

JANUARY 28, 1998

TO ALL REGISTERED BROKERS
PROVINCE OF MANITOBA



REAL ESTATE TRUST DEPOSITS

The Manitoba Securities Commission is receiving inquiries from registrants and complaints from members of the public which suggest a misunderstanding on the part of some registrants as to the provisions of The Real Estate Brokers Act (the "Act") with regard to refunding trust deposits.

Some callers are under the misunderstanding that the Act requires a broker to obtain a signed release from one party before the deposit can be paid to the other party. By way of this letter the Commission would like to clear up that misunderstanding.

Subsection 26(l) of the Act states that a broker shall disburse trust money only in accordance with the terms under which it was received. The statutory offer to purchase and general legal principles dictate who is entitled to receive trust deposits, and under what circumstances.

Under subsection 27(l) of the Act the position of the broker who receives a deposit is that of a trustee acting on behalf of both the vendor and the purchaser, and not as agent for either of them. The subsection further states that the broker has an obligation to pay or account for the deposit to the proper party, and in the event both parties claim an entitlement to the deposit, the broker may pay the deposit into court on an interpleader.

The Commission wants it to be clear that the Act does not require brokers to obtain a signed release in order to disburse a trust deposit. If facts are not in dispute and the entitlement of a party to the deposit is clear, payment of the deposit should be made whether or not one or more of the parties to the transaction have signed a release.

In the event there is a dispute and it is unclear who is entitled to the deposit the broker should consult with its legal counsel to determine what action should be taken.

Brokers should examine carefully any policy they may have which requires a signed release. Such policy should not be applied unreasonably or arbitrarily without the parties' consent as such action may be viewed as a breach of the conditions pertaining to the deposit, which is a serious offence under the Act.

The Commission is notifying brokers that if the Commission conducted an investigation regarding the handling of a disputed deposit by a broker, and the evidence showed that the broker acted in good faith and handled the deposit in a responsible and timely manner, subject to other circumstances it would be unlikely that the Commission would consider disciplinary action against the broker.

J.W. Storsley
Registrar
The Real Estate Brokers Act