



THE MANITOBA  
SECURITIES  
COMMISSION

April 17, 2020

To all Registered Real Estate Brokers,  
Authorized Officials and Salespersons

Province of Manitoba

**Re: Electronic Signatures**

In light of social distancing protocols issued by public health officials during the COVID-19 pandemic, the Manitoba Securities Commission has been contacted by numerous registrants expressing concerns about requirements in *The Real Estate Brokers Act* (the "Act") that signatures on contracts be in ink.

The Commission would like to assure all registrants that it shares, and is sensitive to, these concerns and is taking steps to help protect all registrants and their clients.

To this end, the Commission has issued Order No. 2785 providing a temporary exemption from the requirement that registrants obtain inked signatures on offers to purchase and listing contracts as prescribed in the Act and allows for the use of digital signatures during the COVID-19 pandemic.

A copy of Order No. 2785 is attached and all registrants should thoroughly review it to ensure they satisfy the conditions outlined in the order if they intend to rely on the exemption.

In addition, registrants should be aware of the following items in connection with the order:

- The Commission has not prescribed the form of electronic signature that must be used but requires that contracts be executed in accordance with Part 3 of *The Electronic Commerce and Information Act*. This will allow for some variety in the type of electronic signature used, for example both "writing" a signature on a mobile device and using a service such as DocuSign would be acceptable.
- Copies of offers to purchase and listing contracts signed electronically must still be delivered to the relevant party and may be sent electronically.
- Relevant parties to the contracts must consent to the use of electronic signatures and brokers must keep copies of the consent provided. Furthermore, brokers must still maintain copies of offers to purchase and listing contracts signed electronically as stipulated in Section 28(1) of the Act, and the signatures on the documents must remain intact.
- Electronic signatures on offers to purchase still require a witness. Under the order, it is possible that a third party may act as a witness, and provide an electronic signature, if they are in the presence of the individual who is party to the contract and is signing the contract electronically. If situations arise where a registrant may consider witnessing an electronic signature while not physically present (witnessing by video conference, as an example), the registrant must take steps to confirm and document the identity of the person signing, view the signing process, and confirm the signature has been recorded in the offer. Brokers are responsible for maintaining records of the steps taken.

**Real Estate Division**

500-400 St. Mary Avenue, Winnipeg, MB R3C 4K5 • tel: 204.945.2562 • fax: 204.948.4627 • [mbrealestate.ca](http://mbrealestate.ca)

A DIVISION OF THE MANITOBA FINANCIAL SERVICES AGENCY

- In situations where electronic signatures are used, registrants must take steps to confirm the validity of the electronic signature including confirming the identity of the signatory, establishing the association of the electronic signature to the signatory (i.e. the signature belongs to the individual signing the contract), and maintaining appropriate records of the steps they took.

The Commission would like to emphasize that it is not mandating the use of electronic signatures on offers to purchase and listing contracts and that their use is voluntary on the part of clients.

Order No. 2785 will expire on September 30, 2020. Should public health officials dictate that social distancing protocols must still be maintained at that time, the Commission will look at extending the duration of the order.

As previously stated, the order is a temporary measure intended to provide relief to registrants during the COVID-19 pandemic. Once public health officials determine that social distancing protocols are no longer needed we will return to the requirement that contracts be signed in ink.



Keith Schinkel  
Registrar  
*The Real Estate Brokers Act*





THE MANITOBA  
SECURITIES  
COMMISSION

**THE REAL ESTATE BROKERS ACT** )  
**Section 47** )  
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**Order No. 2785**

**Date: April 14, 2020**

**Temporary Exemption from the Requirement to Obtain  
a Physical Signature on Certain Documents and to physically  
Deliver those Documents under The Real Estate Brokers Act**

**WHEREAS:**

- (A) The Manitoba Securities Commission (the "Commission") has received an application from the Registrar to make an order which would provide an exemption from certain provisions under *The Real Estate Brokers Act* (the "Act"), on a temporary basis, that require physical signatures on certain documents and the physical delivery of those documents.
- (B) On March 11, 2020, the World Health Organization declared the outbreak of coronavirus disease 2019 ("COVID-19") to be a pandemic. On March 20, 2020, the Government of Manitoba declared a state of emergency under the powers set out in sections 10(1) and 10(2) of *The Emergency Measures Act* to enable the province to respond to the pandemic. The Registrar is of the opinion that obtaining a physical signature on certain documents and physically delivering copies of those documents may represent an undue hardship to real estate brokers, authorized officials and salesmen and the public given the COVID-19 pandemic and the risk of the transmission of the disease when people are in close proximity to each other.
- (C) Terms defined in the Act have the same meaning in this order.
- (D) The Commission has determined that compliance with the provisions of the Act requiring physical signatures and the physical delivery of certain documents would cause undue hardship and that it is not contrary to the public interest to issue this order.

**IT IS ORDERED:**

1. **THAT**, pursuant to subsection 47 of the Act a broker and an authorized official and a salesman of that broker are exempt from:
- (a) section 20 of the Act regarding exclusive listings to the extent that this provision requires that:
    - (i) the parties to the listing physically execute the listing; and
    - (ii) a physically executed copy of the listing be physically furnished by the broker, authorized official or salesman to the person granting the listing

subject to the following conditions:

    - (iii) that the listing be executed in accordance with Part 3 of *The Electronic Commerce and Information Act* (the "Electronic Commerce Act");
    - (iv) that an executed copy of the listing be sent by the broker, authorized official or salesman to the person granting the listing in accordance with Part 3 of the Electronic Commerce Act; and
    - (v) that the person granting the listing consents to reliance on this exemption.
  
  - (b) subsection 21(1) of the Act regarding offers to purchase obtained by a broker, authorized official or salesman to the extent that this provision requires that:
    - (i) the offeror physically execute the offer;
    - (ii) the offer be completed in not less than quadruplicate if there is only one broker involved and otherwise not less than quintuplicate;
    - (iii) the offer be signed in the physical presence of a witness; and
    - (iv) the duplicate copy of the offer be immediately delivered by the broker, authorized official or salesman, as the case may be, to the offeror on execution

subject to the following conditions:

    - (v) that the offer be executed by the offeror in accordance with Part 3 of the Electronic Commerce Act;
    - (vi) that a copy of the offer be immediately sent by the broker, authorized official or salesman, as the case may be, to the offeror in accordance with Part 3 of the Electronic Commerce Act; and
    - (vii) that the offeror and the person to whom the offer is addressed consent to reliance on this exemption.

- (c) subsection 21(2) of the Act regarding acceptances of offers to purchase to the extent that this provision requires that:
- (i) the vendor physically sign the acceptance;
  - (ii) the acceptance of the offer by the vendor be duly witnessed;
  - (iii) the acceptance be signed by the vendor and the witness in not less than duplicate;
  - (iv) at least one copy of the accepted offer be left with the vendor; and
  - (v) the broker, authorized official or salesman, as the case may be, immediately notify the purchaser of the acceptance by physically delivering a copy of the accepted offer to the purchaser
- subject to the following conditions:
- (vi) that the acceptance be executed by the vendor in accordance with Part 3 of the Electronic Commerce Act;
  - (vii) that a copy of the accepted offer be immediately sent by the broker, authorized official or salesman, as the case may be, to the vendor in accordance with Part 3 of the Electronic Commerce Act;
  - (viii) that a copy of the accepted offer be immediately sent by the broker, authorized official or salesman, as the case to the purchaser in accordance with Part 3 of the Electronic Commerce Act; and
  - (ix) that the vendor and the purchaser consent to reliance on this exemption.
- (d) subsection 31(1) of the Act regarding listing agreements to the extent that this provision requires that:
- (i) the person granting the listing agreement physically sign the agreement; and
  - (ii) a copy of the agreement be delivered to the person granting the listing at the time it is executed
- subject to the following conditions:
- (iii) that the agreement be executed in accordance with Part 3 of the Electronic Commerce Act;
  - (iv) that a copy of the agreement be immediately sent by the broker, authorized official or salesman, as the case may be, who obtained the listing to the person granting the listing in accordance with Part 3 of the Electronic Commerce Act;



- (v) that the person granting the listing consents to reliance on this exemption.
  - (e) subsection 31(2) of the Act, provided that the only alleged reason for the invalidity is based on paragraph 31(2)(c) of the Act and the broker, authorized official or salesman, as the case may be, has complied with subsection 1.(d) of this order.
2. **THAT** a copy of the executed exclusive listing agreement, executed offer to purchase, accepted offer to purchase and executed listing agreement, as the case may be, and the consents to the use of the exemption be maintained by the broker in a form that is accessible so as to be usable for subsequent reference as part of the books and records that the broker must maintain under the Act;
3. **THAT**, this Order will expire on September 30, 2020.

**BY ORDER OF THE COMMISSION**



**Director**