

DECEMBER 15, 2010

TO ALL REAL ESTATE BROKERS,
AUTHORIZED OFFICIALS AND SALESPERSONS



COMPETITION BUREAU / CREA CONSENT AGREEMENT

The recent consent agreement reached between the Competition Bureau and CREA provides the following definition for a **“mere posting”** means *a listing on a Member Board’s MLS® System in respect of which the Member has chosen or agreed not to provide services to the Seller other than submitting the listing for posting on a Member Board’s MLS® System. Under the Real Estate Brokers Act a “transaction in real estate” means,*

- (a) the negotiation for another or others of any trade in real estate wherever situated, or*
- (b) any advertising by a broker, authorized official or salesman, whether of real estate for sale or lease or for real estate to purchase or take on lease, or*
- (c) the showing of real estate for sale or lease to potential purchasers or tenants, or*
- (d) the collection by a broker, authorized official or salesman of rent, mortgage payments or instalments of purchase money payable under a lease, mortgage or agreement for sale of real estate, except real estate of which he is himself the owner, mortgagee or vendor, as the case may be, or*
- (e) the solicitation or obtaining of a listing agreement,*

and includes any conduct, act or negotiation, directly or indirectly, in the furtherance of any one or more of the things mentioned in this clause.

A **“mere posting”** would fall under paragraphs (b) and (e) and therefore be considered a transaction in real estate.

In providing the service associated with a **“mere posting”** registrants are still required to abide by the requirements of the Real Estate Brokers Act and in particular, all monies received are considered trust monies and are required to be paid to the Broker. It is also recommended that the registrant enter into a service agreement with the seller before undertaking a listing of this nature.

If a salesperson seeks to list a property located in another jurisdiction they are advised to contact the licensing authority in that province beforehand as chances are that registration would be required much in the same way as someone outside Manitoba posting a Manitoba property would require registration in Manitoba as the posting would in effect constitute a listing.

Note: If you are a member of the WinnipegREALTORS® Association, Brandon Real Estate Board, Portage La Prairie Real Estate Board or Manitoba Real Estate Association you are required to follow their rules pertaining to the MLS® System.

Referral fees and/or “bird dog fees”

In accordance with the Real Estate Brokers Act (the “Act”) it is prohibited to pay a fee to an unregistered person for the furtherance of a transaction in real estate. This can be related to a “bird-dog fee” whereby a real estate agent offers a fee to a third party in exchange for referring someone who either wishes to sell or purchase a property through them.

Under section 24(1) of the Act it is prohibited to pay any person a commission, salary or other remuneration in connection with a **transaction in real estate** unless that person is duly registered under the Act.

In payment of the referral fee or “bird-dog fee” the registrant is in effect furthering a transaction in real estate and may be in violation of section 24(1) of the Act and therefore subject to disciplinary action by the Manitoba Securities Commission.

“W.D. Baluk”

W.D. Baluk

Registrar

The Real Estate Brokers Act