

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- and -

IN THE MATTER OF: LEAD PROPERTY MANAGEMENT INC.

AMENDED
STATEMENT OF ALLEGATIONS OF STAFF OF
THE MANITOBA SECURITIES COMMISSION

**STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE, AMONG
OTHER THINGS, THAT:**

A. REGISTRATION AND OPERATIONS

1. Lead Property Management Inc. ("LEAD") was incorporated under the laws of Manitoba on April 28, 2005.
2. LEAD has been registered under The Real Estate Brokers Act ("Act") as a broker restricted to property management from August 22, 2008 to August 21, 2012, with periods of suspension as follows:
 - (a) May 19, 2010 to August 11, 2010;
 - (b) October 4, 2011 until the expiration of its Certificate of Registration on August 21, 2012.
3. At all material times, LEAD was registered under the Act as a broker, restricted to property management.
4. At all material times, LEAD had been a member of The Manitoba Real Estate Association Inc. ("MREA") and therefore participated in the Real Estate Reimbursement Fund ("Fund").
5. Until his demise on October 18, 2010, Kevin Dell ("DELL") had been the minority shareholder of LEAD and its Authorized Official. Following DELL's demise, the remaining majority shareholder of LEAD, Sharon Conway ("CONWAY") was not qualified to act as Authorized Official. LEAD was managed on an interim basis by its accountant until March 9, 2011 when a new Authorized Official was appointed.
6. Pursuant to section 14 of Regulation 57/88 R, the Real Estate Brokers Trust Accounts Regulation ("Trust Accounts Regulation"), an annual report for the period ending December 31, 2010 was required to be filed

by LEAD by April 30, 2011. LEAD filed this report late, on June 22, 2011. As a result of the late filing, a reprimand was issued against LEAD.

7. Thereafter, in August of 2011, LEAD released its Authorized Official in preparation for a tentatively arranged transfer of LEAD's portfolio of properties to another registered property manager and cessation of operations by LEAD. The tentative date of transfer was September 30, 2011.
8. The transfer to another property manager did not proceed.
9. Based upon information then at hand, staff had reason to believe that in general the money in LEAD's trust accounts was insufficient to meet liabilities due to the owners of properties managed by LEAD.
10. On October 4, 2011, the Registrar of the Real Estate Division of the MSC suspended the registration of LEAD.
11. On October 5, 2011, staff of the MSC froze the trust accounts of LEAD including the trust account established for handling rental monies ("T1(Rent)") and the trust account established for security deposits ("T2(Security Deposits)") collectively referred to as the Trust Accounts.
12. On August 17, 2012, LEAD was dissolved.
13. On August 21, 2012, LEAD's registration under the Act expired.

DETAILS

1. As a broker, LEAD was required pursuant to section 26(1) of the Act to maintain and deposit trust money in a bank account (or accounts) designated as a trust account(s) to be operated in a manner consistent with the Act and regulations including the Trust Accounts Regulation.
2. LEAD was also required to maintain trust records in connection with its business pursuant to section 7 of the Trust Accounts Regulation.
3. Following LEAD's suspension, as part of an investigation by staff of the MSC, a review of LEAD's Trust Accounts, T1(Rent) and T2(Security Deposits), and its business and trust records was conducted for the period of August 31, 2010 to September 15, 2011 ("Review Period").
4. Various failures by LEAD to comply with the Act and Trust Accounts Regulation were found including:

- (a) the balance in T1(Rent) was significantly less than required;
 - (b) payments reported as having been made to property owners for whom LEAD managed property had not in fact been made by LEAD;
 - (c) expenses reported as having been paid for property under management by LEAD had not in fact been paid;
 - (d) trust monies were used for non-trust purposes including operating expenses of LEAD;
 - (e) payments were made of some mortgage and insurance payments for two owners without the payments having been reported to the owners;
 - (f) some owners account balances were in a debit position;
 - (g) all rent deposits were not deposited into trust accounts;
 - (h) the balance in T2(Security Deposits) was significantly less than required;
 - (i) books and records of LEAD were incomplete.
5. As at September 15, 2011, the T1(Rent) balance was less than \$28,000.00. The current balance is approximately \$36,000.
 6. As at September 15, 2011, the T2(Security Deposits) balance was almost \$1,900.00 and currently remains the same.
 7. The estimated shortfall in T1(Rent) after deducting the current balance is approximately \$216,000.00.
 8. The estimated shortfall in T2(Security Deposits) after deducting the current balance is approximately \$62,000.00.
 9. The total combined estimated shortfall in the Trust Accounts after deducting current balances is approximately \$278,000.00.
 10. Pursuant to section 15 of the Trust Accounts Regulation, LEAD was required to file with the Registrar a report, as to compliance with subsection 26(1) of the Act and the Trust Accounts Regulation, within four months after cancellation of registration under the Act or the permanent cessation of business.
 11. No such final report has been filed.

B. ALLEGATIONS

1. Staff of the Commission allege that LEAD misappropriated, misapplied,

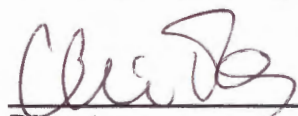
failed to account properly for and/or failed to pay over to the proper persons money received contrary to the Act and the Trust Accounts Regulation and in so doing:

- (a) failed to maintain sufficient balances on deposit in trust accounts to meet all obligations with respect to trust money, contrary to subsection 11(1) of the Trust Accounts Regulation;
- (b) paid operating expenses out of trust accounts contrary to subsection 10(3) of the Trust Accounts Regulation;
- (c) in connection with a trade or transaction in real estate, failed within a reasonable time to account properly for and/or pay over to the owners monies received, thereby committing a fraudulent act under the Act;
- (d) in connection with a trade or transaction in real estate, intentionally misrepresented by word, conduct or manner a material fact, thereby committing a fraudulent act under the Act;
- (e) in connection with a trade or transaction in real estate, engaged in a scheme, course of conduct, business or otherwise to obtain money, profit, or property by any fraudulent means as defined in the Act, or otherwise contrary to law, or by wrongful or dishonest dealing, thereby committing a fraudulent act under the Act;
- (f) failed to keep at all times trust money separate and apart from other money, contrary to subsection 26(1) of the Act; and/or,
- (g) disbursed trust money contrary to the terms upon which it was received, contrary to subsection 26(1) of the Act;

and that due to these allegations, a fraudulent act under the Act has been committed and the Commission should order the MREA to pay out of the Fund such amount to such persons or to the Commission as may be ordered by the Commission pursuant to subsection 39.1(2) of the Act.

2. Such further and other matters as counsel may advise and this Commission permits.

DATED at Winnipeg, Manitoba this 16th day of March, 2015.



Director

TO: LEAD PROPERTY MANAGEMENT INC.

**AND TO: THE REAL ESTATE REIMBURSEMENT FUND
c/o THE MANITOBA REAL ESTATE ASSOCIATION INC.**