

**IN THE MATTER OF**  
**THE REAL ESTATE ACT, C. R-1.3**  
**AND**  
**IN THE MATTER OF MARTY LEIER**

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**DECISION OF THE**  
**SASKATCHEWAN REAL ESTATE COMMISSION**

**Commission File: #2007-90**

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**Before:** A Saskatchewan Real Estate Commission Hearing Committee  
comprised of the following:  
Randal C. Touet - Chairperson  
Donnett Elder  
Phillip Mack  
Terry Powell

**Appearances:** Ed Miller, on behalf of the Investigation Committee

**Absence:** Marty Leier was not present

**Hearing Date:** May 8, 2008

**Written Decision:** June 10, 2008

The Mitigation Hearing was held May 8, 2008 at the offices of the Saskatchewan Real Estate Commission, 237 Robin Crescent, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated April 2, 2008 provided particulars of Marty Leier’s violation and admissions.

### **CHARGE and ADMISSION OF MISCONDUCT**

The registrant was charged with and has admitted, in the Statement of Facts and Admissions, to the following charges:

1. Professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* in that he breached Bylaw 725.2 in the following manner:

Mr. Leier, on or about April 23, 2007 through April 26, 2007, acted as a buyer’s representative for his son and/or assignee without disclosing in writing to the seller, his relationship to the buyer.

2. Professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* in that he breached Bylaw 730(f) in the following manner:

Mr. Leier, between April 23 and August 7, 2007, inclusive, purchased a property and thereafter marketed the property without disclosing in writing to the original seller and the subsequent buyers, via the mandatory Statement of Disclosure, his registrant status with the Saskatchewan Real Estate Commission.

### **LEGISLATION**

Section 39(1)(c) of the *Act* states: “Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this *Act*, if it is a breach of this *Act*, the regulations or the bylaws or any terms or restrictions to which the registration is subject.”

Bylaw 725.2 states: “Prior to the seller accepting an offer to purchase, a broker, branch manager, associate broker or salesperson shall disclose in writing to a seller the registrant’s relationship to the buyer when the buyer is an immediate family member of the registrant.”

Bylaw 730(f) states: “The following approved forms, provided by the Association of Saskatchewan REALTORS® shall be mandatory: (f) Statement of Disclosure.”

### **FACTS**

In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Committee accepted Marty Leier’s Statement of Facts and Admissions, which include the following relevant points:

1. Marty Leier has been continuously registered under the provisions of *The Real Estate Brokers Act, 1987* and *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since September 3, 1976.
2. Marty Leier has taken the following real estate courses:
  - Real Estate 100 July 26, 1976 and
  - Real Estate 300 February 22, 1978.
3. Marty Leier completed the continuing professional development seminars each registration year since 2001-2002.
4. Marty Leier is presently registered under the provisions of *The Real Estate Act* as an associate broker with Hallmark Realty & Associates Limited.
5. On or about April 23, 2007 Mr. Leier wrote a Residential Contract of Purchase and Sale form to buy residential property in Langham, Saskatchewan from the Seller at a proposed purchase price of \$129,000. He indicated on the contract that the buyer was "Ryan Leier and/or assignee". (His son's name was set out in the contract).
6. On April 23, 2007 Mr. Leier removed a condition to the contract on behalf of the buyer. The condition related to the buyer viewing and approving the Property Condition Disclosure Statement. On or about April 27, 2007 he proposed and the Seller accepted by way of an Amendment to the Residential Contract of Purchase and Sale form, a reduced purchase price of \$125,000 and foregoing any claim to the buyer's brokerage commission. The effect of this amendment resulted in the seller receiving a slightly higher net profit on the transaction and the Buyer, whomever it was, paying \$4,000.00 less.
7. On or about April 27, 2007 Mr. Leier used an Amendment to the Residential Contract of Purchase and Sale form to disclose in writing to the seller that the buyer was his son. Mr. Leier is aware that Saskatchewan real estate legislation requires that the seller receive written notice before accepting the contract.
8. On or about August 1, 2007, the transaction completed wherein Mr. Leier and his spouse declared themselves as owners of the property at Information Services Corporation. Although Mr. Leier and his spouse appear as owners of the property, the beneficial owners remained his son and his son's partner.
9. An August 1, 2007 trust agreement identified Mr. Leier and his spouse as the buyers of the property with the intention that their names be registered as owners on title at Information Services Corporation. Mr. Leier is aware that Saskatchewan Real Estate Commission Bylaw 730(f) requires that registrants provide written disclosure on a mandatory form when buying and selling real property.
10. Mr. Leier took possession of the property in the name of himself and his spouse on or about August 2, 2007. On August 3, 2007 Mr. Leier and his spouse signed an MLS

Exclusive Seller's Brokerage contract for the property with a \$154,900 asking price and agreeing to pay \$4,000 in seller's brokerage commission.

11. Before receiving from the new Buyer the Residential Contract of Purchase and Sale form, Mr. Leier did not disclose in writing to the buyer, on a mandatory disclosure form, his ownership/interest in the property.
12. Mr. Leier signed acceptance of the new Buyers' document on August 10, 2007 and only then did he provide mandatory written disclosure to the new Buyers.

## **REPRESENTATIONS**

The Investigation Committee representative, Ed Miller, said that there was no indication of Mr. Leier's relationship to his son in this transaction until 4 days after the offer was made, when the Counter Offer was prepared. He acknowledges the existence of the trust agreement but does not take a position on the legal impact of the document. Mr. Miller made it clear to the Hearing Committee that the issue in this matter is the process of disclosure, not the Registrant himself. However, he is concerned that in these circumstances the necessity of proper disclosure is important. He feels that the sanction in this matter must provide a specific deterrence to Mr. Leier and a general deterrence to all registrants. Timely disclosure is essential for the protection of the public and the sanction must provide confidence in the public that the Act is being enforced.

The Investigation Committee recommended a fine of at least \$1,000.00 and a reprimand for the breach of Bylaw 725.2. They recommended a fine of \$3,000.00 to \$4,000.00 and a reprimand for the breach of Bylaw 730(f).

Mr. Miller confirmed that Mr. Leier has no other convictions. He stated that the fact that Mr. Leier represented both Buyer and Seller for the second transaction is an aggravating factor in the sanction. He referred to the Linda Swehla case (07-27) for the first charge. This case involved the failure to use the mandatory Ancillary Services form and she was fined \$1,000.00.

Regarding the second charge, Mr. Miller mentioned the Jeff Howsam cases (06-65 and 03-34), the first of which Mr. Howsam was fined \$1,000.00 for failure to use the mandatory form of disclosure and the latter case where an order of suspension was made. He also referred the Committee to the Terry Hincks case (07-38) which is presently under appeal to the Superintendent of Real Estate. He indicated that the fact Mr. Leier was an active participant in the transactions is an aggravating factor.

Mr. Leier was not present, but he presented a letter of April 21, 2008 to speak to the matters. In the letter, he stated that the seller's agent was aware that the buyer was Mr. Leier's son. He said he did not use the mandatory form because there was nowhere on the form to disclose immediate family members, except a spouse. He further stated that there was never any intent to deceive the Seller regarding the Buyer's relationship to himself. Mr. Leier also said there was no intent to purchase the property for his own benefit.

Mr. Leier advised the Committee that the property was placed in his and his wife's names because of financing. The title was nominally placed in their names in trust for their son. With regard to the subsequent sale, Mr. Leier said that the Buyer's father is a lawyer and was present when she signed the document. Both of the Buyers were aware that he was a registrant and on title to the property.

Mr. Leier felt this matter was only complained of because of the unique market conditions of 2007, with the value of properties escalating rapidly between the initial offer and the subsequent sale. Mr. Leier, in his letter, also alleged that the investigator would have dropped the complaint had an overpayment to the initial seller been allowed to be kept by her. This was strenuously denied by the investigator and formed no part of the Committee's decision.

Mr. Leier said that he believed he conducted his business as a REALTOR in a professional and ethical manner for over thirty years. He never had an intention to deceive anyone regarding his involvement and suggests there was no harm to any of the parties involved.

## **DECISION**

In accordance with clause 9(4)(a) of the Regulations and clauses 38(1)(f), 38(2)(b) and subclause 38(2)(a)(i) of the *Act*, the Committee made the following orders:

1. For violating Section 39(1)(c) of the *Act* by breaching Commission Bylaw 725.2:
  - a) Pursuant to clause 38(1)(f) of the *Act*, that Marty Leier receive an order of reprimand for the said violation;
  - b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Marty Leier, prior to September 1, 2008, pay to the Saskatchewan Real Estate Commission, a \$1,000.00 fine for the said violation of the *Act*; and
  - c) Pursuant to clause 38(2)(b) of the *Act*, that Marty Leier's registration shall be suspended if he fails to pay any portion of the fine within the said period of time.
2. For violating Section 39(1)(c) of the *Act* by breaching Commission Bylaw 730(f):
  - a) Pursuant to clause 38(1)(f) of the *Act*, that Marty Leier receive an order of reprimand for the said violation;
  - b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Marty Leier, prior to September 1, 2008, pay to the Saskatchewan Real Estate Commission, a \$3,500.00 fine for the said violation of the *Act*;
  - c) Pursuant to clause 38(2)(b) of the *Act*, that Marty Leier's registration shall be suspended if he fails to pay any portion of the fine within the said period of time

## **RATIONALE**

The Committee, in considering the disciplinary action, considered Marty Leier's lack of previous sanction history and the length of time he has been in the real estate industry.

The Hearing Committee wants to make it abundantly clear that disclosure is mandatory. It is not for the registrants to decide if, when and how the disclosure is to take place. The Bylaws are clear. The Statement of Disclosure is a mandatory form. It must be used and the disclosure must take place prior to the acceptance of an offer. It is very clear that this did not take place in these circumstances. Oral disclosure is not sufficient.

The fact that Mr. Leier is a long time registrant makes it even more important that he follows the rules. He is a very experienced registrant and an associate broker. The Hearing Committee does not find that Mr. Leier simply forgot to provide the written disclosure. The issue of disclosure is important and written disclosure is mandatory when any real estate agent is writing a contract and acting either for himself or a family member. When this significant document is absent on not just one, but two, personal transactions involving the same property, the Committee felt a serious point must be made for Mr. Leier and all registrants. The necessity of mandatory documents is simply a confirmation of the ethical standard to be met by all registrants.

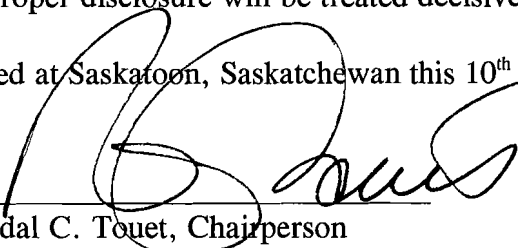
The Commission must ensure that public confidence in the enforcement of the *Act* is maintained. The use of mandatory forms and the necessity of disclosure prior to the trade completing is a matter which the Commission takes very seriously. The *Act* and Bylaws are there for the protection of the public and the registrants. The question of whether or when the seller or buyer knew of Mr. Leier's relationship should not be a matter of speculation. If the mandatory form and written disclosure had taken place, there would be no issue before the Commission.

The Hearing Committee wants to be clear that this is a serious violation and one which requires a serious sanction. In the circumstances, the obligation for disclosure should have been made immediately and in writing. Especially when acting for both himself and the buyer of the property, Mr. Leier should have complied with the *Act*.

This case is more significant than the previous cases of non-disclosure. As an experienced broker, Mr. Leier knows that his involvement in the two transactions must be clearly set out for the parties. And it must be set out in writing before an offer is presented. As a senior registrant, he knows that the mandatory forms must be used. The actions of Mr. Leier fell short of the expected standard for registrants and he displayed complete disregard for the need to follow the written disclosure requirements.

Whether there is substantial harm or not does not relieve the registrant from using these forms. They are for the protection of the public and also to strengthen consumer trust and confidence in the real estate industry. It is imperative that all registrants and the public know that the lack of proper disclosure will be treated decisively by the Commission.

Dated at Saskatoon, Saskatchewan this 10<sup>th</sup> day of June, 2008.



Randal C. Touet, Chairperson