

2019

CHAPTER 19

An Act to amend *The Real Estate Act*

(Assented to May 15, 2019)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Real Estate Amendment Act, 2019*.

SS 1995, c R-1.3 amended

2 *The Real Estate Act* is amended in the manner set forth in this Act.

Section 2 amended

3 Section 2 is amended:

(a) by adding the following clause after clause (b):

“(b.1) **‘branch office’** means a premises, other than the main office of a brokerage, from which registrants registered with a brokerage carry out trades in real estate if:

(i) one or more registrants use the location for the purpose of trading in real estate;

(ii) members of the public are invited to the premises for the purpose of trading in real estate; and

(iii) there is signage or advertising for the premises by a registrant”;

and

(b) in clause (t):

(i) by striking out “and” after subclause (ii);

(ii) by adding “and” after subclause (iii); and

(iii) by adding the following subclause after subclause (iii):

“(iv) any other property prescribed in the regulations”.

New section 4.1

4 The following section is added after section 4:

“Duty and objects of Commission

4.1(1) It is the duty of the Commission at all times:

(a) to serve and protect the public; and

(b) to exercise its powers and discharge its responsibilities in the public interest.

- (2) The objects of the Commission are:
- (a) to regulate the practice of registrants and to govern the registrants in accordance with this Act, the regulations and the bylaws; and
 - (b) to assure the public of the knowledge, skill, proficiency, competency and trustworthiness of registrants in the trading in real estate and other services provided by registrants”.

Section 6 amended

5 Clause 6(1)(c) is repealed and the following substituted:

- “(c) one or two members:
- (i) who are appointed, in accordance with the bylaws, by the members mentioned in clauses (a) and (b); and
 - (ii) each of whom must be either a registrant trading in commercial or farm real estate or a property management registrant”.

Section 12 amended

6 Section 12 is amended in the portion preceding clause (a) by striking out “submit to the superintendent, brokerages, and, on request, other registrants,” and substituting “provide or make available, electronically or otherwise, to the superintendent, registrants and the public.”.

Section 13 amended

7 Clause 13(2)(b) is amended by adding “, electronically or otherwise,” after “inspection”.

New section 14

8 Section 14 is repealed and the following substituted:

“Bylaws

- 14(1) Subject to this Act and the regulations, the Commission may make administrative bylaws for the following purposes:
- (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;
 - (h) governing procedures for the appointment of the members of the Commission mentioned in clause 6(1)(c) and prescribing their terms of office;

- (i) governing procedures for the appointment of members to the Commission pursuant to clauses 6(3)(b) and (c);
- (j) prescribing the duties of members, officers and employees of the Commission;
- (k) prescribing the organization, powers and procedures of the Commission and regulating the Commission in the performance of its duties;
- (l) establishing any committees that the Commission considers necessary and prescribing the manner of election or appointment of members to those committees;
- (m) prescribing the remuneration and allowances for expenses for members of the Commission and members of committees;
- (n) respecting the calling, holding and procedures of meetings of the Commission and annual and special meetings of registrants;
- (o) prescribing application forms for persons applying for registration;
- (p) prescribing procedures governing registration;
- (q) prescribing the amounts of registration and other fees payable to the Commission, including prescribing the times of payment;
- (r) prescribing the expiry date for registration;
- (s) 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);
- (t) prescribing or establishing classes, lectures, courses of study, systems of training, periods of service and examinations for registrants and applicants for registration;
- (u) establishing and governing scholarships, bursaries and prizes;
- (v) fixing the amount of assessment to be levied pursuant to subsection 47(2);
- (w) respecting the administration of the fund;
- (x) respecting the administration of the interest received by the Commission pursuant to section 71;
- (y) providing for the charging of fees for any services provided by the Commission;
- (z) respecting the types of notices and service of notices that may be served electronically;

- (aa) 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;
 - (bb) respecting payment to the Commission of interest on trust accounts by financial institutions;
 - (cc) respecting any other matter prescribed in the regulations.
- (2) Subject to this Act and the regulations, the Commission may make regulatory bylaws for the following purposes:
- (a) respecting the reporting and publication of decisions and reports of the Commission and committees;
 - (b) respecting the qualifications, standards and tests of competency for obtaining registration;
 - (c) prescribing the penalties for late payment of registration and other fees payable to the Commission;
 - (d) prescribing terms of registration;
 - (e) setting standards of professional conduct, competency and proficiency of registrants;
 - (f) providing for a code of ethics for registrants;
 - (g) setting standards regarding the manner and method of practice of registrants;
 - (h) 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;
 - (i) requiring reports from registrants with respect to their operations and prescribing the content of those reports;
 - (j) prescribing the circumstances under which applicants are required to attend re-entry education programs and courses and approving programs and courses for that purpose;
 - (k) setting standards for continuing education and the participation of registrants in continuing education;
 - (l) governing the reinstatement or registration after cancellation of a person whose registration has been suspended or cancelled;
 - (m) setting requirements for maintenance of registration;
 - (n) regulating advertising by registrants;
 - (o) prescribing the form, content and maintenance of the register and the information to be provided by registrants for the purposes of the register;
 - (p) respecting the investigation and inspection of methods of practice of registrants by the Commission;

- (q) prescribing the forms to be used by registrants when trading in real estate;
 - (r) respecting the designation of an individual as the acting broker or acting branch manager in the temporary absence of the broker or branch manager;
 - (s) establishing categories of registration and prescribing the rights and responsibilities of each category;
 - (t) respecting property management agreements;
 - (u) prescribing the conditions under which leases are to be in writing;
 - (v) respecting requirements for agency agreements in addition to those prescribed in this Act and the regulations;
 - (w) 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;
 - (x) respecting records to be kept by registrants, including records with respect to trades in real estate;
 - (y) respecting the use of electronic signatures, including requirements for witnessing electronic signatures;
 - (z) respecting any other matter or thing that the Commission considers necessary to better carry out the purposes of this Act.
- (3) Within 30 days after 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.
- (4) No administrative bylaw made pursuant to subsection (1) comes into force until it is published in the Gazette.
- (5) No regulatory bylaw made pursuant to subsection (2) comes into force until it is:
- (a) approved by the superintendent; and
 - (b) published in the Gazette.

(6) The bylaws are to be open for inspection by all persons, without fee, during normal office hours of the Commission.

(7) Nothing in this section affects the validity of any bylaws that were made and approved before the date on which this section comes into force”.

New sections 15 and 15.1

9 Section 15 is repealed and the following substituted:

“Bylaw procedure

15(1) Within 30 days after receiving copies of a regulatory bylaw made pursuant to subsection 14(2), the superintendent shall:

- (a) approve the bylaw; or
- (b) if the superintendent 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 the approval or disapproval of a bylaw pursuant to subsection (1).

(3) The superintendent shall:

- (a) forward to the Commission one copy of a regulatory bylaw approved pursuant to subsection (1) stamped with the approval;
- (b) file with the Director of Corporations two copies certified by the registrar to be true copies of the following:
 - (i) an administrative bylaw made pursuant to subsection 14(1);
 - (ii) a regulatory bylaw approved pursuant to subsection (1); and
- (c) if 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.

“Bylaw review

15.1(1) The superintendent may, if the superintendent considers it to be in the public interest, request the Commission to:

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

(2) If the Commission fails to comply with a request of the superintendent pursuant to subsection (1), within 60 days after 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 Director of Corporations; and
 - (ii) deliver a copy of the bylaw to the Commission.

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

Section 26 amended**10 Subsection 26(1) is repealed and the following substituted:**

“(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) if, 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 the business of the applicant or the applicant’s officers or directors;

(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;

(c) the applicant has provided false or misleading information to the Commission in the course of applying for registration or applying for a renewal of the applicant’s registration;

(d) the applicant is someone against whom a member of the public has obtained a final judgment arising out of that applicant’s action as a registrant and no reasonable arrangements have been made to satisfy it;

(e) the applicant is not of good character or is otherwise unfit to be a registrant;

(f) the applicant is a brokerage and any director, officer, shareholder or partner, as the case may be, of the brokerage is not of good character; or

(g) for any other reason relating to an applicant or an applicant’s officers or directors, the applicant is not suitable for registration or the registration of the applicant is for any reason objectionable”.

Section 38 amended

11(1) Clause 38(1)(e) is amended by striking out “an order” and substituting “subject to subsection (1.1), an order”.

(2) The following subsection is added after subsection 38(1):

“(1.1) Any order made pursuant to clause (1)(e) may only be made in the circumstances prescribed in the regulations and in an amount not exceeding the amount prescribed in the regulations”.

(3) Subclause 38(2)(a)(i) is repealed and the following substituted:

“(i) a fine in a specified amount not exceeding \$25,000 for each finding and \$100,000 in the aggregate for all findings”.

(4) Subsection 38(3) is repealed and the following substituted:

“(3) The registrar shall send a copy of an order made pursuant to this section to:

(a) the registrant whose conduct is the subject of the order;

- (b) the person, if any, who made the complaint; and
- (c) in the case of an order that involves a finding of professional incompetence or professional misconduct on the part of a broker, branch manager, associate broker or salesperson, the registrant's brokerage".

(5) Subsection 38(4) is repealed.

(6) Subsection 38(5) is amended by adding "or subsection (2)" after "clause (1)(e)".

Section 40 amended

12 Clause 40(a) is amended by striking out "indictable".

Section 43 amended

13 Subsection 43(1) is amended:

- (a) by striking out "or" after clause (d);**
- (b) by adding "or" after clause (e); and**
- (c) by adding the following clause after clause (e):**

"(f) the registrar, if the registrar considers it to be in the public interest to appeal the decision or order".

Section 44 amended

14(1) Subsection 44(1) is repealed and the following substituted:

"(1) Within 30 days after the decision or order:

- (a) 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; and
- (b) if the registrar considers it to be in the public interest, the registrar may appeal a decision or order of the superintendent pursuant to section 36 or 43 to a judge of the court by serving the superintendent with a notice of appeal and filing the notice of appeal with the local registrar of the court".

(2) Subsection 44(2) is repealed.

Section 47 amended

15(1) Clause 47(2)(a) is amended in the portion preceding subclause (i) by striking out "the money" and substituting "subject to subsection (3), the money".

(2) The following subsection is added after subsection 47(2):

"(3) The Commission is not required to levy an assessment in any year in which the amount of the fund exceeds the amount mentioned in subsection 48(4)".

Section 48 amended

16 Clause 48(4)(a) is repealed and the following substituted:

“(a) \$350,000”.

Section 49 amended

17 Clause 49(1)(f) is amended by striking out “60 days” and substituting “90 days”.

Section 57 amended

18(1) Subsection 57(1) is amended by striking out “Every” and substituting “Subject to the regulations, every”.

(2) Clause 57(2)(d) is repealed and the following substituted:

“(d) it shows the total amount of commission to be paid to the brokerage and how it is to be calculated”.

Section 58 amended

19(1) Clause 58(1)(a) is amended by striking out “is” and substituting “subject to the regulations, is”.

(2) Clause 58(3)(a) is amended by striking out “the acceptance is” and substituting “subject to the regulations, the acceptance is”.

New section 66

20 Section 66 is repealed and the following substituted:

“**Calculation of remuneration**

66 No brokerage:

(a) shall request or enter into a service agreement or other arrangement for the payment to the brokerage of remuneration based on the difference between the price at which real estate is listed for sale and the actual sale price of it;

(b) shall retain remuneration computed on the basis mentioned in clause (a); or

(c) shall request or enter into a service agreement or other arrangement for the payment to the brokerage of remuneration that is determined in the manner prescribed in the regulations”.

Section 83 amended

21 Subsection 83(1) is amended:

(a) by adding the following clause after clause (a):

“(a.1) prescribing property for the purposes of clause 2(t)”;

(b) by adding the following clause after clause (e):

“(e.1) respecting the determination of remuneration for the purposes of section 66”;

(c) by adding the following clause after clause (m):

“(m.1) respecting offers to purchase”; and

(d) by adding the following clauses after clause (r):

“(r.1) prescribing fees for the purposes of section 83.1;

“(r.2) respecting special penalties for the purposes of section 89.1, including:

(i) prescribing the contraventions of this Act or the regulations for which a special penalty may be assessed; and

(ii) prescribing the amount of a special penalty and, for that purpose, prescribing different amounts for different contraventions”.

New section 83.1**22 The following section is added after section 83:****“Commission fees**

83.1 The Commission shall pay the fees prescribed in the regulations to the superintendent in connection with the administration of this Act and the regulations”.

New section 89.1**23 The following section is added after section 89:****“Special penalties**

89.1(1) The Commission may, by order, assess a special penalty in the amount prescribed in the regulations against any person for contraventions of this Act or the regulations prescribed in the regulations.

(2) On receipt of an order from the Commission demanding payment of a special penalty pursuant to this section, the person shall immediately pay the special penalty to the Commission.

(3) If a person does not comply with an order made pursuant to subsection (1) within 15 days after the day on which a copy of the order is sent to the person, the Commission may file a certified copy of the order with the court and enforce the order as if it were a judgment of the court”.

Coming into force

24 This Act comes into force on proclamation.