

Report from Council

New Chair, Vice-Chair Elected

First meeting of 09/10 Council held in July

At the first meeting of the 2009/10 Council in July, William (Bill) Brown of Brown Bros. Agencies, Victoria, was elected as Chair of the Real Estate Council for the 2009/10 term. Gerry Martin of B.C. Farm & Ranch Realty Corp., Abbotsford, was elected as Vice-Chair.

There are 16 members of the Real Estate Council, including three members appointed by the provincial government. Thirteen members are chosen through an election process open to all real estate licensees in the province. The

elected members are comprised of three representatives and nine brokers representing the various provincial counties. One individual is elected as the strata/rental property management member. Members are elected for two-year terms, with half of the Council elected each year, thus ensuring conti-



William Brown



Gerry Martin

nuity. The names of the other Council members are listed in the right margin on the next page. ■

Proper Identification of Licensees on Contracts

As reported in a previous *Report from Council* newsletter, it has again come to the attention of the Council that some licensees are writing listing agreements, Contracts of Purchase and Sale, and other contractual forms in the name of another licensee. For example, a “licensed assistant” prepares documents in the name of the team’s “lead licensee” who has no real involvement in the transaction. Questions arise as to whether appropriate agency disclosure is being made, whose name ought to appear on such documents, particularly the Contract of Purchase and Sale, and which licensee is ultimately accountable, both in terms of the preparation of the document and the client/agent relationship.

“Licensed assistants” may believe that they are not accountable if they write a Contract of Purchase and Sale in the name of the “lead licensee”.

The duties and responsibilities of a “licensed assistant” are considered the same by the Council as the “lead licensee”.

Section 5-10 of the Council Rules requires that before assisting or representing any person in a real estate transaction, a licensee must disclose to that person the nature of the assistance or representation the licensee will provide to that person. If the “licensed assistant” is providing any assistance or representation, such as writing up the Contract of Purchase and Sale, it should be clear on



the contract as to who is providing this assistance or representation—the “licensed assistant”, the “lead licensee”, or both.

If the “lead licensee” has no involvement in the transaction, then the “licensed

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A Note from the Chair



William R. Brown,
Chair

You will have noticed from the lead story that I was elected as Chair of Council last month. I was extremely pleased to be elected and I look forward to working with all of the members of the 2009–2010 Council. As mentioned in the last *Report from Council*, we welcome newly elected member Patrick O'Donnell

of West Vancouver, and re-elected members Abdul Ghouri of Vancouver and Michael Ziegler of Victoria, to the Council table. In addition, I am pleased to advise that the government has reappointed public member Danny Leung of Richmond and Bruce Turner of Courtney. The government has also appointed John Nagy of Richmond as the third public member replacing Ramesh Rhiki.

As many of you are aware, I was first appointed to the Council as the rental/strata management appointee in 2005. I was then elected to this position in 2007 and 2009 and have really enjoyed serving on Council. The licensing of strata managers was an important and extremely

worthwhile initiative by the government, which I fully support. With the significant assistance of the Council's Rental Property Management and Strata Management Advisory Groups, the Council has made great strides with these segments of the industry, and a concerted effort has been made to place more focus on both rental and strata management issues. During my term as Council Chair, I look forward to continuing to work with the members of these two Advisory Groups, who have been invaluable in assisting the Council in regulating these segments of the industry, for which I thank them.

Despite the global economic downturn, industry statistics indicate an increase in real estate sales in various areas of the province and a slight increase in the number of licensees over the last few months. This positive news, given market conditions over the past twelve months, is most welcome.

On behalf of Council members and staff, I wish you a busy and productive fall.

William R. Brown
Chair

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Proper Identification of Licensees on Contracts

assistant" must only include his or her own name (name of "licensed assistant") where it states "prepared by: _____" at the top of the Contract of Purchase and Sale. In addition, his or her name must also be included in the agency disclosure section of the contract, along with the name of his or her related brokerage.

If both the "lead licensee" and the "licensed assistant" are providing assistance and/or representation to the buyer, but the "licensed assistant" is writing up the contract on behalf of the "lead licensee", then the "licensed assistant" should include his

or her own name where it states "prepared by: _____" at the top of the contract and the words "On behalf of" (include the name of the "lead licensee"). In this circumstance, both the name of the "licensed assistant" and the name of the "lead licensee" must appear in the agency disclosure section of the contract, along with the name of the related brokerage.

In this way, both the seller and the buyer will know who is providing the assistance and/or agency relationship. It, therefore, also protects licensees who have no involvement in the transaction. ■

Office Closures

The Council office will be closed on **Monday, September 7, 2009** for Labour Day and **Monday, October 12, 2009** for Thanksgiving.

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Real Estate Council of BC
CHAIR—William R. Brown
VICE-CHAIR—Gerry Martin
EXECUTIVE OFFICER—Robert O. Fawcett

COUNCIL MEMBERS

William (Bill) Binnie
Bryon Brandle
Marshall Cowe
John Finlayson
Abdul Ghouri
Danny Leung
Jim McNeal
John Nagy
Patrick O'Donnell
Ann Petrone
W. B. (Bill) Phillips
Bruce Turner
Liz Tutt
Michael Ziegler

STATISTICS

August 2009

Representatives: 16,190
Associate Brokers: 1,768
Managing Brokers: 1,343
Total Licensees: 19,301
Brokerages (including branch offices
and sole proprietors): 1,403

Role of the Council

The Real Estate Council is a regulatory agency established by the provincial government. Its mandate is to protect the public interest by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*. The Council is responsible for licensing individuals and brokerages engaged in real estate sales, rental and strata property management. The Council also enforces entry qualifications, investigates complaints against licensees and imposes disciplinary sanctions under the Act.

Report from Council

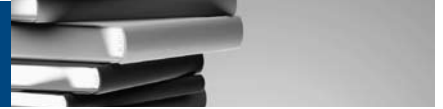
The *Report from Council* newsletter is published six times per year. Past issues can be found at www.recbc.ca.

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Relicensing Education Program Important Changes

As licensees are aware, the Council's Relicensing Education Program (REP) came into effect in January of 2007. The Council designed REP to ensure that its course list contains many of the courses that are included in the BCREA's Professional Development Program (PDP), enabling licensees to complete one set of mandatory course requirements.

REP and PDP have been working very well together and the Council continues to look for ways in which mandatory continuing education can be improved. At a recent meeting, the Council decided to:

1. Maintain the requirements set out for the first REP cycle. This means that in order to renew a licence in 2009 or 2010:
 - **Individuals who are licensed to provide trading services must complete 2 courses:** 1 elective course and the mandatory "What Brokerages and REALTORS® Need to Know About Agency" course.
 - **Individuals who are licensed for rental property management or rental property and strata management only must complete 2 elective courses.**
 - **Individuals licensed for strata management services only** may be eligible for limited exemptions and should consult with the Council's Education staff or visit www.recbc.ca for further information.
2. Revise the second cycle REP requirements to eliminate the requirement for an elective course for most licence categories. This means that in order to

The Council has revised the second cycle REP requirements to eliminate the requirement for an elective course for most licence categories.



renew a licence in 2011 or 2012:

- **Individuals licensed to provide trading services only must complete** Real Estate E&O Insurance Legal Update* course.
 - **Individuals licensed to provide trading services PLUS either rental property management services OR strata management services OR both must complete** either Real Estate E&O Insurance Legal Update* course OR Strata Law/Legal Update course.
 - **Individuals licensed to provide strata management services OR rental property management services OR both must complete** one elective course.
3. With respect to mandatory education requirements for licence renewals in 2013 and 2014, (the third cycle of REP), the Council has made no decisions as to whether or not a mandatory course will be required. However, the Council will be seeking licensee input on the third REP cycle requirements.

The Council is hopeful that the new second cycle REP requirements will be received by licensees as a positive step towards simplifying REP. Licensees with questions can contact the Council's Education Department at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca. ■

*Refers to Real Estate E&O Insurance Legal Update 2008 or later versions of the course.

Obtaining Strata Documents

Licensees providing trading services have expressed concerns about the availability of documents, such as engineering reports. The following considers the obligations of the various parties involved in a real estate transaction in respect of the provision of these documents.

Who is entitled to documents?

When considering the documents produced by a strata corporation and desired by a prospective buyer, it is necessary to understand what documents a buyer is entitled to receive. Under the *Strata Property Act* (the “Act”), the only document a buyer is entitled to obtain is the Form B.

It has long been recognized that the information on a Form B is far from sufficient for a buyer. The Form B does not contain minutes, financial statements, by-laws and other documents that a buyer wishes to review. As a result, the right of an **owner**, the seller, to obtain documents from a strata corporation has often been used to obtain the documents, such as minutes and financial statements, for the benefit of the buyer.

The Act permits an owner or person authorized in writing by an owner to obtain copies of documents retained by the strata corporation. Through the listing agreement, the seller authorizes the listing agent to obtain the documents from the strata corporation as may be required by a buyer. A buyer can, therefore, receive only those documents that an owner is entitled to receive. A buyer cannot, however, request these documents directly from the strata corporation as the buyer is not specifically authorized by the owner to obtain them.

The documents available to an owner or a person authorized in writing by an owner are those set out in section 35 of the Act. Section 36 of the Act requires a strata cor-

poration to make those documents available to the owner or person authorized by the owner. Sections 35 and 36 of the Act require the strata corporation to retain and make available to an owner, or authorized person, among other things, *all written contracts and any correspondence sent or received by the strata corporation*.

Engineering Reports

Engineering reports are not specifically itemized in section 35. However, it is arguable that the report falls within the broad category of *correspondence received by the strata corporation*. Thus, if a strata corporation has obtained an engineering report, it should be available to the owners under the heading of correspondence received. If the strata corporation has pro-

It is necessary to first understand what documents a buyer is entitled to receive.

ceeded to enter into contracts for repairs or remediation, those contracts would also be available to an owner pursuant to sections 35 and 36 of the Act.

As indicated above, any document available to an owner, such as an engineering report, can be obtained and provided to a buyer if the owner has authorized someone, such as the listing agent, to obtain the document from the strata corporation.

In some cases, a Strata Council may be unwilling to release an engineering report because they have not had an opportunity to fully consider the report or, alternatively, because they believe a second opinion should be obtained. Whether such reasons are valid and properly justify the withholding of the report are unclear. In practical terms, however, if a Strata Council is not willing to release the report, the only means for an owner to obtain the report is

to apply to the Court for an order that the engineering report be released and provided to the owners. If a buyer is requesting an engineering report and the Strata Council has refused to release it, although the owner could apply to the Court for an order to have the report released so that it can be provided to the buyer, such a solution is impractical and unlikely.

Buyers’ agents who are advised that the strata corporation’s engineering reports will not be provided should warn their buyers in writing of the risks of proceeding with the purchase of a strata lot when such information is not available.

Seller’s Liability

Often buyers will request copies of engineering reports not knowing whether an engineering report exists. If no engineering report is then provided, the buyer believes that no engineering report was ever commissioned or obtained.

It is important for a seller to recognize that the request for documentation in the Contract of Purchase and Sale obligates the seller to produce the documents requested. A request for all engineering reports is simply that, **all** engineering reports. If the seller is aware that engineering reports exist but does not ensure that they are provided to the buyer as part of the buyer’s request for documentation, the seller may be liable to the buyer for failing to provide the requested documents. Notwithstanding that the documents are generally provided by the strata corporation, the seller and seller’s agent should ensure that the documents provided to the buyer fully satisfy the buyer’s request.

It is obvious that a seller cannot be held liable for engineering reports if the Strata Council has failed to advise owners that a report has been commissioned or received.

The Strata Property Act permits an owner or person authorized in writing by an owner to obtain copies of documents retained by the strata corporation.

In those cases, the Strata Council may have failed in their duties to act honestly, in good faith and in the best interests of the strata corporation and may be liable to the owners, including the buyer.

Role of the Strata Manager

A strata manager is the agent of the strata corporation. The strata manager's duties are set out in the contract between the brokerage and the strata corporation and, generally, include carrying out many of the strata corporation's duties, such as maintaining the books and records and managing the day to day activities of the strata corporation.

When documents are requested from the strata corporation, they are often

requested from the strata manager. It is important for licensees to appreciate that the strata manager is merely stepping into the shoes of the strata corporation and has no separate duties to make disclosure other than ensuring that the obligations of the strata corporation are fulfilled. In other words, when obtaining documents from the strata corporation, the strata corporation must comply with the Act and the strata manager has no ability to act in a manner other than as permitted by the Act. The strata manager, for example, cannot release documents, such as meeting minutes or financial statements, to a party other than an owner or person authorized in writing by an owner. Additionally, the strata manager cannot provide their opinion on the likelihood

of a future special levy or the need for repairs. Such information is only available to owners and prospective buyers through the minutes and other records of the strata corporation.

In addition to the obligation to comply with the Act, strata managers are reminded that they should ensure they are acting on the instructions of their client, the strata corporation. Section 3-3(1)(c) of the Council Rules obligates the brokerage and its related licensees to act only within the scope of the authority given by the client. Before taking any actions, including releasing documents, the strata manager should confirm that they are acting with the authorization and under the instructions of the strata corporation. ■

Strata Corporation and Strata Manager Privacy Guidelines Now Available

B.C.'s Privacy Commissioner's office has posted 'Privacy Guidelines for Strata Corporations and Strata Agents' on its website. These new guidelines support strata corporations in meeting their privacy obligations under the *Personal Information Protection Act* and the *Strata Property Act*.

The Privacy Guidelines cover such topics as:

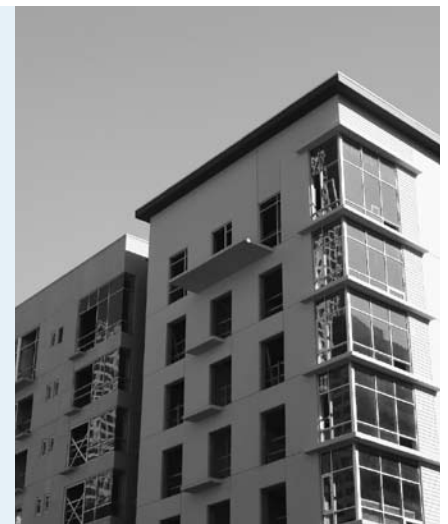
- Guidelines for handling requests for complaint records.
- Privacy issues relating to audio or video surveillance and entry control systems.
- Responses to individuals' requests for correction of their own personal information.
- Rules that apply to the personal information of employees or inde-

pendent contractors of strata corporations.

- Creating a privacy policy for the strata corporation.

The Council encourages all licensees who deal with strata properties to familiarize themselves with the information contained in these guidelines. The information is especially important for strata managers in their dealings with the strata corporation clients.

The guidelines are the result of the Privacy Commissioner's Office consultations with industry groups such as the Condominium Home Owners Association, the Strata Property Agents of BC, the Professional Association of Managing Agents, the Real Estate Council of BC, the Financial Institutions Commission



and the Ministry of Labour and Citizens' Services. Lawyers with expertise in strata corporation law and other knowledgeable stakeholders were also consulted.

The privacy guidelines are posted at: [www.oipc.bc.ca/sector_private/public_info/Guidelines_Strata-Corp\(2009\).pdf](http://www.oipc.bc.ca/sector_private/public_info/Guidelines_Strata-Corp(2009).pdf). ■

Real Estate Foundation of British Columbia Update

At the request of Karin Kirkpatrick, the new Executive Director of the Real Estate Foundation of British Columbia (the “Foundation”), the Council is publishing the following update for the benefit of all licensees.

Over the past several months, brokerages will have received a letter from the Foundation providing both information on the role of the Foundation and a request for updated trust account banking information. This is a process the Foundation is required to undertake from time to time to ensure its records are correct and match the monthly reports it receives from BC’s savings institutions.

The Foundation has had an excellent response with the return of these forms and thanks all brokerages for their cooperation in confirming this information. As well, it has given the Foundation an opportunity to discuss, with managing brokers, some of the good work funded by this interest income.

The idea for the creation of the Foundation was based on a model developed, originally, in the legal profession. Since 1969, in British Columbia, all interest generated on lawyers’ pooled trust accounts has been directed to the Law Foundation of BC. The Law Foundation, like the Real Estate Foundation, then uses those public funds to support non-profit initiatives, related to their industry, for the betterment of British Columbia.

In 1985, at the initiative of a group of real estate professionals and with the support of the Ministry of Finance, a legislative amendment was enacted which resulted in the formation of the Real Estate Foundation. Alberta followed suit in 1991. With few exceptions, prior to 1985, interest generated on pooled trust accounts flowed to the savings institution holding the funds.

Since the start of its grants program in 1988, the Foundation has provided

grants totaling \$54M to communities throughout British Columbia. These funds have made it possible for BC’s non-profit organizations to, for example, provide affordable seniors housing, protect sensitive environmental areas, promote continued professional development for real estate professionals, and undertake important research related to real estate and land use.

The two main concerns that arose during the Foundation’s recent update process were related to the following:

Rental Property Managers Handling Security and Pet Deposits

Under section 29 of the Real Estate Services Act (RESA), the interest on funds held in a brokerage pooled trust account must be remitted to the Foundation. As an exception, interest earned on security and pet deposits held under the Residential Tenancy Act is not required to be remitted to the Foundation.

To ensure the interest on these security and pet deposits is not remitted to the Foundation, the Foundation strongly advises a brokerage to maintain a separate pooled trust account for security and pet deposits only. If security and pet deposits are deposited into the brokerage general pooled trust account (an account containing any other type of deposit than security and pet deposits), the savings institution responsible for remitting interest on pooled trust accounts to the Foundation may not be able or willing to segregate the interest earned on security and pet deposits from the interest earned on other funds in that pooled account. This would result in the interest earned on the security and pet deposits being remitted to the Foundation when it should not be.

Brokerages Maintaining “Flow-Through” Accounts

A pooled trust account may be used by a brokerage for either electronic deposits and/or payments. These pooled trust ac-

counts are referred to as “flow-through” accounts in the Council Rules. Pooled trust accounts being used as flow-through accounts are subject to Section 29 of RESA and a savings institution must be directed to pay any interest on the flow-through account to the Foundation.

If you require information on how to direct your savings institution to remit these funds, or to learn more about the projects funded by the Foundation, please contact the Foundation office at 604-688-6800 or toll-free 1-866-912-6800. Forms and further information on the requirement under section 29 of RESA can be found via the Real Estate Brokers link at www.realestatefoundation.com

On behalf of the Foundation, thank you for your continued support. Every deposit that generates interest for the Foundation supports sustainable communities in BC. ■



Since 1988, the Foundation has provided grants totaling \$54M to communities throughout British Columbia

Council Rule Changes

The Council, at its meeting on June 16, 2009, amended two sections of its Rules. The amendments are related to the ability of managing brokers to be licensed in relation to 2 affiliated brokerages, or to 2 offices of the same brokerage. Previously, these offices must have been located within 100 kilometres of each other. The amendments

eliminate this proximity requirement.

The Council had previously given notice of the proposed Rule amendments by sending a fax notice to all real estate brokerages in the province and posting them on its website on May 4, 2009. The amended Rules take effect July 1, 2009.

Licensees wishing to view the Council Rules may do so on the Council's website at www.recbc.ca.

Licensees with any questions can contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca. ■

Proposed Rule Changes	Description
2-3 Managing broker may be licensed in relation to 2 a maximum of 4 affiliated brokerages (1) For the purposes of section 7 (2) <i>[relationships between brokerages and other licensees]</i> of the Act, a managing broker may, <u>subject to subsection (2) of this section, be licensed in relation to 2 brokerages if</u> <u>(a) be licensed in relation to a maximum of 4 brokerages that the brokerages are affiliated within the meaning of the <i>Business Corporations Act</i>, and</u> <u>(b) the managing broker is not licensed in relation to more than one licence of a brokerage under section 2-4 <i>[related licensees of brokerages with branch offices]</i> of these rules.</u> (b) provide real estate services in relation to the licence of each of those brokerages. (2) <u>The total of all brokerage licences in relation to which a managing broker is licensed under this section and section 2-4 <i>[related licensees of brokerages with branch offices]</i> must not exceed 4.</u> (3) For certainty, section 7 (4) <i>[managing broker subject to brokerage's licence]</i> of the Act applies to the managing broker in relation to the specific brokerage licence in relation to which they are acting at any particular time.	Both this group of changes, and those below, have the cumulative effect of increasing the total number of brokerage offices in relation to which a managing broker may be licensed from the current maximum of 2 to a proposed maximum of 4.
2-4 Related licensees of brokerages with branch offices (1) If a brokerage holds one or more branch licences in addition to its head office licence, a managing broker, associate broker or representative who is a related licensee of the brokerage must be licensed in relation to a single licence of the brokerage. (2) As an exception to subsection (1), a managing broker may, <u>subject to subsection (3),</u> <u>(a) be licensed in relation to 2 a maximum of 4 licences of a brokerage, and</u> <u>(b) may provide real estate services in relation to each of those brokerage licences, if the managing broker is not licensed in relation to another brokerage under section 2-3 <i>[managing broker may be licensed in relation to two affiliated brokerages]</i> of these rules.</u> <u>(b) provide real estate services in relation to each of those brokerage licences.</u> (3) <u>The total of all brokerage licences in relation to which a managing broker is licensed under this section and section 2-3 <i>[managing broker may be licensed in relation to a maximum of 4 affiliated brokerages]</i> must not exceed 4.</u> (4) For certainty, section 7 (4) <i>[managing broker subject to brokerage's licence]</i> of the Act applies separately to the managing broker in relation to the specific brokerage licence in relation to which they are acting at any particular time.	Both this group of changes, and those above, have the cumulative effect of increasing the total number of brokerage offices in relation to which a managing broker may be licensed from the current maximum of 2 to a proposed maximum of 4.

"Stigmatized" Properties – Part 2

The following two questions were received concerning the April 2009 *Report from Council* article about stigmatized properties.

What is a seller's (and seller's agent's) obligation to disclose a stigma if asked directly about it by a buyer or a buyer's agent?

Unlike the obligation to disclose a material latent defect, a seller and, therefore, a licensee representing that seller does not have an obligation to disclose the existence of stigmas which might affect their property. Therefore, if asked about the possible existence of stigmas, the seller, or licensees representing the seller, may:

- a) answer the question directly; or
- b) decline to answer the question and advise the buyer to conduct their own investigation.

Before responding to such a question on behalf of their seller, a licensee should first seek direction from their seller about whether to answer, or to decline to answer. Sellers and their licensees who choose to answer such questions are expected to use reasonable skill and care to ensure the accuracy and completeness of the information provided to buyers.

A refusal to answer questions may raise a warning flag for a prospective buyer who may then wish to find the answers through their own independent research.

Are the obligations different in dual agency?

Despite the fact that a seller does not have an obligation at law to disclose the existence of a stigma that affects their property, the seller has, when consenting to the listing brokerage acting as a limited dual agent, agreed that the brokerage will have a duty of disclosure to the buyer, excluding

- a) that the seller is willing to accept a price or terms other than those contained in the listing;
- b) the motivation of the seller to sell; or
- c) personal information about the seller.

Under the current limited dual agency system, the brokerage has a duty to disclose to the buyer all material information except that which has been excluded by



the limited dual agency agreement with the consent of both the buyer and the seller. Accordingly, where the buyer has made their concern about a stigma known to the brokerage through the buyer's representative, and the brokerage through the listing representative is aware of the existence of such a stigma, the brokerage has a duty to disclose that information to the buyer. Where the brokerage does not have knowledge of the existence of a stigma and an inquiry is made by the buyer, the options set out above related to the first question would apply. ■

Reminder About Licensing Forms

The Council recently amended its individual licensing form (*Application for Representative, Associate or Managing Broker Licence*) and individual licence renewal form to include a new question #7 in the disclosures section of the form. The new question asks licensees to disclose ongoing investigations by other regulatory agencies as follows:

- (7) *Are you the subject of an investigation or discipline proceedings under real estate, insurance, mortgage broker or securities legislation, or by a professional body, in British Columbia or another jurisdiction?*

To enable this change, the Council modified section 4-4(1)(d) of the Council Bylaws to include this new question effective May 1, 2009.

These forms were also amended to ask licensees to provide

their email addresses to the Council. This initiative is being undertaken in order to assist the Council in finding alternative and less expensive ways of communicating with licensees for initiatives, such as the annual Council member elections. To allow for this change, sections 4-4(2), 4-4(4), 4-6(2) and 4-6(4) of the Council Bylaws were amended also effective May 1, 2009.

The Council requests that licensees, managing brokers and brokerage administrative staff ensure that they download the updated *Application for Representative, Associate or Managing Broker Licence* form from the Council's website at www.recbc.ca.

Licensees with questions can contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca. ■

Notice of Licensee Resignations

Jenette Louise Hilton

Jenette Louise Hilton, while licensed as a representative with Ocean Pointe Realty Ltd. (Ldy) dba Re/Max Ocean Pointe Realty Ltd. (Ldy), Ladysmith, requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against her as she has decided to permanently retire from real estate practice. Ms. Hilton was facing a disciplinary hearing into her professional conduct and would have been required to appear before a hearing committee of the Real Estate Council to respond to these allegations. Considering the fact that there is likely no greater disciplinary penalty than not being licensed again, the Real Estate Council agreed with Ms. Hilton's request. Ms. Hilton surrendered her licence on January 8, 2009 and the lifetime ban on Ms. Hilton's licensing under the *Real Estate Services Act* was effective as of July 20, 2009.

Renate (Renee) Janak

Renate (Renee) Janak, while licensed as a representative with Crest Realty Westside Ltd. (VanBch) dba Re/Max Crest Realty Westside (VanBch), Vancouver, requested the Real Estate Council of British Columbia to discontinue disciplinary pro-

ceedings against her as she has decided to permanently retire from real estate practice. Ms. Janak was facing a disciplinary hearing into her professional conduct and would have been required to appear before a hearing committee of the Real Estate Council to respond to these allegations. Considering the fact that there is likely no greater disciplinary penalty than not being licensed again, the Real Estate Council agreed with Ms. Janak's request. Ms. Janak surrendered her licence on April 15, 2009 and the lifetime ban on Ms. Janak's licensing under the *Real Estate Services Act* was effective as of July.

Charles Dennis Jones

Charles Dennis Jones, while licensed as an associate broker with 621104 B.C. Ltd. dba Homelife Benchmark Titus Realty, Surrey, requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against him as he has decided to permanently retire from real estate practice. Mr. Jones was facing a disciplinary hearing into his professional conduct and would have been required to appear before a hearing committee of the Real Estate Council to respond to these allegations. Considering the fact that there is likely no greater disciplinary

penalty than not being licensed again, the Real Estate Council agreed with Mr. Jones's request. Mr. Jones surrendered his licence on May 29, 2009 and the lifetime ban on Mr. Jones's licensing under the *Real Estate Services Act* was effective as of July 20, 2009.

Veronica (Ronnie) McCartney

Veronica (Ronnie) McCartney, while licensed as a representative with Black Tusk Realty Ltd. dba Royal LePage Black Tusk Realty, Garibaldi Highlands, requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against her as she has decided to permanently retire from real estate practice. Ms. McCartney was facing a disciplinary hearing into her professional conduct and would have been required to appear before a hearing committee of the Real Estate Council to respond to these allegations. Considering the fact that there is likely no greater disciplinary penalty than not being licensed again, the Real Estate Council agreed with Ms. McCartney's request. Ms. McCartney surrendered her licence on June 29, 2009 and the lifetime ban on Ms. McCartney's licensing under the *Real Estate Services Act* was effective as of July 20, 2009. ■

Disciplinary Decisions

Since the June 2009 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

ISSUE: Timothy Bruce Peligren, representative, Central Island Realty Ltd. dba Coldwell Banker Vancouver Island Realty, Parksville, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, as a representative with the brokerage, in the marketing and sale of strata lots in a strata development called the Little Qualicum

River Village ("development"), being a development of 528872 B.C. Ltd. ("developer"), a company for which Mr. Peligren at all relevant times was the sole director and officer: (a) in a number of transactions from 2005 to 2007, provided development buyers or their representatives with consolidated disclosure statements that were non-compliant with the requirements of Part Two of the former *Real Estate Act* or the current *Real Estate Development and Marketing Act*; (b) in a number of transactions from 2005 to 2006, failed to advise buyers to pay deposits to the brokerage, lawyer or notary public, rather than to the developer, in accordance with section 18(1) of the *Real Estate Development and Marketing Act*; (c) in one transaction in 2005, offered

Correction

In the June 2009 *Report from Council* newsletter it was reported in under "Notice of Licensee Resignation" heading that Marie Therese Denise Lachaine was licensed with Macdonald Realty Westmar, Richmond when she contravened the *Real Estate Services Act* when, in fact, the contravention took place while Ms. Lachaine was licensed with One Percent Realty Ltd., Vancouver. The Council apologizes for any inconvenience this error may have caused.

agency representation to the buyer when it was improper to do so and acted in a conflict of interest as a limited dual agent as he was the sole director, officer and shareholder of the seller; (d) in a number of transactions from 2006 to 2007, failed to make written disclosures of interest in trade to buyers, in accordance with sections 5-8 and 5-9 of the Council Rules, as an associate of the developer under section 5-7 of the Council Rules; and (e) failed to promptly provide to his managing broker general records as outlined in section 8-4 (as amended) of the Council Rules and trading records as outlined in section 8-5 (as amended) of the Council Rules, in accordance with section 3-2 (as amended) of the Council Rules.

RESULT: Timothy Bruce Peligren was suspended for thirty (30) days from July 15, 2009 to August 13, 2009 (inclusive) and was ordered pay a discipline penalty to the Council in the amount of \$10,000, to enrol in and attend the first available CPE course "What Brokerages and REALTORS® Need to Know About Agency" course and pay enforcement expenses to the Council in the amount of \$750.00.

ISSUE: Gordon Wayne Thomas Dumbrell, managing broker, Central Island Realty Ltd. dba Coldwell Banker Vancouver Island Realty, Parksville, for whom Coldwell Banker Vancouver Island Realty is vicariously liable, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, as managing broker with the brokerage, in the marketing and sale of strata lots in the development, he failed to ensure that there was an adequate level of supervision for a related representative, namely Timothy Bruce Peligren, in accordance with section 6(2) of the *Real Estate Services Act* and section 3-1 of the Council Rules.

RESULT: Gordon Wayne Thomas Dumbrell and Coldwell Banker Vancouver Island Realty were reprimanded.

ISSUE: Arild Stoltenberg Engen, currently unlicensed, while licensed as a representative with Grand Forks Realty Ltd., Grand Forks, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to clarify the corporate structure of the seller and whether the son of the principal of the seller could speak on behalf and bind either the principal, the corporate seller or both of them; (b) failed to promptly provide to his managing broker a copy of the contract and failed to keep him informed of the real estate services he was providing, in contravention of section 3-2(1) and 3-2(2)(a) of the Council Rules; (c) accepted \$5,000.00 remuneration in relation to real estate services from a person other than his brokerage, in contravention of sections 7(3) (b) and 31 of the *Real Estate Services Act* and section 5-15 of the Council Rules; (d) failed to ensure there was a written agreement that advised the buyer that the stakeholder provisions of the *Real Estate Services Act* would not apply and that it was separate from the contract setting out that the deposit was not to be held in trust, but would be paid directly to the seller, in contravention of section 27(4) of the *Real Estate Services Act*; and (e) acted in a conflict of interest when he accepted instructions from the son of the principal to conceal information, namely the status of the seller which could compromise the transaction, from the parties or either of them, contrary to section 3-3(1)(i) and (j) of the Council Rules.

RESULT: Arild Stoltenberg Engen was suspended for thirty (30) days upon re-licensing and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

ISSUE: Ghassan (Gus) Batal, representative, Angell, Hasman & Associates Re-

alty Ltd., West Vancouver, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by: (a) contravening section 4-8 of the Council Rules, in that he published real estate advertising indicating the subject property was being offered for sale in the May 9, 2008 edition of a newspaper without the consent of the said owner to the advertisement; and (b) contravening section 4-7 of the Council Rules, in that he advertised the said property for sale in the newspaper, which was false or misleading, as the said property was not for sale at the time of the advertisement.

RESULT: Ghassan (Gus) Batal was suspended for twenty-one (21) days from July 22, 2009 to August 11, 2009 (inclusive), and was ordered to successfully complete the disciplinary education assignment applicable to Chapter 2 (The *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

ISSUE: Patricia Ruth Elizabeth Bastedo, representative, West Coast Realty Ltd. (Dunc) dba Sutton Group – West Coast Realty (Dunc), Duncan, while licensed as a representative with 675342 B.C. Ltd. dba Sutton Group – Resource Realty, Duncan, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in relation to the Contract of Purchase and Sale dated March 9, 2007 concerning the property on Carnell Drive, Lake Cowichan, in that she: (a) failed to disclose to the buyer the nature of representation she would be providing, contrary to section 5-10(a) of the Council Rules; (b) failed to take reasonable steps to avoid a conflict of interest in that she was a shareholder in the company contracted to build the house on the subject property, contrary to section 3-3(1)(i) of the Council Rules; (c) failed to disclose all material information concerning the transaction, including that

she was a shareholder in the company contracted to build the house on the subject property, contrary to section 3-3(1)(f) of the Council Rules; (d) failed to act with reasonable care and skill in drafting the Contract of Purchase and Sale by incorrectly disclosing agency representation in the contract, contrary to section 3-4 of the Council Rules; and (e) failed to advise the buyers to seek independent representation or legal advice when a dispute arose between the buyers and the corporate builder of which the licensee had a 25% share ownership.

RESULT: Patricia Ruth Elizabeth Bastedo was suspended for fourteen (14) days from July 22, 2009 to August 4, 2009 (inclusive) and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, to enrol in and attend the first available “Real Estate E&O Insurance Legal Update 2009” course, and pay enforcement expenses to the Council in the amount of \$750.00.

ISSUE: Azim Bhimani, representative, Westmar Realty Ltd. dba Macdonald Realty Westmar, Richmond, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to promptly provide to his managing broker the First Disclosure and the Second Disclosure, contrary to section 3-2(1) of the Council Rules; and (b) failed to properly disclose to his clients the nature of the representation he was providing, contrary to section 5-10 of the Council Rules.

RESULT: Azim Bhimani was reprimanded, ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, to enrol in and attend the first available “Real Estate E&O Insurance Legal Update 2009” course and pay enforcement expenses to the Council in the amount of \$1,000.00.

ISSUE: Save 2 Sell Realty Corporation, Surrey, was found by a Discipline Hearing Committee to have committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1) of the Council Rules in that it failed to file an Accountant’s Report with the Council by the prescribed date.

ISSUE: Bhadrayu Chandrakant (Dave) Vaishnav, managing broker, Save 2 Sell Realty Corporation, Surrey, was found by a Discipline Hearing Committee to have committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant’s Report was filed with the Council by the prescribed date.

RESULT: Save 2 Sell Realty Corporation was reprimanded. Further, Save 2 Sell Realty Corporation and Bhadrayu Chandrakant (Dave) Vaishnav were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,331.50.

RESULT: Bhadrayu Chandrakant (Dave) Vaishnav was reprimanded for professional misconduct. Further, Bhadrayu Chandrakant (Dave) Vaishnav and Save 2 Sell Realty Corporation were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,331.50.

ISSUE: Leslie Glen Cohen, representative, Westmar Realty Ltd. dba Macdonald Realty Westmar, Richmond, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to properly disclose to his clients the nature of the representation he was

providing, contrary to section 5-10 of the Council Rules.

RESULT: Leslie Glen Cohen was reprimanded, ordered to enrol in and attend the first available “Real Estate E&O Insurance Legal Update 2009” course and pay enforcement expenses to the Council in the amount of \$1,000.00.

ISSUE: Most Home Real Estate Services Inc. dba Most Referred Real Estate, Maple Ridge, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant’s Report with the Council by the prescribed date.

ISSUE: Stanley Charles Penny, managing broker, Most Home Real Estate Services Inc. dba Most Referred Real Estate, Maple Ridge, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant’s Report was filed with the Council by the prescribed date.

RESULT: Most Referred Real Estate was reprimanded. Further, Most Referred Real Estate and Stanley Charles Penny were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Stanley Charles Penny was reprimanded. Further, Stanley Charles Penny and Most Referred Real Estate were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

ISSUE: New Asia Realty Inc., Vancouver, entered into a Consent Order with the Council in which it consented to an

Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Paul Chiu Yin Pang, managing broker, New Asia Realty Inc., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant's Report was filed with the Council by the prescribed date.

RESULT: New Asia Realty Inc. was reprimanded. Further, New Asia Realty Inc. and Paul Chiu Yin Pang were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Paul Chiu Yin Pang was reprimanded. Further, Paul Chiu Yin Pang and New Asia Realty Inc. were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

ISSUE: Suneet Joel Raj, currently unlicensed, while licensed as a representative with Royal Pacific Realty (Kingsway) Ltd., Vancouver, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that he provided rental property management services without fulfilling the exemption requirements set out in sections 9-1 and 9-2 of the Council Rules.

RESULT: Suneet Joel Raj was reprimanded and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 3 (Professional Ethics) of the Rental Property Management Services Licensing Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

ISSUE: William Pik Sing Cheung, representative, Bowmac Realty Inc., Richmond, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3(1) of the *Real Estate Services Act* in that he, while licensed to provide trading services and rental property management, provided strata management services without being licensed to do so.

ISSUE: Hunt Kwok-Hung Tse, managing broker, Bowmac Realty Inc., Richmond, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, as managing broker for the brokerage and in contravention of section 6(2) of the *Real Estate Services Act*: (a) permitted a licensee to provide strata property management services while not licensed to do so; and (b) failed to ensure that the said business of the brokerage was carried out in accordance with the Act, Regulation, Rules and/or Bylaws.

RESULT: William Pik Sing Cheung was reprimanded and was ordered to enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2009" course. Further, William Pik Sing Cheung and Hunt Kwok-Hung Tse were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Hunt Kwok-Hung Tse was reprimanded and was ordered to successfully complete the disciplinary education assignment applicable to Chapter 2 (Mandatory Requirements Under The *Real Estate Services Act*) of the Brokers Licensing Course. Further, Hunt Kwok-Hung Tse and William Pik Sing Cheung were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00. ■

Feedback?

Please send any comments about the *Report from Council* newsletter to:

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