

**THE REAL ESTATE
BROKERS ACT**

)

Order No. 4362

Section 47

)

December 23, 2003

THE PUBLIC TRUSTEE OF MANITOBA

WHEREAS:

(A) The Public Trustee of Manitoba (the "Public Trustee") has applied to The Manitoba Securities Commission (the "Commission") for an order pursuant to Section 47 of The Real Estate Brokers Act (the "REBA") exempting certain agents ("Agents") to be hired by the Public Trustee for certain limited purposes (as described below) from the provisions of sections 40 and 44(1) of the REBA;

(B) The Public Trustee has represented to the Commission that:

1. Occasionally, the Public Trustee is called upon to administer farm property. This will occur under two circumstances. First, the Public Trustee may become the administrator of an estate where a person has died in Manitoba leaving no other resident of Manitoba able or willing to administer the estate. Second, the Public Trustee may become the committee of a person who has been found to be mentally incapable of managing his or her affairs, in which case the Public Trustee is then responsible for making personal and financial decisions on that person's behalf. In these circumstances, the Public Trustee may be required to deal with farm property. By law, such assets must be managed by the Public Trustee in accordance with prudent business practices and in the best interests of the client or the estate.

2. In the past, an estate officer employed by the Public Trustee's office handled the administration of farm property, including arranging for the sale or lease of such property. However, due to hiring constraints, this was problematic for the Public Trustee, as the administration for farm property is time consuming. Further, the time required to properly administer the farm properties was not being borne by the client or estate owning the asset, but absorbed by the Public Trustee.

3. For these reasons, the Public Trustee wishes to retain certain individuals (referred to herein as "Farm Managers") to assist the Public Trustee in managing farm properties. The Public Trustee wishes to engage persons who are independent contractors acting as adjusters for the Manitoba Crop Insurance Corporation.

4. The expected duties of the Farm Managers will be to become involved when a new client or estate that holds farm property as an asset is received by the Public Trustee's office. The Farm Managers will be asked to inspect the farm property and provide a report to the Public Trustee's office detailing the nature and current circumstances of the farm property or farm operation. The Farm Managers may also be called upon to arrange for an appraisal of the property.

5. An important function of the Farm Managers will be to deal with the leasing arrangements of the farm property when a decision is made by the Public Trustee to rent the property. The Farm Manager would be responsible for contacting local farmers in this regard, usually by an advertisement to be published notifying any interested persons that the property is for rent. The Farm Manager would then be required to assess the responses and to negotiate any specific terms that may be required in the lease. The Farm Managers will not have the authority to formally conclude lease agreements. They will only make recommendations to the Public Trustee's office. The Public Trustee will make the final decision with respect to the terms of a lease. If the terms of a lease can be agreed upon, counsel in the Public Trustee's office will prepare the lease. Once a lease is in place, the Farm Managers will provide inspections of the property to ensure that the tenant is complying with the terms and conditions of the lease.

6. If the Public Trustee makes a decision to sell the farm property, the Farm Manager will be asked to place an advertisement for sale in a local newspaper or appropriate journal. The Farm Manager will also be expected to answer any inquiries made by interested parties concerning the nature of the farm property. Ordinarily, the advertisement of the farm property will be in tender form (including a deadline for submitting offers to the Public Trustee's office). Once all offers have been received, counsel in the Public Trustee's office will assess the offers in consultation with the Farm Manager. The Public Trustee will make the ultimate decision regarding any possible sale. Counsel in the Public Trustee's office will draw the contract for the sale. The Public Trustee's counsel will hold any deposits made in connection with a sale.

7. The Public Trustee intends to pay an hourly rate for inspection services. For lease negotiations, the Public Trustee intends to pay a flat rate plus an additional payment equal to 3% of the rent payable in respect of the first year of the lease. For sales, the Public Trustee intends to pay 3% of the purchase price. Appropriate disbursements for mileage, overnight accommodation and meals will also be paid.

8. The sale or leasing of farmland has not been handled by real estate agents on the Public Trustee's behalf for the last few years as offers have been solicited by tender. In many circumstances, real estate agents do not have sufficient knowledge of soil types, yields, and farming practices to properly negotiate sales and leases. The proposed remuneration is also such that it is unlikely that local real estate agents would wish to be involved.

9. Individuals currently engaged as adjusters by the Manitoba Crop Insurance Corporation are uniquely qualified to provide the services required. They are organized on a regional basis that lends itself to the geographically dispersed properties administered by the Public Trustee.

10. The Commission previously granted an order exempting the activities of the Farm Managers from sections 40 and 44(1) of REBA, subject to certain conditions, which expires December 31, 2003.

C. The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

IT IS ORDERED:

1. **THAT**, pursuant to section 47 of the REBA, the activities of the Farm Managers shall be exempt from sections 40 and 44(1) of the REBA provided that:

(a) each of the Farm Managers is also an independent contractor acting as an adjuster for the Manitoba Crop Insurance Corporation;

(b) this order shall expire on December 31, 2004; and

(c) before applying for an extension or renewal of this Order, the Public Trustee shall provide the Commission with an activity report listing, among other things that may be reasonably requested by staff of the Commission, the names of the individuals who were retained as Farm Managers, the services that they performed and the compensation they received therefor.

2. **THAT** the fee for this Order is \$150.00.

BY ORDER OF THE COMMISSION

Director, Legal