



Report from Council

April 2006 Volume 41, No. 5

Disclosing the Source of Remuneration

Some questions have recently arisen with respect to disclosure of the source of a buyer's agent's remuneration in single buyer agency and dual agency transactions.

For typical transactions involving a property that is listed for sale, and in which a buyer's agent will be receiving its remuneration as a result of the listing brokerage agreeing to share a portion of the total remuneration provided for in the listing contract, the source of the buyer's agent's remuneration is the listing brokerage.

In dual agency, whether the transaction involves just one licensee (a 'double-ender') or two or more licensees engaged by the same brokerage, the source of remuneration is the seller.

The following examples, using the

terminology found in Part B of the Disclosure of Remuneration (section 5-11 of the Council Rules) form, two versions of which are posted on the Council's website (www.recbc.ca), illustrate these two scenarios. For these examples, assume the full commission as per the listing contract is \$10,000, the listing brokerage's name is ABC Realty Ltd., and the amount offered to a co-operating brokerage by ABC Realty Ltd. is \$5,000:

Brokerage Acts as Agent for Buyer Only
"My related brokerage will receive or anticipates receiving a commission of \$5,000 from ABC Realty Ltd."

Brokerage Acts as a Dual Agent (whether in-house dual agency or double-ender)
"My related brokerage will receive or anticipates receiving a commission of

\$10,000 from the seller."

Note that in both examples it is the amount of remuneration that is to be earned (or is anticipated to be earned at the time of disclosure) by the brokerage that is to be disclosed. In dual agency, because there is only one brokerage involved in the transaction, it is the full amount of commission (the listing and selling portions combined) that is to be disclosed.

For more information, please refer to the March 2006 5th Special Report to Licensees entitled Disclosure! Disclosure! Disclosure! Licensees with further questions may contact the Council office at 604-683-9664, 1-877-683-9664 or email info@recbc.ca.

Payment of Remuneration to Licensees

Section 7(3)(b) of the *Real Estate Services Act* states that a managing broker, associate broker or representative is not entitled to and must not accept remuneration in relation to real estate services from any person other than the brokerage in relation to which they are licensed.

The definition of remuneration is very broad and includes any form of remuneration, including any commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly.

Given these requirements, a brokerage's administration of remuneration, such as mortgage referral points and similar awards, can be problematic. The Council is aware that

some licensees are receiving the benefits of these reward/referral programs directly, not through their brokerage, and this is not acceptable.

If such programs are being used by licensees, their related brokerages must ensure that

· these licensees, and the sources of such remuneration, are aware that the receipt and disbursement of these benefits must be administered by the brokerage, and

· brokerage policies and procedures are in place to properly record, account for, and disburse these benefits.

Further, since these types of remuneration are earned in the course of providing real estate services, and are not being paid directly

by the client, licensees must ensure that appropriate written disclosure is made to their client regarding the source and amount (or, if the amount is unknown, the likely amount or method of calculation of the amount) of the remuneration.

In this Issue:

- Disclosing the Source of Remuneration
- Payment of Remuneration to Licensees
- Payment of Commissions Related to Assignments
- Amendments to the *Real Estate Services Act*
- Providing Real Estate Services Under the *Real Estate Services Act*
- Licensees Must Respond Promptly to Council Inquiries
- Licence Renewal Requirements
- Licensees Must Give Notice of Discipline, Bankruptcy or Criminal Proceedings



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STATISTICS

(APRIL 2006)

REPRESENTATIVES: 13,874

ASSOCIATE BROKERS: 1,956

MANAGING BROKERS: 1,354

BROKERAGES: 1,384

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.realtorlink.ca

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A Note From the Chair

This Report contains three articles on licensee disclosure requirements. These articles are in addition to those contained in the 5th Special Report to Licensees issued last month. I urge all licensees to familiarize themselves with the content of both Reports and retain them for future reference.

This Report also contains a number of important practice reminders, including the requirement for licensees to respond promptly to Council inquiries and the fact that the Council Rules now require that licensees submit applications for licence renewal no later than 30 days prior to licence expiry. Your assistance in complying with these two sections of the Council

Rules is appreciated.

Finally, on behalf of the Council, I would again stress the need for brokerages engaged in rental property and strata management to ensure that they maintain, at all times, proper books and records in accordance with the *Real Estate Services Act*. Licensees in the lower mainland may be aware that last month, the Council issued an Order in Urgent Circumstances suspending the licence of a brokerage for failing to properly account for trust money.

If a brokerage is unable or does not have the expertise to maintain proper books and records, it must hire the necessary staff to do so. The



Dougal Shewan

potential harm to the public of unaccounted for, missing or wrongfully converted monies is of great concern and therefore managing brokers are urged to take corrective action if they are not in compliance with the requirements of the Council Rules.

*On behalf of Council,
Doug Shewan, Chair*

Payment of Commissions Related to Assignments

Due to market conditions over the past several years, situations have arisen where, prior to the completion date of a contract, the contract has been assigned to a new buyer. In these situations, the licensee acting for the new buyer usually wants to be paid his or her commission when the assignment has been executed, which is prior to the completion date of the original contract. Can a brokerage pay out commissions on an assignment prior to the actual completion date of the original contract?

In a typical transaction (where the contract has not been assigned) the commission is not deemed to be earned by the licensee until the date

on which the transfer documents are submitted to the land title office for registration. However, in the case of an assignment, which is not a transfer that is registrable in the land title office, section 15(2)(b) of the Council Rules permits the commission to be earned on the date on which the assignment is executed. Therefore, in this situation, a brokerage can withdraw money it holds in trust that is intended as remuneration on the date the assignment is executed by the parties to the assignment. It would not be necessary for the brokerage to wait for the actual completion date of the original contract.

It should be noted that the brokerage can only pay

commissions from monies it is holding in trust pursuant to the assignment agreement, and not from the original deposit it may be holding as a stakeholder pursuant to the original Contract of Purchase and Sale unless the seller and assignee otherwise agree in writing pursuant to section 28(2)(a) of the *Real Estate Services Act*.

In that regard, if buyer #1 agrees that the licensee is to be paid his or her commission at the time the assignment to buyer #2 is executed rather than on the completion of the original contract, then the service agreement, whereby the licensee was engaged to assist in marketing the assignment, must reflect this.

Office Closures

The Council office will be closed on Monday May 22, 2006 for Victoria Day.

Amendments to the *Real Estate Services Act*

Licensees should be aware of the following amendments to the *Real Estate Services Act* that were passed in the legislature in March, 2006. Brokerages should pay particular attention to the amendments to section 27 of the Act. These amendments create more flexibility in the manner in which remuneration is received and accounted for. Remuneration that has been earned may now be deposited when received **either** into a brokerage trust account, **or** into a commission trust account. In addition, if a brokerage engages only one licensee – being its managing broker – it may deposit remuneration **that has already been earned in accordance with section 5-15 of the Council Rules** directly into its general operating account. In addition to the section 27 amendments, a number of other amendments were passed as outlined in the following chart.

Section	Change	Description
1	Section 1 of the Real Estate Services Act, S.B.C. 2004, c. 42, is amended by adding the following definition: "strata corporation" means a strata corporation within the meaning of the <i>Strata Property Act</i> and includes a section within the meaning of that Act; .	Expands the definition of "strata corporation" to include a section.
27	Section 27 is amended (a) by repealing subsection (2) (b) and substituting the following: (b) all money held or received on account of remuneration for real estate services, including a share of remuneration received from another brokerage. , and (b) by adding the following subsections: (4.1) Despite subsection (2) (b), remuneration that has already been earned, as determined in accordance with the rules, by a brokerage may be paid into a commission trust account maintained by the brokerage. (4.2) Subsections (2) (b) and (4.1) do not apply to remuneration that has already been earned, as determined in accordance with the rules, by a brokerage if the brokerage has no related licensees other than a managing broker.	Creates more flexibility in the manner in which remuneration is received and accounted for. Remuneration that has been earned may now be deposited when received either into a brokerage trust account, or into a commission trust account. If a brokerage engages only one licensee – being its managing broker – it may deposit remuneration that has already been earned in accordance with section 5-15 of the Council Rules directly into its general operating account.
60	Section 60 is amended in the definition of "compensable loss" by striking out "or" at the end of paragraph (c), by adding ", or" at the end of paragraph (d) and by adding the following paragraph: (e) was caused by conduct of a licensee acting under an exemption provided by Part 9 of the rules; .	Part 9 of the Council Rules provides exemptions whereby certain licensee activities are not subject to the legislation. This amendment states that where licensees act within the provisions of those exemptions, losses that may be suffered will not be eligible for recovery from the special compensation fund.
85.1	The following section is added: Consolidation and revision of bylaws and rules 85.1 (1) Subject to the regulations, the real estate council may make bylaws giving effect to an editorial consolidation or revision of all or some of its bylaws and rules that does one or more of the following: (a) consolidates provisions and omits spent provisions; (b) alters the form, style, punctuation, numbering and arrangement of provisions; (c) corrects typographical errors. (2) The authority under subsection (1) does not include the authority to make substantive changes to the bylaws or rules.	Allows a more streamlined process for the Council to make minor changes to its rules and bylaws.
128	Section 128 is amended (a) in subsections (2) and (3) by striking out "no action or other legal proceedings for damages lies or may be brought" and substituting "no legal proceeding for damages lies or may be commenced or maintained", (b) by adding the following subsection: (2.1) Subject to subsection (4), no legal proceeding for damages lies or may be commenced or maintained against a protected individual, the real estate council, the compensation fund corporation or the government because of anything done or omitted (a) in the performance or intended performance of any duty, or (b) in the exercise or intended exercise of any power under Part 5 [<i>Payments from Special Compensation Fund</i>]. , and (c) by repealing subsection (4) and substituting the following: (4) Subsections (2), (2.1) and (3) do not apply to a protected individual in relation to anything done or omitted in bad faith.	Expands immunity provisions to include actions on the part of protected individuals, the Council, and the Compensation Fund Corporation related to claims made against the special compensation fund.

Providing Real Estate Services Under the *Real Estate Services Act*

The *Real Estate Services Act* (RESA) contains an important distinction from the former *Real Estate Act* relating to the provision of services. Most provisions of the former Act did not apply to licensees if they were acting on their own behalf in a transaction, or providing real estate services free of charge, or acting under one of the available exemptions. This has changed under RESA.

Section 2 of RESA states that:

“2 (1) This Act applies to every person who provides real estate services to or on

behalf of another for or in expectation of remuneration.

(2) In addition but subject to the rules, this Act applies to every licensee who provides real estate services, even if the licensee

(a) provides real estate services on the licensee’s own behalf,

(b) provides real estate services to or on behalf of another but not for or in expectation of remuneration, or

(c) would otherwise be exempted by this Act or the Regulations from the

requirement to be licensed in relation to the provision of those real estate services.”

Essentially this means that **the requirements of RESA, including the Regulations, Bylaws, and Rules, apply to licensees even if they are providing real estate services free of charge, acting on their own behalf, or could have acted without being licensed because they could have been exempt.**

The full version of this article can be found in the April 2005 Report from Council newsletter.

Licensees Must Respond Promptly to Council Inquiries [S. 2-19]

Section 2-19 of the Council Rules requires that a **licensee must respond promptly to any inquiry** addressed to the

licensee by the Council. **The response must be in writing** and be provided by the date set, unless otherwise permitted. The penalties

for not responding to Council inquiries can be significant and it is in the licensee’s best interest to respond honestly and completely.

Licence Renewal Requirements [Section 2-13(2)]

Licensees are reminded that section 2-13(2) of the Council Rules requires that a **licensee must apply for licence renewal no later than thirty (30) days before the end**

of his or her current licence term.

Before mailing or faxing forms to the Council, please check them for accuracy, completeness and proper signatures.

Inaccurate or incomplete applications submitted to the Council for renewal of licences can cause processing delays.

Licensees Must Give Notice of Discipline, Bankruptcy or Criminal Proceedings [Section 2-21]

Section 2-21 of the Council Rules requires licensees to notify the Council, in writing, if they have been subject to any disciplinary or regulatory proceedings in which the licensee may be, or has been, made subject to a disciplinary sanction in the real estate, insurance, securities, mortgage broker, etc. industries.

This section also requires a licensee, or if the licensee owns any business, to notify the Council if there has been a court order or

judgment made against the licensee or the business in relation to real estate services, insurance, mortgages or securities or misappropriation, fraud or breach of trust.

Sub-section (d) of this section of the Council Rules requires licensees to inform the Council if they are charged with or convicted of an offence under a federal or provincial enactment or under the law of any foreign jurisdiction with the exception of highway traffic offences resulting only in

monetary fines or demerit points or both and charges initiated by a violation ticket. Details of bankruptcy, insolvency or receivership proceedings of a licensee, or any business that the licensee owns, must also be reported.

It is important to note that this information must be conveyed promptly to the Council. Licensees must not wait until amending or renewing their licence to report this information.

Disciplinary Decisions

Since the February 2006 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

➤ **Complaint:** Contravention of section 31(1)(c) under the *Real Estate Act/Misconduct*

■ **Issue:** Cortez Bradley Ney, representative, Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty, Nanaimo, contravened section 31(1)(c) of the *Real Estate Act* in that he:

(a) failed to ensure that, as a limited dual agent, he acted impartially and that the buyers received full disclosure of all material information prior to signing the contract and continuing disclosure of all material information after its execution, to and including the completion of the contract;

(b) failed to recommend to the buyers and seller before the contract was signed and the initial deposit was paid, that they receive independent legal advice both in respect of the payment of the further deposit directly to the seller and generally, given that the parties were also entering into a construction contract, although it is acknowledged that the buyers sought legal advice early and restructured the deposit upon that legal advice, with the consent of the seller;

(c) acted in a conflict of interest and contrary to his duties as a limited dual agent – including acting impartially – when he agreed to assist in the financing of the purchase of the property and he agreed to secure that sum as a mortgage registered against the property prior to the original closing date;

(d) failed to withdraw any agency representation in light of his ongoing financial and business relationship with the seller;

(e) failed to disclose to the buyers the

nature of his financial relationship with the seller, including the mortgage he had been granted to secure funds he had lent to the seller; and

(f) in light of his agreement to act as a limited dual agent, he failed to obtain, in writing, the seller's consent to advise the buyers of the seller's failure to complete its contractual obligations on other transactions in which Mr. Ney and Royal LePage Nanaimo were involved or, in the absence of that consent, failed to withdraw any agency representation.

✍ **Penalty:** Cortez Bradley Ney's licence was suspended for sixty days (60) days from February 22, 2006 to April 22, 2006 (inclusive) for misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Cortez Bradley Ney, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$2,500.00.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act/Incompetence and negligence*

■ **Issue:** Alfredo Luis Lavaggi, associate broker, Sussex Group – S.R.C. Realty Corporation dba Prudential Sussex Realty, Vancouver, who, while licensed as a managing broker with Continental Realty Ltd. dba Prudential Sussex-Alfredo Lavaggi, was

(a) incompetent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he

(i) failed to withdraw his agency

representation of the sellers and the buyers when he became financially interested in the property and

(ii) allowed his personal interest to conflict with his duties as a limited dual agent; and

(b) was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he failed to provide the buyers sufficient time and opportunity to seek independent legal advice prior to signing the Contract of Purchase and Sale and also prior to signing the partnership agreement.

✍ **Penalty:** Alfredo Luis Lavaggi's licence was suspended for thirty (30) days from March 8, 2006 to April 6, 2006 (inclusive) for incompetence and negligence as described above. As a condition of continued licensing, Mr. Lavaggi is required to successfully complete Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available "Legal Update" course and to pay enforcement expenses to the Council in the amount of \$4,000.00.

➤ **Complaint:** Breach of section 9.12 of Regulation 75/61 under the *Real Estate Act/Negligence*

■ **Issue:** Sandra Jean Stinson, representative, Re/Max of Lake Cowichan, Lake Cowichan, who, while licensed with Countrywide Village Realty Ltd., Lake Cowichan, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* by

(a) failing to ensure that a contract was put into effect that clearly set out the rights and responsibilities of the parties, including the parties' rights and responsibilities upon default;

(b) failing to advise the parties and each

of them to seek independent legal advice and give them time to obtain such advice prior to the execution of addenda to the said contract; and

(c) failing to clarify when the deficiency items disclosed in the addendum would be completed and the ramifications of non-compliance.

Penalty: Sandra Jean Stinson was suspended for twenty-one (21) days from March 8, 2006 to March 28, 2006 (inclusive). As a condition of continued licensing, Ms. Stinson must successfully complete Chapter 10 (Law of Contract) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available “Legal Update” course and pay enforcement expenses to the Council in the amount of \$1,500.00.

The Council’s decision was appealed by Sandra Jean Stinson to the Financial Services Tribunal, which dismissed her appeal on February 15, 2006.

➤ **Complaint:** Breach of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Keith Grant Nelson, representative, Countrywide Village Realty Ltd., Lake Cowichan, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* by

(a) failing to ensure that a contract was put into effect that clearly set out the rights and responsibilities of the parties, including the parties’ rights and responsibilities upon default;

(b) failing to advise the parties and each of them to seek independent legal advice and give them time to obtain such advice prior to the execution of addenda to the said contract; and

(c) failing to clarify when the deficiency

items disclosed in the addendum would be completed and the ramifications of non-compliance.

Penalty: Keith Grant Nelson was suspended for twenty-one (21) days from March 8, 2006 to March 28, 2006 (inclusive). As a condition of continued licensing, Mr. Nelson must successfully complete Chapter 10 (Law of Contract) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available “Legal Update” course and pay enforcement expenses to the Council in the amount of \$1,500.00.

The Council’s decision was appealed by Keith Grant Nelson to the Financial Services Tribunal, which dismissed his appeal on February 15, 2006.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Sherry Shohreh Moallem, representative, Re/Max Central, Burnaby, who, while licensed with Sutton Group West Coast, Burnaby, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she

(a) failed to advise the sellers and/or their listing agent in a timely fashion that she had not received the buyer’s deposit within 48 hours of acceptance; and

(b) failed to submit the subject transaction to her brokerage in a timely manner.

Penalty: Sherry Shohreh Moallem’s licence was suspended for twenty-one (21) days from March 29, 2006 to April 18, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Sherry Shohreh Moallem, and a Consent

Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (*Real Estate Services Act*), Chapter 10 (The Law of Contract) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available “Legal Update” course and pay enforcement expenses to the Council in the amount of \$400.00.

The Superintendent of Real Estate appealed the Council’s decision to the Financial Services Tribunal, which upheld the appeal in part. The suspension of the licence of Ms. Moallem imposed by the Council would be varied to increase the suspension from fourteen (14) days to a period of twenty-one (21) days. All other provisions of the decision of the Council remain unchanged.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Kelly Lynne Brown, representative, Re/Max 2000 Realty, Surrey, who, while licensed with Royal LePage Coronation Park, Surrey, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she

(a) failed to recommend that the buyers obtain independent legal advice as to the significance of any charges or easements registered against the property prior to the buyers removing the subject relating to receiving and approving a title search;

(b) failed to ascertain that a deck and carport had been built on the property as additions without a valid permit; and

(c) failed to ensure that the buyers signed a Limited Dual Agency Agreement as referred to in the Contract of Purchase and Sale.

Penalty: Kelly Lynne Brown’s licence

was suspended for twenty-one (21) days from March 8, 2006 to March 28, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Kelly Lynne Brown, and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete Chapter 2 (*Real Estate Services Act*), Chapter 4 (Title Registration in British Columbia) and Chapter 12 (The Law of Agency) of the Real Estate Trading Services Licensing Course and pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence.

■ **Issue:** Alan Ward Steeves, representative, Royal LePage Coronation Park, Surrey, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he

(a) failed to ascertain that a deck and carport had been built on the subject property without a valid permit; and

(b) failed to ensure that the sellers signed a Limited Dual Agency Agreement as referred to in the Contract of Purchase and Sale.

✍ **Penalty:** Alan Ward Steeves' licence was suspended for fourteen (14) days from March 29, 2006 to April 11, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Alan Ward Steeves, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete Chapter 2 (*Real Estate Services Act*) and Chapter 12 (The Law of Agency) of the Real Estate Trading Services Licensing Course

and pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Donald Raymond Estrada, associate broker, Royal LePage Coronation Park, Surrey, who, while licensed as the managing broker for that brokerage, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he failed to ensure that the licensees had the buyer and seller in the subject transaction sign a Limited Dual Agency Agreement as referred to in the Contract of Purchase and Sale.

✍ **Penalty:** Donald Raymond Estrada was reprimanded for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Donald Raymond Estrada, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete Chapter 13 (The Law of Agency) of the Broker's Licensing Course and pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*/Negligence

■ **Issue:** Sanjay Nayyar, representative, Re/Max City Realty, Vancouver, who, while licensed with Re/Max Performance Realty, Delta, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he: (a) failed to ensure that a copy of the listing contract was given to the sellers and (b) failed to provide a copy of the listing contract to his brokerage.

✍ **Penalty:** Sanjay Nayyar's licence was suspended for fourteen (14) days from March 15, 2006 to March 28, 2006 (inclusive) for negligence as described above. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary assignments applicable to Chapter 2 (*Real Estate Services Act*) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available "Legal Update" and to pay enforcement expenses to the Council in the amount of \$5,060.20.

➤ **Complaint:** Contravention of section 15 of the *Real Estate Act*, sections 9.12, 9.16 and 12.01 of Regulation 75/61 under the *Real Estate Act*, sections 25 and 35(1)(d) of the *Real Estate Services Act*, and sections 3-1(a) and (b), 3-3(a) and (b), 4-1(a) and 7-4(2) of the Council Rules under the *Real Estate Services Act*/Negligence and professional misconduct

■ **Issue:** Arbor Lane Properties Ltd., Vancouver


(a) failed to keep such proper and up to date books, records and accounts as noted in an Office and Records Inspection Report contrary to section 15 of the *Real Estate Act* and section 12.01 of Regulation 75/61 under the *Real Estate Act*;

(b) failed to have a managing broker in active charge of the business of the brokerage contrary to section 9.16 of Regulation 75/61 under the *Real Estate Act*;

(c) failed to keep the brokerage licence for its head office prominently displayed in the head office contrary to section 4-1(a) of the Council Rules; and

(d) failed to maintain proper books, accounts and other records contrary to section 25 of the *Real Estate Services Act*.

■ **Issue:** Patricia Ann Webster, managing



broker, Arbor Lane Properties Ltd., Vancouver, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she:

(a) failed to be in active charge of the business of the brokerage in that she failed to ensure that the brokerage kept proper and up to date books, records and accounts;

(b) failed to respond to the Council's written inquiries concerning an Office and Records Inspection Report in a timely and complete manner; and

(c) failed to provide the Council with trust reconciliations in a timely manner or at all as requested by the Council.

In respect of activities conducted after December 31, 2004, Ms. Webster was incompetent within the meaning of section 35(1)(d) of the *Real Estate Services Act* and therefore guilty of professional misconduct in that she failed to be actively engaged in the management of the said brokerage and failed to ensure that the business of the brokerage was carried out competently in accordance with the Act, Regulations, Council Rules and Council Bylaws as required by section 3-1(1)(a) and (b) and section 3-1(3)(a) and (b) of the Council Rules in that she:

(d) failed to ensure that the brokerage kept proper and up to date books, records and accounts;

(e) failed to ensure that the licence of the brokerage was displayed at its head office;

(f) failed to ensure that the brokerage had its licensee name listed in the building directory at the head office of the brokerage;

(g) failed to ensure that the monthly trust asset and liability reconciliations for each trust account of the brokerage were reviewed, dated and initialled by her as required by section 7-4(1) of the Council Rules;

(h) permitted an unlicensed assistant to perform duties which require licensing under the *Real Estate Services Act*; and

(i) failed to be actively engaged in the management of the said brokerage.

Penalty: Arbor Lane Properties Ltd. was reprimanded. As a condition of continued licensing, it was further ordered to provide to the Council proper monthly reconciliations of the brokerage's trust account for a period of twelve consecutive months commencing April 2006. Each monthly trust reconciliation was to be received by the Council no later than the end of the month following the month to which the trust reconciliation related. It was further ordered that a Council auditor complete an Office and Records Inspection of the books and records within six months of the date of the decision, with the cost of the inspection to be paid by

Arbor Lane Properties Ltd.

Penalty: Patricia Ann Webster was reprimanded. As a condition of continued licensing, she was ordered to pay a fine in the amount of \$1,000.00 within sixty days of the date of the decision. If that sum has not been paid within sixty days, her licence would be suspended forthwith until such a time as the fine was paid in full and, as a managing broker, she must successfully complete the Broker's Licensing Course and examination within one year of the date of the decision failing which she would no longer be permitted to act as a managing broker although she would be immediately eligible to be licensed as a representative. She was further ordered to complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*), Chapter 19 (Operational Budgets, Capital Budgets, and Accounting), Chapter 20 (Controls, Systems, and Forms) and Chapter 26 (Communications and Ethics in Property Management) of the Property Management Supplemental Course.

Arbor Lane Properties Ltd. and Patricia Ann Webster, as a condition of continued licensing, were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$5,560.20.