domain name is the Internet address of a website. For example, the ARELLO domain name is [www.arello.com](http://www.arello.com). Meta tags are keywords embedded in a website that help Internet search engines find that website. For example, a registrant might include keywords such as "real estate," "homes," "houses," etc. in their website's

meta tags field. When a person enters the word “homes” in the search function of Internet search engines such as Google or Yahoo etc., websites that contain the word “homes” in their meta tags field will be found. Domain names, e-mail addresses and meta tags should not contain any trademark that the registrant has not been authorized to use. Examples would be the unauthorized use of the terms MLS®, Multiple Listing Service® and REALTOR®. References to the names of other brokerages or registrants should also not be included under meta tags without their written permission.

### **CURRENCY AND ACCURACY OF INFORMATION**

Listing information must be kept current and accurate. Registrants must ensure that when listings have expired, they are immediately removed from websites. Similarly, if property information changes during a listing period, the information posted on websites should be changed accordingly.

Registrants should not advertise other registrants’ listings directly on their own website without permission from the listing associate, and if this permission is given, should not alter any of the listing information without approval of the listing associate. If linking to an outside database of available properties, it should be clear to consumers which listings are the registrant’s and which are not. The name of the listing brokerage cannot be removed.

Associates must ensure that registration information posted on their website is kept current and accurate. There should be no reference to any registrant who is not currently registered with that brokerage. Where information about unregistered employees of the associate is included, the fact they are not registered should be clear.

Those who provide general market information on their websites should include a notation such as “General market information on this website was last updated on \_\_\_\_\_.”

### **LINKS, DEEP LINKS AND FRAMES**

A link is either a graphic or word(s) in a website that, when clicked on, takes an Internet user to the first page (also known as the “home page”) of another website. A deep link is a link that takes a user to a page other than the home page (known as an “interior page”) of another website. A frame is created when one website captures the content of another website. The second website is said to be “framed” if it appears to be a part of, or embedded in, the first site. This is often done in an attempt by the first site to not “lose” the user to the second site.

There are a number of issues relating to linking and framing:

- While it is generally agreed that permission is not required to link to certain websites such as government agencies, public libraries etc., registrants must remember that a website and its contents are intellectual property. The “look and feel” of a website, its original content and the manner in which the information is compiled all give rise to copyright. **Registrants should seek permission prior to linking to another website.**
- Regardless of which website hosts the listings of your local real estate board (e.g. www.localrealestateboard.com etc.), there are rights of compilation in that listing database. **Whether a real estate board, association or private company own those rights, registrants should adhere to the guidelines established for linking to that listing information.**
- Many websites earn advertising revenue based on the number of visits to the home page of the site. By deep linking to an interior page of a website, advertising revenue is potentially lost. **Deep linking should never be done without seeking the prior approval of the owner of the website.**
- Framing can lead to copyright and/or trademark infringement. In effect, when another website is framed, that property is being used. **Framing another website should never be done without seeking the prior approval of the owner of the website.**
- Registrants should make certain that any site to which they link is compatible with the image and views they wish to portray.
- **Registrants should avoid misrepresenting the relationship between their services and the services offered by a site to which their site is linked.** Also, if the link creates the impression that the registrant is participating in, or endorsing the services being offered, that registrant may be assuming responsibility for the performance of those services.
- Linking is better done with text than with graphics. Graphics are often subject to copyright or trademark and cannot be used without the permission of their owner.

### **REGISTRATION JURISDICTION**

Registrant must not give the impression that they are registered in a jurisdiction where they are not. Registrants should clearly indicate on their website where they are registered.

### **OFFICE POLICIES REGARDING INTERNET USE**

As with other forms of advertising, brokers need to be aware of the content of their registrants’ websites. A prudent broker should approve all websites before they are activated and maintain regular website monitoring to ensure ongoing compliance with the jurisdiction’s advertising guidelines and any additional policies the company may have.

It is recommended that companies establish e-mail/Internet workplace policies that include usage guidelines, penalties for violations and mechanisms for addressing complaints. Brokerage and registrant websites should also contain a privacy policy statement that informs Internet users of the company's or registrant's intended use of any personal information gathered.

### **SOCIAL NETWORKING**

In recent years social networking such as blogs, Facebook, Twitter, etc. have become forms of communication. Registrants sometimes use this form of networking to communicate with clients, customers and the public in general. Should the purpose of the communications carried out through any of these networks be of a nature that they fall under the regulation of trading in real estate, then the same requirements of disclosure must be carried out as in any other medium. Brokers should be aware of what mediums their sales force is using to communicate with the public.

For example, the homepage for a blog would have to identify the registered individual and the brokerage. The same would be true of the homepage of a Facebook account. In the case of a medium like Twitter, it would not be reasonable that every "tweet" contain the disclosure information, but the homepage that a person must register within to be able to receive messages from the sender, must contain the name and brokerage of the sender. This is similar to a registrant giving a person their business card, which contains the required information. The registrant does not disclose this information again every time he/she has contact with that customer or client.

## **O. Implications of a Non-co-operating In-House Listing Agreement**

### **Preamble**

The Saskatchewan Real Estate Commission is of the opinion that brokerages/registrants should co-operate with other brokerages/registrants in the marketing of real estate unless the seller specifically requests in writing that the brokerage/registrant not co-operate with other brokerages. The decision to not co-operate should be made in the best interests of the seller. In addition, it would appear that the decision to not co-operate in the marketing of real estate between brokerages has not always been in the best interest of the seller. In some circumstances, the seller has been given information from the registrant that encourages the seller not to be co-operative to enable the brokerage to sell the property within the brokerage.

Pursuant to Commission Bylaw 708, outlined below are the minimum consequences for a registrant to disclose to a seller who chooses to market his/her property through an In-House Exclusive Seller's Brokerage agreement and not co-operate

with other brokerages in the marketing of the seller's property.

#### Reduced Market Exposure

A property that is marketed through an MLS® system or other co-operative listing system is instantly exposed to all system members. In the case of MLS® systems, it is also placed on www.mls.ca, the national real estate website for all the listings submitted to real estate boards across Canada. This website is recognized as the most active real estate website in Canada.

A property listed on an in-house exclusive agreement that allows co-operation does not have the same exposure as an MLS® or other co-operative listing service. The listing is exposed to registrants within that brokerage and other registrants who make an inquiry of the brokerage. If the brokerage has a website, the listing will be exposed on the Internet.

A property listed through an in-house exclusive agreement that does not allow co-operation is only exposed to the registrants of that brokerage. Any inquiries from other registrants are declined because the brokerage is not allowed to share any information with respect to the property. Only those buyers who contact the listing brokerage may purchase the property.

#### Fewer Potential Buyers

The marketing vehicle selected may affect the number of potential buyers that will be exposed to the opportunity to purchase the property. A seller who chooses not to co-operate with other brokerages in the marketing of his/her property may be significantly reducing the number of potential buyers for the property. The greater number of individuals (both registrants and consumers) the property is exposed to could result in a greater number of buyers having an interest in the property. The greater number of potential buyers increases the opportunity to receive an offer and potentially a quicker sale. Other brokerages may have qualified buyers but are unable to show the property.

#### Sale Price Potentially Reduced

The result of marketing the property to fewer individuals and fewer potential buyers may result in a reduced sale price or the property not selling at all. The greater number of potential buyers may increase the opportunity for an increased sale price.

#### Buyers Restricted From Purchasing

Many buyers today are choosing to be exclusively represented by a specific brokerage to ensure that their best interests are being considered in a real estate transaction. The buyer enters into an exclusive representation agreement (similar to a listing agreement for sellers) with the brokerage and agrees that he/she will

only purchase real estate through that brokerage. These buyers would be in breach of their contract with their brokerage if they purchased the property through the listing brokerage. Other buyers choose to enter into a verbal arrangement with a specific brokerage to represent their interests and will not purchase a property through another brokerage. A potential buyer who may be the perfect buyer for the property and meets the terms of sale of the seller is unable to purchase the property because he/she is under contract to another brokerage or chooses not to be represented by the brokerage that has the property listed because of conflict of interest issues. When a brokerage represents both parties to a transaction, it could reduce the representation options for both the buyer and seller.

- P. The seller's brokerage is not in violation of Bylaw 726 when it places a "sold" sign on the seller's property when another brokerage sells the property.
- Q. Pertinent facts include a property that was or is knowingly used for criminal activity that includes but is not limited to hydroponics or other growing operations relating to illegal substances or manufacturing of illegal substances; known material latent defects including but not limited to defects that render a property dangerous or potentially dangerous, unfit for habitation or unfit for the buyer's disclosed purposes.
- R. The seller's brokerage contract (agency agreement) will dictate the amount of the buyer's brokerage commission payable by the seller. The seller's brokerage contract can be amended to reflect a different amount of the buyer's brokerage commission at any time prior to receiving an offer from the applicable buyer's brokerage. Distribution of notification of this amendment is to occur in the same manner as notification was given to the industry in the first instance.

### III. EDUCATION

- A. The Saskatchewan Real Estate Commission will recognize the Real Estate Institute of Canada's (REIC) Certified Property Management (CPM) designation as equivalent to the *Property Management as a Professional Career* course. The applicant must be a current member in good standing of the Real Estate Institute of Canada.
- B. The Saskatchewan Real Estate Commission will recognize the Building Owners and Managers Institute International's (BOMA) Real Property Administrator (RPA) designation as equivalent to the *Property Management as a Professional Career* course. The applicant must be a current member in good standing with the Building Owners and Managers Institute.
- C. The Saskatchewan Real Estate Commission deems that the Real Estate 100/200/300 course series are equivalent to the Real Estate 150/350 course series.
- D. The Saskatchewan Real Estate Commission deems that the Real Estate 150 and the *Fundamentals of Real Estate* courses are equivalent to the *Real Estate as a Professional Career* and the *Residential Real Estate as a Professional Career* courses.
- E. The Saskatchewan Real Estate Commission deems that the *Real Estate 300* and the *Real Estate 350* courses are equivalent to the education requirements for registration as a broker or branch manager for those individuals who have not re-qualified by completing the salesperson, broker or branch manager educational qualifications since successful completion of the courses.
- F. THAT a Continuing Professional Development (CPD) home study program be offered to those individuals whose place of residence is out-of-the province or whose distance from where a seminar is being offered is unreasonable. In addition, the CPD home study program will be available to those individuals who terminated their registration and return to the industry after the seminars for a specific year are no longer being offered.
- G. If the individual is currently registered or has been registered in the previous two years, he/she is deemed by experience to have equivalency and is only required to complete the broker's course "*Real Estate Office Management and Brokerage*". If the individual leaves the industry for a period of more than two years, he/she will have to re-qualify as a salesperson.
- H. A registrant is required to complete one of the CPD classroom seminars or the on-line course offered through the Commission's education provider, the Association

of Saskatchewan REALTORS® prior to the end of May each registration year.

After May 31<sup>st</sup> registrants will be required to:

- i) file an application with the Commission, request an extension and pay the \$300 monthly extension fee; and
- ii) apply to the education provider to enroll in and successfully complete the on-line CPD course.

(Note: The Executive Director/Registrar of the Commission has the discretionary powers to approve extensions if extenuating circumstances exist.) After June 30<sup>th</sup>, a registrant may apply for an additional one-month extension, providing that extenuating circumstances exist and at the discretion of the Executive Director/Registrar may be granted an extension to July 31<sup>st</sup> and the registrant may proceed to renew his/her registration for the upcoming year. No further extensions will be granted after July 31<sup>st</sup>. If a registrant fails to complete the CPD requirement by July 31<sup>st</sup>, his/her Certificate of Registration will be suspended until he/she complies.

#### IV. FORMS

- A. The Notice to Remove Condition(s) on Residential Contract of Purchase and Sale form must be used to remove any and all conditions of any offer and the party required to remove the condition(s) should sign the Notice to Remove Condition(s) form.
- B. Registrants are not required to use the Residential Contract of Purchase and Sale or Schedule "C" when they are assisting in the sale of a condominium by a developer as defined in *The Condominium Property Act, 1993*.
- C. The Commission will accept a modified computerized version of the Interest Bearing Trust Account form from financial institutions.
- D. An offer to purchase received from a non-registrant should not put a registrant in violation of Section 58(1) of *The Real Estate Act* or Commission Bylaws 710 and 730.

## V. HEARING PROCESS

- A. The Saskatchewan Real Estate Commission will, upon request, provide a hearing transcript only to the parties to a complaint or the Superintendent after a Notice of Appeal has been filed.
- B. If after a hearing, the Hearing Committee decides that a registrant is guilty of professional misconduct and/or professional incompetence, the Committee may choose to impose a variety of sanctions on the registrant. One possible sanction is a Restitution Order under Section 38(1)(e) of *The Real Estate Act*.

Restitution Orders are appropriate in cases where it is determined that:

- (a) a registrant has received commission or remuneration that was not authorized by a party to the trade in real estate;
- (b) a registrant has deliberately acted dishonestly or deliberately misrepresented the material facts relating to a property; or
- (c) a registrant has, without authority, bound a party to a trade in real estate to an enforceable contract.

In other situations, the Hearing Committee may order restitution if it determines that restitution would be appropriate but it should do so only in exceptional circumstances.

- C. The Hearing Committee, when considering assessing costs pursuant to Section 38(2)(a)(ii) of *The Real Estate Act*, may wish to take into consideration the actual costs that can be attributed to the hearing (i.e. travel, per diems, rent of hearing room, subpoena of witnesses, meals, legal services, etc.)
- D. Following a Mitigation Hearing or a Formal Hearing, a summary of the Commission's order will be prepared containing the following: the name of the registrant, the section(s) violated by the registrant, the sanction that was imposed and a short explanation of the events leading to the violation. The Commission will use this summary in the next issue of *The Register*, after the appeal period has expired; and this summary will also be available, but only upon request, to members of the news media and the general public.
- E. After hearing a complaint pursuant to Section 37(3) of *The Real Estate Act* and the Commission determines that the registrant whose conduct was subject of the hearing, is not guilty of professional misconduct or professional incompetence may request, in writing, that the Commission publish a report outlining the circumstances of the case in *The Register*.
- F. A bad debt is to be recorded with the credit bureau for each outstanding sanction and also that any such outstanding monies must be repaid prior to a Certificate of

Registration being reinstated.

**G. Witness Expense Claim Policy:**

- 1. Professional witness** means a witness who is called to give evidence in consequences of professional services rendered by him/her and who is:
  - i) a barrister or solicitor;
  - ii) a physician or surgeon;
  - iii) a professional engineer;
  - iv) a surveyor;
  - v) an accountant;
  - vi) an architect;
  - vii) a dentist;
  - viii) a veterinary surgeon; or
  - ix) if the hearing panel hearing the cause directs, a person who is:
    - a member of a profession not mentioned in clauses (i) to (ix); or
    - a person called to give expert evidence.
- 2. Witness** means a person called on to give evidence in a cause before a hearing panel who is:
  - i) not a party of that cause; or
  - ii) if a corporation is a party, not an officer of that corporation.
- 3.** The fee payable to a witness other than a professional witness or consultant for each day or part thereof that he/she travels to, from or attends a Commission hearing is \$50.00.
- 4.** The fee payable for each half-day or part of a half-day for travel to, from or attendance at a Commission hearing:
  - i) to a professional witness is \$100 and
  - ii) to a consultant called to give expert testimony is \$200.
- 5.** If a medical report arising out of an examination is admitted in evidence and the physician or surgeon who made the report does not personally attend to give evidence, the fee payable to the physician or surgeon who made the report is \$200.
- 6.** The fee payable to an interpreter for each day of five hours that he/she attends a Commission hearing is \$100 subject to a proportionate reduction for each hour less than the said five hours.
- 7.** A witness or interpreter is entitled on submission of receipts to be paid his expenses for necessary travel, accommodation and meals at the rate that is approved for similar expenses incurred by members of the public service.

8. A reasonable fee or expense actually paid for preparation of a plan, model, video tape, film or photograph reasonably necessary for the conduct of a proceeding may be paid, notwithstanding that the preparer of the item does not attend and testify at the proceedings.
  9. The current travel and meal rates for members of the public service as of April 1, 2008 are: mileage 39.06¢/km, breakfast \$8.00, lunch \$14.00, supper \$19.00 and hotel (actual and reasonable charges supported by receipts).
- H. When a formal hearing is being scheduled to take place and correspondence is being prepared to request attendance by the various witnesses at the hearing, the Witness Expense Claim form will be prepared for each witness and will be sent to them by mail or personal service prior to the actual date of the formal hearing. It will be the responsibility of each witness to complete the form and provide it to the Commission office, along with the original receipts attached. Commission staff will not monitor receipt of these expense claim forms. Witnesses who fail to submit their form will not be sent reminders to do so.
- I. Commission staff members prepare and print an invoice outlining the total fine amount relating to a Commission hearing decision. Upon receipt of a hearing decision, staff members forward the hearing decision and fine invoice to the registrant subject of the hearing.

**IF REGISTRANT PAYS:**

1. If the fine is paid prior to the deadline date, Commission staff members use Simply Accounting to prepare a receipt that is mailed to the registrant. The payment is recorded in the accounting program as well as within the Commission's database.
2. The cheque is deposited and the investigation file shows the fine as paid.

**IF REGISTRANT FAILS TO PAY:**

3. If the registrant leaves the industry and/or fails to pay the fine after his/her registrant is suspended for non-payment, Commission staff members will contact the Credit Bureau and register the outstanding fine.
4. There is no charge with the Credit Bureau for the registration of each outstanding debt.
5. The Credit Bureau requests that administration sign an agreement stating that it can withhold the following amounts if the total monies are collected from the registrant: 25% for amounts less than \$5,000 and 15% for amounts greater than \$5,000.

6. The Credit Bureau forwards payment to the Commission along with a statement showing the amount collected less the collection charge.

Prior to being reinstated to trade in real estate, a registrant subject of a hearing decision shall be required to pay the Saskatchewan Real Estate Commission any portion of a fine not collected by the Credit Bureau in addition to any collection charge paid to the Credit Bureau by the Commission.

## VI. MISCELLANEOUS

A. In accordance with *The Real Estate Act*, its regulations and the Saskatchewan Real Estate Commission Bylaws, the Saskatchewan Real Estate Commission will consider releasing the following information when available:

### 1. General Release of Information:

- (a) Upon a letter of request, the Saskatchewan Real Estate Commission will provide a letter of confirmation relating to a registrant's sanction history where disciplinary action was taken against a registrant by the Commission and shall be released in connection with the administration of the *Act* as permitted under Section 85(2)(a). The cost for providing this service will be as prescribed in the Bylaws.
- (b) Upon written or verbal request, the Saskatchewan Real Estate Commission will release information as to the current registration status of a registrant and the brokerage the registrant is registered with.
- (c) The Saskatchewan Real Estate Commission will **not** release a complete list of all registrants and/or brokerages to anyone without an approved motion from the members of the Commission. However, a document, **The Register** containing a list of all current registrants may be viewed at the Saskatchewan Real Estate Commission offices during office hours in accordance with Section 13(2) of the *Act* and Commission Bylaw 229.
- (d) Upon request, the Saskatchewan Real Estate Commission will provide a copy of the most recent Commission Bylaws for a fee as prescribed in the Bylaws. The Registrar may use his discretion in sending out complimentary copies of the Bylaws.
- (e) Upon request, the Saskatchewan Real Estate Commission will provide a copy of any Saskatchewan Real Estate Commission promotional or informational material for a fee set by the Saskatchewan Real Estate Commission. This material will be available at the discretion of the Registrar or the Commission as deemed necessary for exercising the Saskatchewan Real Estate Commission's powers or carrying out the Saskatchewan Real Estate Commission's duties.
- (f) Upon request, the Saskatchewan Real Estate Commission will

provide copies of application forms to be completed for the purpose of registering under *The Real Estate Act*. The application forms will be provided without charge.

- (g) A copy of the Investigation Committee's report to the complainant who made the complaint as required under Section 35(4) of *The Real Estate Act*.
- (h) A copy of the Review Officer's decision to be forwarded to the complainant after a preliminary evaluation provided the complaint requires no further action in accordance with Section 8(7) of *The Real Estate Regulations*.
- (i) Upon request of a party to the transaction, the Saskatchewan Real Estate Commission will provide copies of documents signed, completed or provided to the Commission by the party involved in the transaction. The Saskatchewan Real Estate Commission will charge 30¢/page with a minimum fee of \$5.00 for the cost of producing the documents.
- (j) When a decision is made to suspend or cancel a Certificate of Registration of a registrant who is a member of a real estate board/association, the real estate board/association will be notified in writing regarding the suspension or cancellation.
- (k) In accordance with Section 326 of the Bylaws, the Saskatchewan Real Estate Commission will provide written notification to an applicant who is refused registration stating the reasons for the refusal and informing the applicant of his or her right of review before the Commission.
- (l) Upon receipt of a written request from an applicant who has been refused registration and is requesting a hearing, the Registrar shall provide written notification to the applicant of the date, time and place of the hearing as required under Bylaw 328.

## **2. Information to be Supplied to Registrants Only**

- (a) One complimentary copy of the Commission's Annual Report for the current year will be supplied to each brokerage and, on request, other registrants. Requests for previous issues of the Annual Report or extra copies of the current fiscal year's annual report, if available,

will be supplied to a registrant at a nominal fee of 30¢/page.

- (b) A copy of the Investigation Committee's report to the registrant subject of the investigation as required under Section 35(4) of the *Act*.
- (c) Notice of a hearing to the registrant subject of the hearing in accordance with Section 37(1) of the *Act* and copies of the documents that the Commission intends to introduce at a hearing in accordance with Section 9(1) of *The Real Estate Regulations*.
- (d) A copy of a disciplinary order, to the registrant subject of the order, made pursuant to Section 38 and Section 40 of the *Act*.
- (e) A copy of the documents filed with the Superintendent in accordance with Section 43(4) and Section 43(5) of the *Act* to the appellant or his or her solicitor or agent on payment of the cost of producing them as prescribed in the Bylaws.
- (f) A copy of the Review Officer's decision to be forwarded to the registrant subject of an investigation and the Investigation Committee after a preliminary evaluation of the complaint suggests that the complaint requires no further action in accordance with Section 8(7) of *The Real Estate Regulations*.
- (g) A copy of a complaint or summary of a complaint to the registrant subject of the complaint in accordance with Section 8(2) of *The Real Estate Regulations*.
- (h) One free copy of the Saskatchewan Real Estate Commission's newsletter, **The Register**, to each registrant that is registered at the time of printing of the publication. Additional copies of present and past copies of **The Register** may be obtained from the Commission at a cost of \$2.00 per issue.
- (i) Each registrant will receive a copy of the registrant's Certificate of Registration upon approval of an application for registration.
- (j) In accordance with Section 405 of the Commission Bylaws, a registrant, for a fee of \$20.00, unless exceptional circumstances exist, a registrant shall be provided with the following:
  - (i) The issuance of a new Certificate of Registration resulting from a change of a brokerage's address or from a change of

a registrant's name.

- (ii) The issuance of a new Certificate of Registration resulting from a registrant moving to another office location (branch office) of the same brokerage.
- (iii) The preparation of correspondence for a registrant outlining his or her registration and/or sanction history in the Province of Saskatchewan.

3. **Information to be Shared with Other Organizations**

Pursuant to Section 32 of *The Real Estate Act Regulations*, the Saskatchewan Real Estate Commission may release the following information where the Registrar or Registrar's designate understand that the release of the information is for the purpose of administering or enforcing the *Act* or any Act or law of Saskatchewan, of Canada or of another jurisdiction inside or outside of Canada:

**APPLICANT/REGISTRANT PERSONAL INFORMATION**

- Name, residential and business addresses, postal codes, phone numbers, email address
- Date of birth
- Judgments
- Brokerage trust account information
- Directors of a brokerage

**REGISTRATION HISTORY**

- Class of registration
- Dates of registration
- Name of brokerage for each registration

**SANCTION HISTORY**

- Date of sanction
- Description of violation
- Sanction assessed
- Hearing decision

**EDUCATION HISTORY**

- List of courses successfully completed for registration purposes
- Education course requirements for each class of registration
- Continuing education course credits

- B. The following procedure shall apply to a registrant who the Saskatchewan Real Estate Commission is investigating under the provisions of *The Real Estate Act*, its regulations or the Commission Bylaws:

Should the registrant's certificate of registration be terminated during any stage of the investigation or hearing process, the investigation or hearing process relating to the registrant shall be:

- a) suspended with the termination of the registrant's certificate of registration; and
- b) restored should the registrant become registered under the provisions of *The Real Estate Act* within a six-year period from the date of the alleged offence.

- C. If a registrant committed an offence during the two-year period of time from leaving the industry; the Commission has no jurisdiction.

- D. The Saskatchewan Real Estate Commission will not issue a press release with respect to a Cease and Desist Orders; however, Commission staff could assist the Superintendent's office in drafting wording for a possibly press release by the Financial Services Commission.

## VII. REGISTRATION PROCESS

- A. Pursuant to Section 30(1)(a) of *The Real Estate Act*, a brokerage's office requirement is met providing that:
- (a) the brokerage office is complying with the regulations, bylaws and zoning requirements of the municipality it is located in; and
  - (b) the municipal bylaws permit the access of salespeople and consumers to this office location.
- B. A registrant, having been registered for a minimum of two years, who then enters any full-time position in public office, will be entitled to return to the industry without having to take any further educational courses, provided that he re-enters the industry within sixty (60) days of having left public office.
- C. The Registrar has the authority to approve all applications for salesperson registration where the applicant has been involved in a bankruptcy that is not associated with fraud.
- D. The Saskatchewan Real Estate Commission will process a faxed registration application only when the Saskatchewan Real Estate Commission receives payment for the applicable registration. The original registration application form must immediately be sent to the Commission office.
- E. Any registrant who terminates his or her Certificate of Registration prior to complying with any sanction imposed upon him or her will not be granted a new Certificate of Registration under *The Real Estate Act* until the registrant has complied with the terms of the sanction.
- F. A potential applicant for registration may provide information to the Saskatchewan Real Estate Commission for an opinion on whether or not the potential registrant is suitable for registration prior to submitting an application for registration (i.e. criminal record, bankruptcy, etc.).
- G. Effective September 1, 1996, the Saskatchewan Real Estate Commission will not grant any new dual certificates of registration.
- A registrant with dual registrations will be allowed to continue his or her dual registration unless one of the certificates of registration lapses for a continuous period greater than thirty days. Thereafter, a registrant will not be granted dual registration.
- H. For the purposes of Bylaw 307, the Commission deems that a criminal record check is a fingerprint comparison of an applicant's fingerprints obtained under the *Identification of Criminals Act*. Prior to the date of his/her application, an

applicant for registration is required to submit a criminal record check that was prepared within a reasonable period of time. An applicant may be issued a certificate of registration with terms on an initial application for registration prior to receipt by the Commission of a criminal record check by fingerprint comparison of the applicant if;

- (a) the applicant provides written confirmation that the criminal record check has been submitted to the RCMP, including the date of the submission of the request;
- (b) in the opinion of the Commission, the request for a criminal record check was sent to the RCMP within a reasonable period of time prior to the date of application for registration; and
- (c) in the opinion of the Commission, the applicant is suitable for registration.

The continued suitability of an applicant for registration will be contingent on the Commission's review of the applicant's criminal record check by fingerprint comparison. An applicant shall take all reasonable steps to ensure that the Commission receives the criminal record check within a reasonable period of time.

- I. For the purposes of Bylaw 723(c), the Saskatchewan Real Estate Commission deems that when a registrant is served with a Statement of Claim or a Small Claims Summons, this constitutes the commencement of civil proceedings.
- J. For the purposes of *The Real Estate Act*, the Saskatchewan Real Estate Commission will permit a brokerage to maintain a mailing address, acceptable to the Commission, separate from its address for service. The address for service is deemed to be the registrant's brokerage's main office location or branch office location whichever is applicable.
- K. An individual making application for registration as a broker or branch manager who:
  - (a) has been actively employed as a salesperson, broker or branch manager for a period of two years during the preceding five years in another jurisdiction; and
  - (b) submits proof of his or her registration history from the regulatory bodywill be deemed to meet the **experience** requirements for registration as a broker or branch manager.
- L. A registrant who is aggrieved by a decision of the registrar, made pursuant to a delegated power, may make application for the Commission to review that decision pursuant to section 28(4) of the *Act*. The commencement of a review pursuant to

section 28(4) of the *Act* does not stay the effect of the decision, but on five days' notice to the registrar, the appellant may apply to the registrar for a stay of the decision pending the disposition of the review. Subject to any objections by the registrar, the registrar will grant a stay of the registrar's decision pending the disposition of the review. If the registrar has an objection(s) to granting a stay of the registrar's decision, the Commission will determine if a stay should be granted.

- M. Upon issuance of a cease and desist order by Saskatchewan Justice, an article regarding the named individual will be published in the most applicable medium.
- N. The Saskatchewan Real Estate Commission authorizes the Registrar or the Registrar's Designate to approve an applicant's Grade 12 equivalency in accordance with Bylaw 307.1. Upon being satisfied that the applicant has show proficiency in one or more of the following areas or has provided proof of completion as applicable:
  1. Received directly from the applicant a true copy (as per The Canada Evidence Act) of the applicant's Grade 12 transcript.
  2. Completed high school or obtained a two-year diploma or a degree from outside of Canada.
  3. Certification from an approved assessment organization such as International Qualifications Assessment Service (IQAS) that the applicant meets a comparable level of education to that of a Grade 12 level in Canada.
  4. A certification from a University, technical institute or a trade school of enrollment in or completion of a program from inside of Canada.
  5. An approved GED (General Education Diploma) from an approved education provider.
  6. Shown competency through experience gained in the operation or participation of a business or profession.

## VIII. TRUST ACCOUNTS

- A. Every brokerage is accountable to the financial institution in which interest bearing trust accounts are maintained, for any service charges exceeding the interest earned by the method referred to in Section 71(2) of *The Real Estate Act* for each account.
- B. The charge of the financial institution for servicing the trust account(s) as referred to in Section 71(2) of *The Real Estate Act* and Section 610 of the Commission Bylaws does not include the cost of purchasing trust account cheque blanks. This cost is the responsibility of the brokerage.
- C. The Commission deems that any monies received by a registrant in connection with a trade in real estate more than two business days after acceptance of an offer must be deposited into the brokerage's trust account within two business days of receipt.
- D. All donations, scholarships or third party requests for funding will be subject to the approval of the Commission and the Superintendent of Real Estate as an Interest Bearing Trust Account project.