

THE SECURITIES ACT

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Order No. 2591

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Section 47

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May 21, 2008

**An Order Exempting certain New Home Builders
and their salespeople from registration requirements of
The Real Estate Brokers Act**

Background

Section 40(1) of *The Real Estate Brokers Act* ("The Act") requires that no person shall act as a broker or salesman or otherwise engage in any transaction in real estate unless such person is registered under the Act.

Builders of new homes in Manitoba are conducting a transaction in real estate as defined in the Act when negotiating and completing a contract of the purchase and sale of a new home and land.

The exemptions from registration contained in section 41(1) do not apply to the builders of new homes and their employees conducting a transaction in real estate.

WHEREAS:

The Manitoba Home Builders' Association (MHBA), on its own behalf and on behalf of Builder Members of the MHBA have represented to the Commission that:

A. The MHBA is a non-profit association that was originally established in 1937 and presently has approximately 270 members.

B. MHBA members include new homebuilders ("Builder Members") who conduct transactions in real estate in Manitoba through the construction of new homes for sale to the public.

C. MHBA provides information and education to the public on purchasing a new home and requires its Builder Members to deal honestly and fairly with members of the public.

D. The MHBA provides education to Builder Members, and salespeople employed by Builder Members, including information on best practices for dealing with a member of the public on the purchase of a new home.

E. Builder Members are required to comply with all municipal and provincial building code requirements and the requirements of *The Builders Liens Act* when constructing and selling new homes in Manitoba.

F. Purchasers of new homes have access to new home warranty programs to protect the purchaser from damages through defective or deficient construction of a new home.

G. Builder Members employ salespeople to sell new homes who receive training on how to deal with the public in a fair and honest manner.

H. Registration of Builder Members and their employees under the Act to conduct sale of new homes is not required to protect the public.

Order and Conditions

1. The Commission orders that, pursuant to Section 47 of *the Act*, a Builder Member of MHBA, and each salesperson employed by the Builder Member, conducting a transaction in real estate of a home constructed by the Builder Member is exempt from the requirements to be registered as a broker or salesperson under *the Act*, subject to the following conditions:

A. The Builder Member is a member in good standing with the MHBA.

B. All new home sales persons employed by the Builder Member must have taken the MHBA new home sales course and have successfully completed the new home sales exam administered by the MHBA.

C. Only the Builder Member and/or a qualified new home sales person employed by the Builder Member is permitted to negotiate the contract to purchase a new home (the "contract").

D. The new home that is the subject of the contract must have been constructed by the Builder Member.

E. The contract must contain a clause for the purchaser to have the opportunity to seek independent legal advice.

F. The initial deposit received by the Builder Member shall not exceed \$10,000.00 and shall be held by the Builder Member in trust or the Builder Member's solicitor in trust in accordance with the terms of the contract.

G. The contract must provide new home warranty coverage to the purchaser from a new home warranty provider that is acceptable to Canada Mortgage and Housing Corporation or Genworth Financial Capital.

H. The sales of condominium projects by the builder do not form part of this exemption order.

I. The Builder Member and its employees will provide to the Commission all books and records relating to any transaction in real estate conducted in reliance on this order when requested by the Commission and its staff.

J. The MHBA will provide to the Commission and its staff upon request any information in their possession involving the builder member that pertains to any transaction in real estate conducted by the builder member.

2. This order will expire on April 30, 2009.

3. The fee for this Order is \$150.00.

BY ORDER OF THE COMMISSION

Director - Legal