

**THE REAL ESTATE BROKERS
ACT**) **Order No. 2485**
)
Section 47) **July 30, 2003**

**Use of electronic Offer To Purchase Forms by
Brokers and Salespersons**

WHEREAS:

(A) Representation has been made to the Manitoba Securities Commission (the "Commission") by the Manitoba Real Estate Association and the Real Estate Advisory Council that it would be beneficial to the industry and the public to permit the use of an electronic version of the offer to purchase form prescribed for use in real estate transactions.

(B) An Electronic Forms Practice Directive (Schedule "A") has been developed to set out the requirements for the use of an electronic form of the offer to purchase.

(C) The requirement to complete the offer to purchase in quadruplicate or quintuplicate [Section 21(1) of The Real Estate Brokers Act (the "Act")] is inconsistent with the use of an electronic form of offer to purchase and the Electronic Forms Practice Directive.

(D) The Commission is of the opinion that it would not be contrary to the public interest to make this order.

IT IS ORDERED pursuant to section 47 of the Act:

1. That a registrant is exempt from the requirement to complete an offer to purchase in quadruplicate or quintuplicate as required in section 21(1) of the Act, on condition that the registrant comply with the Electronic Forms Practice Directive.

BY ORDER OF THE COMMISSION

Doug Brown – Director-Legal

Schedule "A"

ELECTRONIC FORMS PRACTICE DIRECTIVE

The Manitoba Securities Commission in conjunction with the Manitoba Real Estate Association are issuing the following directive with respect to the electronic usage of offers to purchase. The forwarding of signed offers to purchase by fax communication or by electronic scanning will be considered an acceptable practice as long as the following guidelines are adhered to:

1. If a client/customer is signing an offer to purchase in a location other than in the physical presence of a Manitoba registrant:

(i) the signature of the client/customer on the offer to purchase must be witnessed by a competent adult;

(ii) the name, address and phone number (and e-mail address if available) of the witness must be noted on the offer to purchase or on a document which is attached to the offer to purchase.

2. A Manitoba registrant should not allow any distribution or presentation of an offer to purchase, which has not complied with the provision in paragraph 1 above.

3. Real estate registrants are expected to retrieve and store on file an "inked" signature copy of the document from their respective client or customer. Brokerages must be in a position to provide, if called upon, the "best evidence" with respect to the formation of a contract on their "side" of the transaction.

Likewise, the registrant shall retain the copy of the offer received from the other registrant. Ideally, there would only be one copy, however, the provisions outlined in this directive contemplate situations where the contract is completed in "parts". Each registrant is required to compare all copies in their possession as soon as possible to ensure that there are no variations or irregularities in the copies. If any such variations are identified they shall immediately be brought to the attention of all parties to the contract as well as all registrants involved.

4. The current provisions of the Real Estate Brokers Act provide that an offer to purchase shall be in writing, and completed in not less than quadruplicate (one broker) or quintuplicate (two brokers). These new guidelines would allow for the offer to be completed, but not in multiple copies. It will now be sufficient if the parties to the contract receive a true copy of the component parts of the final contract as soon as possible together with copies of the contractual document which has been transmitted on their behalf in its various stages. Any changes to the document should be reflected in all copies, irrespective of how minor the changes.

5. Registrants may utilize "electronic" versions of offer(s) to purchase on the following basis:

(i) A copy of the document may be downloaded from the internet, printed in hard copy and filled in by the registrant and executed in ink by the buyer/seller. The document can then be presented as otherwise provided in this directive.

(ii) A copy of the document may be accessed on the internet and the blank fields may be typed in by the registrant. A paper copy may then be printed and executed in ink by the buyer/seller. The document can then be presented as otherwise provided in this directive.

These alternatives are allowable, only in the instance where the electronic form of offer to purchase being accessed is in a format, which does not allow for the variation of the statutory clauses, but only allows for the entering of information in blank fields. The source of this document should only be from a source authorized by The Manitoba Real Estate Association and

The Manitoba Securities Commission in order to maintain confidence that the format of the document meets statutory requirements. There is significant value in having offers prepared in typewritten format to help avoid uncertainty in terms.

The type font of the information being entered into the blank fields should be in a different format than the statutory wording so that the two can be easily distinguishable.

A. As per the directive, registrants are discouraged from submitting a counter to a counter offer on behalf of their client/customer, and are encouraged to redraft a fresh offer to purchase. Considering that the offer to purchase can now be completed "on-line" as described, registrants are encouraged to re-type a fresh offer to purchase as an alternative to entering into a counter to counter process.

B. In all the instances described above, a party to the contract must only execute an inked signature on one copy of the contract, a copy of which is to be retained by the registrant dealing with that customer/client. It is noted that these directives contemplate the creation of a contract in "parts", yet there should never be more than one inked copy of any one-signature segment in existence.

In order to accommodate there only being one "inked" signature on one copy of the contract, it is imperative that the registrant, as soon as possible, provide photocopies of the document to their client and the co-operating registrant (or directly to the other party to the contract where it is a situation of joint representation).

C. Registrants are reminded that there is significant danger in negotiating terms of offers by verbal communication in that they might unintentionally bind their clients to a transaction, irrespective of the Real Estate Brokers Act requirements that every offer must be in writing and signed in the presence of a witness. The prudent use of facsimile communication and scanners should ease the temptation of communicating "verbally".

D. Registrants are strongly advised to take note of the dangers inherent in the practice of signing an offer on behalf of a client and indicating "accepted as per telephone conversation" unless the registrant holds a power of attorney for that purpose.

E. Registrants are strongly advised to consider the dangers inherent in communicating of an offer or acceptance on behalf of a client/customer unless the client/customer has actually signed a true copy of the document, and that the respective registrant is satisfied that the signature has in fact been affixed.