



Report from Council

April 2007 Volume 42, No. 5

Conflicts of Interest When Providing Property Management Services

Generally, a brokerage that provides strata management services to a strata corporation while at the same time providing rental property management services or trading services to an owner of a strata lot in the strata corporation is in a conflict of interest situation. The problem arises because the interests of the strata corporation may conflict with the interests of the strata lot owner, thus compromising the brokerage's ability to act in the best interests of one of its clients. Specifically, the brokerage may find itself unable to fulfill all of the duties it owes to one client under section 3-3 of the Council Rules without at the same time breaching some of the duties owed to the other client under the same section.

For example, consider a situation where a strata lot owner in an age 55+ strata titled complex rents their lot to an "underage" tenant. A brokerage providing both strata management and rental property management services in these circumstances would find itself in an untenable position. Acting as strata manager, the brokerage's duty to disclose material information to its strata corporation client would require

the brokerage to inform the strata council of the bylaw infraction for necessary action. However, to do this would require the brokerage to breach its duty owed, as rental property manager, to the owner to maintain the confidentiality of information. Another example of the conflict could arise where the brokerage, as strata manager, is aware of confidential financial issues which could lead the strata corporation to impose a special levy. This information could be material to the interests of an owner to whom the brokerage is providing trading services (e.g. the brokerage has listed that owner's strata lot for sale); however, fulfilling the duty to disclose this information to the owner would lead the brokerage to breach its duty of confidentiality to the strata corporation.

It is, of course, possible that a brokerage may be able to fully serve both clients without ever having to deal with the type of dilemma presented above. As well, there may be situations where the benefits of representing both clients could be seen to outweigh the risks posed by the conflict of interest.

These practical realities are reflected in section 3-3(2) of the Council Rules,

which allows the brokerage to obtain the client's consent to an alteration or abridgement of some or all of the duties ordinarily owed to the client. This provision can be used by a brokerage that wishes to provide strata management services to a strata corporation while at the same time providing rental property management or trading services to a strata lot owner.

Using this provision, there are different approaches that can be taken

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STATISTICS (APRIL 2007)

REPRESENTATIVES: 15,355

ASSOCIATE BROKERS: 1,894

MANAGING BROKERS: 1,369

BROKERAGES: 1,408

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

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A Note From The Chair

Licensees will note that this edition of the *Report from Council* is larger than our usual editions. In fact, it is the largest regular *Report* that the Council has produced. This super sized edition is a result of the need to include continuing information about the recently introduced *Real Estate Services Act*, the Council's Relicensing Education Program (REP) and an increasing number of disciplinary decisions taken over the past few months.

Our lead article deals with the issue of conflicts of interest in the property management segment of our industry. However, the issue of conflicts of interest is one of importance to all licensees as reflected in our 5th *Special Report to Licensees* in March 2006 entitled "Disclosure, Disclosure, Disclosure".

Beginning with this edition of the *Report*, the Council is re-launching "The

REP Sheet". The REP Sheet will serve as a separately branded publication that will provide licensees with important information and updates about the REP program. Licensees are also encouraged to view the detailed information on the REP program on the Council's website at www.recbc.ca.

This Report also includes an important reminder about Canada's money laundering legislation – the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. It is important for all licensees to know of the requirements of this federal law as outlined in the article beginning on page six.

Of interest to licensees who arrange short term vacation rentals or similar accommodation throughout the province is the need to be licensed under the *Business Practices and Consumer*



Philip Jones

Protection Act under the auspices of the Business Practices and Consumer Protection Authority. Further information on this licensing requirement can be found on page 11.

Finally, licensees will note that there are a number of significant discipline sanctions outlined in this *Report*. I would remind all licensees that you must always act in accordance with the requirements of the *Real Estate Services Act* and render the highest level of service to your clients.

*On behalf of the Council,
Philip Jones, Chair*

Brokerage Trust Account Reminder

Section 29 of the *Real Estate Services Act* requires that interest credited by a savings institution on real estate trust accounts, other than those for named clients, be paid to the Real Estate Foundation of BC. The transfer of earned interest to the Foundation is straightforward and should not involve any accounting procedures.

The Council Rules

require a real estate licensee acting as a strata manager to open and maintain a separate trust account for each strata corporation client. Such accounts accrue interest to the benefit of the client. Property managers handling non-strata clients will maintain a brokerage trust account and it will accrue interest to the benefit of the foundation.

The easiest way for

brokerages to ensure that interest due to the foundation is remitted is to complete the standard authorization form which will instruct the financial institution accordingly.

For further information, please contact the Real Estate Foundation of BC at 604-688-6800, toll-free 1-866-912-6800 or email info@realestatefoundation.com

Council Office Closures

The Council office will be closed on May 21, 2007 for Victoria Day.

Conflicts of Interest When Providing Property Management Services

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by a brokerage in these circumstances to avoid a breach of section 3-3. Essentially, all approaches require the informed consent of any client who will not, or who might not, receive the full benefit of all of the duties ordinarily owed by the brokerage to that client. A brokerage may wish to seek legal advice about how to structure its client relations in order to avoid a breach of section 3-3 of the Council Rules. The following options present two different approaches that may be used:

1. Obtain the agreement of all clients to the provision of limited representation to all clients. Under this approach, the brokerage would obtain each client's informed consent to the brokerage acting for others and, accordingly, to its providing only limited representation to the client. The agreement with each client should disclose the following:

- (a) that the brokerage intends to provide rental property management services or trading services, or both, to one or more owners as well as to provide strata management services to the strata corporation;
- (b) that the brokerage will not be able to
 - (i) act in the client's best interests, if those interests conflict with the interests of the other clients,
 - (ii) act in accordance with the client's instructions, if acting in accordance with those instructions would lead the brokerage to breach any of the brokerage's obligations to the other clients, or
- (a) disclose to the client any confidential information about the other client.

The agreement with each client should be in writing, and should be obtained before any services are

provided to the client.

Note: A brokerage that provides real estate services under this type of agreement must maintain the confidentiality of each client's information.

2. Obtain the agreement of some clients to the provision of limited representation to those clients. Under this approach, the brokerage would designate either its strata corporation client or its owner client as a "primary client", and provide full representation to that primary client. Since there would be no limitation on



the duties owed to the primary client, it would not be necessary to obtain that client's agreement under section 3-3(2) of the Council Rules. However, the brokerage would have to obtain, before providing any services to a non-primary client, that client's informed consent to the brokerage acting for a primary client, and accordingly, to providing only "limited representation" to the client. The agreement with each non-primary client should disclose the following:

- (a) that the brokerage intends to provide real estate services to the strata corporation or an owner, as

- the case may be, as a "primary client", and can only provide limited representation to the client;
- (b) that the brokerage will not be able to
 - (i) act in the client's best interests, if those interests conflict with the interests of a primary client,
 - (ii) act in accordance with the client's instructions, if acting in accordance with those instructions would lead the brokerage to breach any of the brokerage's obligations to a primary client,
 - (iii) maintain the confidentiality of information about the client, or
 - (iv) disclose to the client any confidential information about the primary client.

The agreement with each non-primary client should be in writing, and should be obtained before any services are provided to that client.

Note: A brokerage that provides real estate services under this type of agreement must maintain the confidentiality of information about the primary client, and must disclose to that primary client any known material information about any non-primary client. This should be made clear to any non-primary client.

Obtaining consent from existing clients: A strata management brokerage that is also providing real estate services to owners of strata lots in the strata corporation may be offside section 3-3 of the Council Rules. If the brokerage cannot fulfill the full range of its duties under section 3-3 to any client, it should immediately disclose the situation to that client. Service agreements should be amended to reflect that disclosure (and the consent of the client to the arrangement) as soon as practicable, but in any event upon their renewal.

Rental Property Management Licensing Exemptions

Section 1 of the *Real Estate Services Act* (RESA) defines ‘rental property management services’ and ‘rental real estate’ as follows:

“rental property management services” means any of the following services provided to or on behalf of an owner of rental real estate:

- (a) trading services in relation to the rental of the real estate;
- (b) collecting rents or security deposits for the use of the real estate;
- (c) managing the real estate on behalf of the owner by
 - (i) making payments to third parties,
 - (ii) negotiating or entering into contracts,
 - (iii) supervising employees or contractors hired or engaged by the owner, or
 - (iv) managing landlord and tenant matters

but does not include an activity excluded by regulation;

“Rental real estate” means real estate that is or is intended to be rented or leased;

“Trading services” described in sub-paragraph (a) above are also defined in section 1 of RESA as meaning any of the following services provided to or on behalf of a party to a trade in real estate:

- (a) advising on the appropriate price for the real estate;
- (b) making representations about the real estate;
- (c) finding the real estate for a party to acquire;
- (d) finding a party to acquire the real estate;
- (e) showing the real estate;
- (f) negotiating the price of the real estate or the terms of the trade in real estate;
- (g) presenting offers to dispose of or acquire the real estate;
- (h) receiving deposit money paid in

respect of the real estate but does not include an activity excluded by regulation;

This means that rental property management services includes any of these trading services as they relate to the rental of real estate, e.g. showing real estate to a prospective tenant, advising a landlord or tenant on the rental rate for the real estate, negotiating the rental rate between the parties, etc. These definitions relate to the provision of rental property management services involving all types of rental real estate, regardless of its use (e.g. commercial, industrial, residential, mixed, etc.).

Section 2.14 of the Real Estate Services Regulation (the Regulation) allows individuals, who are employed by a brokerage, to provide certain rental property management services without having to be licensed. Section 2.14 states:

Exemption for caretakers employed by brokerages

2.14 (1) Subject to subsection (2), an individual who is employed as a caretaker or manager of rental real estate by a brokerage that is licensed to provide rental property management services is exempt from the requirement to be licensed under Part 2 of the Act in respect of any of the following activities in relation to those real estate services:

- (a) if the caretaker or manager complies with subsection (2), collecting money in relation to the rental real estate, including money collected as rent, security deposits or pet damage deposits;
- (b) showing the rental real estate to prospective tenants;
- (c) receiving and presenting applications in respect of the rental of the rental real estate from prospective tenants;
- (d) supervising employees or contractors hired or engaged by the

brokerage;

(e) communicating between landlords and tenants respecting landlord and tenant matters.

(2) On receipt of money referred to in subsection (1)(a), the exempt caretaker or manager must promptly deliver the money to the brokerage.

(3) Subsection (1) does not apply to a caretaker or manager who negotiates or enters into contracts on behalf of the brokerage or the owner of the rental real estate.

There are several key components of this exemption regulation that brokerages employing unlicensed persons who act under it need to understand. First, the relationship between the brokerage and such a person must be one of employer/employee. The person cannot act as an independent contractor providing services to or on behalf of the brokerage. The usual tests one would find in an employer/employee relationship that apply for income tax and remittance purposes must be satisfied, e.g. the brokerage being responsible for source deductions of income tax, employment insurance premiums, Canada Pension Plan contributions, etc. Brokerages may wish to seek independent accounting and/or legal advice to ensure this required working relationship is in place.

In reviewing the activities of brokerages engaging unlicensed persons to provide rental property management services under the section 2.14 exemption, the Council may require such brokerages to show that the employer/employee relationship has been established similar to the manner it is dealt with by the Canada Revenue Agency.

Continued on next page...

Rental Property Management Licensing Exemptions ...Continued

A second consideration is the fact that the rental property management services that a brokerage's unlicensed employee may provide under this exemption are limited to those identified in section 2.14 of the Regulation. This list of services is quite narrow when compared to the broader list of services found under the definition of rental property management services, which, as mentioned above, include trading services related to the rental of the real estate. Therefore, a brokerage employing an unlicensed person to provide services must ensure that their

activities do not go beyond those which are included in the exemption regulation.

For example, while the exemption allows an unlicensed caretaker or manager employed by a brokerage to show real estate to a prospective tenant, that person may not advise either the landlord or tenant with respect to an appropriate rent, make any representations about the real estate, or negotiate or enter into a tenancy agreement on behalf of either the landlord or the employing brokerage. In reviewing the activities of brokerages

employing unlicensed persons to provide rental property management services under the section 2.14 exemption, the Council will look for verification that the scope of rental property management services performed by such employees is limited to those detailed in section 2.14.

A brokerage, which employs unlicensed persons under the section 2.14 exemption regulation, is responsible to ensure compliance with the foregoing, and may be subject to discipline proceedings for failing to do so.

Scope of Authority for Expenditures on Behalf of Strata Corporations

Section 30(1)(g) of the *Real Estate Services Act* (see below) allows a brokerage, based on a strata corporation client's instructions, to withdraw funds from a trust account maintained on behalf of that strata corporation.

Withdrawals from trust account

30 (1) *Money in a brokerage trust account, other than money that the brokerage holds as stakeholder, may be withdrawn only if it is one or more of the following:*

- (a) money paid into the trust account by mistake;*
- (b) interest paid in accordance with section 29 [interest on trust account];*
- (c) money authorized to be withdrawn under section 31 [payment of licensee remuneration];*
- (d) unclaimed money transferred under section 32 [unclaimed money held in trust];*
- (e) money paid into court under section 33 [payment of trust funds into court];*
- (f) money paid in accordance with a court order;*
- (g) money paid to or in accordance with the instructions of the principal***

to whose credit the money was deposited.

In conjunction with the above, the Council Rules require that:

1. a brokerage providing strata management services must establish in its service agreement the brokerage's scope of authority to sign cheques and make disbursements on behalf of its strata corporation clients [section 5-1 (5.1)(c)(i)], and
2. the service agreement include a brokerage's authority to transfer amounts between brokerage trust accounts maintained for the strata corporation under section 7-9(2) of the Council Rules [section 5-1(5.1) (b)(i)];

Therefore, the Real Estate Council, when investigating complaints or conducting an audit regarding a brokerage, will look at service

agreements to determine a brokerage's scope of authority relative to withdrawal of funds from trust accounts.

An example is where a strata corporation has cash flow problems in its operating fund and requires a "loan" from the Contingency Reserve Fund [CRF]. The strata manager would act outside of his/her scope of authority to unilaterally transfer such funds from CRF to operating in the absence of express authorization to do so.

If authority to make such transfers has not been established in the service agreement, a strata manager may incur substantial risk and liability, as well as be subject to discipline under the Council Rules. A brokerage should ensure that any parameters respecting its scope of authority to act on behalf of a strata corporation are clearly established in its service agreement with that client.

Real Estate Obligations Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

Canada's anti-money laundering and anti-terrorism legislation

The Canadian government passed the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) in June 2001. This federal legislation mandated the creation of Canada's Financial Intelligence Unit – the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), whose responsibility is to receive reports and provide financial intelligence to assist law enforcement with the fight against money laundering and terrorist financing. The legislation also obligates certain financial intermediaries, such as banks, credit unions, mortgage brokers, securities dealers and real estate brokers, to send reports to FINTRAC. Real estate licensees are also required to report certain transactions when engaged in any of the following activities on behalf of any person or entity in the course of a real estate transaction:

- receiving or paying funds;
- depositing or withdrawing funds; or
- transferring funds by any means.

The legislation deals with three different types of reportable financial transactions that directly affect real estate licensees:

- (1) Large Cash Transaction Reports (LCTR) (i.e., those involving cash deposits over \$10,000),
- (2) Suspicious Transaction Reports (STR), and
- (3) Terrorist Property Reports (TPR).

As the PCMLTFA is a federal law, it is important that licensees understand their individual legal responsibilities when conducting real estate transactions. Any violation of the PCMLTFA, including failure to submit a report to FINTRAC, could result in a maximum of five years' imprisonment, or a monetary fine of up to \$2 million (or both). The following information is intended to provide licensees with a general overview of the compliance requirements under the legislation. Licensees, however, should familiarize themselves with the legislation itself, as well as the instructional guidelines provided on the FINTRAC website at www.fintrac.gc.ca.

How do brokerages implement a compliance program?

Under the PCMLTFA, real estate brokerages must implement a compliance regime designed to detect suspicious transactions and create a system of reporting transactions that best suits the size and operation of their business. An effective compliance program must have the following four key parts:

1. Compliance Officer

In many cases, this is the managing broker or delegate who is to be responsible for implementing and administering the compliance program.

2. Policies and Procedures

The brokerage should develop an effective compliance program which should include policies and procedures to prevent, detect and address non-compliance. At a minimum, this should incorporate reporting (how to report to FINTRAC), client identification requirements with regard to LCTRs and detection of suspicious transactions.

3. Review of Policies and Procedures

Compliance policies and procedures should be reviewed as often as necessary to test their effectiveness and evaluate whether they should be modified. Changes in legislation and non-compliance issues could also trigger the need for a review.

4. Training

Conduct ongoing compliance training for representatives, employees or other individuals who are authorized to act on the brokerage's behalf.

Large Cash Transaction Reports

When acting as a financial intermediary, a brokerage must keep certain records under the PCMLTFA. For trades in real estate involving \$10,000 or more in cash (defined under the Act to mean coins or notes issued by the Bank of Canada, and coins or bank notes of countries other than Canada), a record of the transaction must be reported to FINTRAC.

If two or more cash transactions of less than \$10,000 each are made within a 24-hour period, by or on behalf of the same client, these are considered to be a single

large cash transaction if they add up to \$10,000 or more. In this case, the brokerage would be required to submit a Large Cash Transaction Report.

What information must be kept on record?

Whenever a trade in real estate involves \$10,000 cash or more, client information must be retained by the brokerage. A complete list of the information that must be kept on record is contained on the FINTRAC website under *Guideline 6*. Large cash transaction records may be kept in electronic format as long as a paper copy can be readily produced and be provided to FINTRAC within 30 days of a request to examine them. Records must be kept for five years from the date they were created.

Who must report large cash transactions?

Individual licensees have a responsibility under section 3-2 of the Council Rules to promptly provide the details of all trades and services to his or her brokerage. A brokerage must report large cash transactions (i.e., \$10,000 or more). **NOTE:** If anything about a large cash transaction gives reasonable grounds to suspect that it could be related to a money laundering or a terrorist activity financing offence, a Suspicious Transaction Report must be forwarded to FINTRAC. This would be in addition to making the Large Cash Transaction Report about the same transaction, as required. **A Large Cash Transaction Report must be filed within 15 days after the transaction.**

Suspicious Transaction Reports

By law, all licensees (individual licensees and brokerages) must report suspicious transactions when they have reasonable grounds to suspect that the funds may be connected to a money laundering or terrorist financing activity. A suspicious transaction can involve several factors or "red flags" that individually may be insignificant, but, when combined together, may raise suspicion that the transaction is related to criminal activity.

When a real estate brokerage or licensee, suspects that a specific transaction, or group of transactions, is either questionable or inappropriate with regard to a deal, there may be an obligation to submit a STR report to FINTRAC.

An assessment of suspicion should be based on a reasonable evaluation of relevant factors, including the knowledge of the client's business, financial history, background and behavior. Transactions may be suspicious regardless of the sum of money involved. There is no monetary threshold for making a Suspicious Transaction Report. This requirement to report overrides an agent's fiduciary duty to keep the confidences of a principal. Real estate licensees are protected from legal liability when making reports to FINTRAC. Licensees should consider the following indicators when carrying out certain activities on behalf of clients:

- client arrives at a real estate closing with a significant amount of cash;
- client purchases property in the name of a nominee, such as an associate or a relative (other than a spouse);
- client does not want to put his or her name on any document that would connect him or her with the property, or uses different names on offers to purchase, closing documents and deposit receipts;
- client inadequately explains the last minute substitution of the purchasing party's name;
- client negotiates a purchase for market value or above asking price, but records a lower value on documents, paying the difference "under the table";
- client sells property below market value with an additional "under the table" payment;
- client pays initial deposit with a cheque from a third party, other than a spouse or a parent;
- client pays substantial down payment in cash and balance is financed by an unusual source or offshore bank;
- client purchases personal use property under corporate veil when this type of transaction is inconsistent with the ordinary business practice of the client;
- client purchases property without

inspecting it;

- client purchases multiple properties in a short time period and seems to have few concerns about the location, condition, and anticipated repair costs, etc. of each property;

When must a suspicious transaction be reported?

The requirement to report a suspicious transaction applies only when the financial transaction has occurred. In cases where the client or the reporting person or entity decides not to complete the transaction, there is no obligation to report. However, transaction completion in this instance does not refer to completion of the overall real estate transaction. It refers to receiving, paying, depositing, withdrawing, or transferring funds. In the real estate business, such transactions might involve buyers' deposits, and the payment of closing balances. Once a licensee has detected a fact that leads him/her to have reasonable grounds to suspect that a transaction is related to the commission of a money laundering offence, a **Suspicious Transaction Report must be sent to FINTRAC within 30 days.**

How do brokerages submit reports?

Real estate brokerages that have the electronic capability (i.e. access to the internet) are required to submit both STR and LCT Reports electronically via FINTRAC's web based reporting tool - F2R. Enrollment into F2R requires the creation of a specific user ID and password and this can be done by contacting FINTRAC at 1-866-346-8722 or via email at F2R@fintrac.gc.ca.

Terrorist Property Reports

By law, all licensees (individual licensees and brokerages) are required to report terrorist property. In this context, terrorist property means any type of real or personal property and includes any deed or instrument giving title or right to property, or giving right to money or goods. For example, cash, bank accounts, insurance policies, money orders, real estate, securities, and traveller's cheques, among other types of assets, are considered property.

What is a terrorist?

A terrorist or a terrorist group means anyone that has, as one of their purposes or activities, facilitating or carrying out any terrorist activity. This can be an individual, a group, a trust, a partnership or a fund. It can also be an unincorporated association or organization. A terrorist group will also include anyone on a list to be published under the *Criminal Code*. This list (Terrorism Financing – List of Names) is accessible from the website of the Office of the Superintendent of Financial Institutions at www.osfi.ca.

When must a Terrorist Property Report be filed?

Terrorist Property Reports must be sent to FINTRAC once property is in a licensee's possession or control if they know that the property is owned or controlled by or on behalf of a terrorist or a terrorist group. **This includes information about any transaction or proposed transaction for such a property.** If a licensee does not know that he/she is dealing with a terrorist but suspects that they might be, then a Suspicious Transaction Report is required if a transaction is completed. If a licensee knows that property in their possession or control is owned or controlled by or on behalf of a terrorist or a terrorist group, they are also required under the *Criminal Code* to inform the RCMP (Royal Canadian Mounted Police — Financial Intelligence Task Force at 1-888-349-9963) and CSIS (Canadian Security Intelligence Service — Security Screening Branch, Project Leader Government Operations at fax 613-842-1902) without delay. Terrorist Property Reports must be sent via paper format; the form is available for download from the FINTRAC website. Paper forms can be faxed to the fax number on the cover of the form.

Additional information on compliance with Canada's anti-money laundering and anti-terrorist financing legislation can be found on the FINTRAC website at www.fintrac.gc.ca or by calling toll-free 1-866-346-8722.

The REP Sheet

REP Sheet #1 April 2007

As licensees are aware, the Real Estate Council's Relicensing Education Program (REP) came into effect on January 1st of this year and requires licensees to complete two courses every licensing cycle as a condition of continued licensing. It is important for licensees to note that the REP requirements are separate from any requirements mandated by the real estate boards through their Professional Development Program (PDP). The Council has, however, designed REP to ensure that its course list contains many of the courses that are included in PDP, including the mandatory course, thus avoiding licensees having to complete two different sets of mandatory course requirements. Keeping in mind the 18 credit requirement to satisfy PDP, a licensee may only need to complete three courses in two years to satisfy both their REP and PDP requirements.

As part of the launch of REP, the Council is also re-launching *The REP Sheet* as the primary communications vehicle for REP notices. Look for *The REP Sheet* on a periodic basis to provide important updates about the program. Licensees may also access current information about REP, including *The REP Sheet*, on its website at www.recbc.ca/licensee_info/rep.htm.

Council Rules Amended to Enable REP

In order to introduce REP, section 2-8.1 of the Council Rules was added and it requires that education be completed as a condition of relicensing.

The REP Rule is as follows:

"2-8.1 Educational requirements for licence renewal

1. This section applies to a licence renewal that takes effect on or after January 1, 2009.
2. In order to have a licence renewed, an applicant for licence renewal must
 - a. have completed the applicable continuing education courses

What do you need to do to complete your REP requirements?

IT'S SIMPLE:

Take two REP courses in two years to renew your licence.

- respecting the real estate services and the level of licence in relation to which the application is made, and
- b. have passed the examinations corresponding to those courses prior to the date the licence is renewed."

It should be noted that subsection (2)(b) would only apply where the completion of a course includes the requirement to pass an examination.

REP Program Requirements

Licensees are responsible to complete two courses during the first REP cycle: one elective course and one mandatory course.

The mandatory course during the 2007-2009 REP cycle is "What Brokerages and REALTORS® Need to Know About Agency". Licensees who

complete the mandatory course prior to the first REP cycle, will receive credit for this course in their first REP cycle.

Licensees may choose their elective course requirement from a list of approved REP Courses that are detailed on the Council's website at www.recbc.ca/licensee_info/rep.htm.

The two courses must be completed prior to a licensee's next licence renewal date (2 years from the date of licence issuance); e.g., If a licensee's licence renewal date is January 27, 2007, the two courses must be completed by January 26, 2009.

Licensees must keep proof of completed education and attendance records in a specific education file, along with sufficient information about the courses, including completion certificates and marks. These records must be kept for five years from the last date of the REP cycle (licence renewal date) in which the education was completed.

At the time of licence renewal, licensees will report to the Council on the REP coursework completed and certify that the information they have provided is accurate.

REP Requirement for Strata Managers in the First Cycle

As a result of the educational requirements required for strata managers beginning January 1, 2006, individuals licensed to provide only strata management services are exempted from the mandatory course in

the first REP cycle. As well, individuals licensed as managing brokers to provide only strata management services are exempted from the elective course in the first REP cycle as they will be completing the broker's licensing course and exam as a requirement of licensing.

Elective Course Option for Rental Property Managers in First Cycle

Individuals licensed for rental property management only or rental and strata management only may substitute a second REP approved elective course for the mandatory agency course "What Brokerages and REALTORS® Need to Know About Agency" in the first REP cycle.

Course Comparison Chart

As noted above, the Council has designed REP to ensure that its course list contains many of the courses that are included in PDP, including the mandatory course, thus avoiding licensees having to complete two different sets of mandatory course requirements. A course comparison chart is posted on the REP page on Council's website at www.recbc.ca/licensee_info/rep.htm.

REP Policy Statement

In order to ensure that all licensees are treated equitably with respect to REP requirements, relicensing education requirements also apply to individuals applying for licensing whose licence has become inoperative, suspended, or has been voluntarily surrendered. The REP policy statement is detailed on the Council's website at www.recbc.ca/licensee_info/rep.htm.

REP Declaration Form

Licensees will be receiving a REP Declaration form with their licence renewals during the 2007-2008 licence cycle advising them of their particular

REP requirements. The form must be signed and returned to the Council with the licence renewal form. First-time licensees will receive a copy of this form with their licence and will also be required to return the signed copy to the Council.

FAQ's

1. How does the program affect me based on my licence renewal date?

The following are some examples of different licence expiry dates and the corresponding REP requirements:

- Renewal date was August 16, 2006
-No REP requirements during current licence cycle (August 16, 2006 to August 15, 2008)
-Complete two courses between August 16, 2008 and August 15, 2010
- Renewal date is January 27, 2007
-Complete two courses by January 26, 2009
- Renewal date is October 20, 2008
-Complete two courses by October 19, 2010

2. I am licensed for both trading and strata management services. Do I have to take two REP courses for each licence category for which I am licensed?

No, you are only required to complete the mandatory course and one elective course. You may choose your elective course from the trading or rental/strata elective course lists.

3. I am licensed to provide rental property management services. Am I able to select my elective course from the list of Trading Services elective courses?

Licensees may complete any REP approved elective course in the first REP cycle, regardless of their licence category.

4. Will I receive credit for the Agency Course if I completed it prior to my first REP cycle?

Yes, licensees will receive credit for the Agency Course if they completed it on or after January 1, 2006 and prior to their licence renewal during 2007-2008.

5. Will I receive credit for courses I took prior to 2007?

Licensees will receive credit for any REP Accredited elective courses that were completed on or after January 1, 2006 and prior to their licence renewal during 2007-2008.

6. What if I take more education than the minimum REP requirements?

Licensees who complete more education than required will not be permitted to carry forward credits to the second REP cycle.

7. If I take a course that is half a day (i.e. "The New Real Estate Services Act - Everything You Need to Know"), will I be able to use that towards my elective REP course credits?

Yes, a half-day course will provide you with a half day rated course credit towards meeting your REP requirements. Therefore, you could take two half-day rated courses to make up your one-day rated elective REP course requirement.

Additional Information

Additional information about REP is available on the Council's website at www.recbc.ca/licensee_info/rep.htm.

Licensees are also encouraged to review the August and October 2006 *Report from Council* newsletters for detailed information about the program. Licensees may also contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca.

Brokerage Fails to Disclose Relationship with Buyer ...Held Liable for Over \$1,000,000

A December 2006 finding in the High Court of New Zealand resulted in a brokerage being liable for over \$1 million N.Z. as a result of not disclosing to a seller its relationship with a buyer. Many of the legal principles, upon which this decision was based, are the same principles which would be applied by a Canadian court to a similar fact pattern.

In April 2004, the sellers sold their waterfront home in a suburb of Auckland for \$2.575 million. The sellers were disappointed with the price, but became even more upset when they learned that the buyer had re-sold the property only five months later for \$3.555 million. The sellers believed they had sold their property for less than its true value. Premium Real Estate Ltd. (Premium) was the sellers' agent through licensee Guy. Another Premium licensee, Riley, presented an offer on behalf of the buyer, which eventually resulted in the \$2.575 million sale. Premium was also the buyer's agent through licensee Riley on the re-sale. When they sold their property, the sellers did not know that the buyer was a property speculator for whom Premium licensee Riley regularly acted on both the purchase and sale of properties, and that one of Riley's daughters worked as the buyer's personal assistant.

As a result, the sellers sued Premium, seeking a refund of the \$67,050 commission paid on the sale and damages of \$995,000, alleging that Premium's conduct constituted breaches of New Zealand's Fair Trading Act, negligence, breach of contract, and breach of fiduciary duty. The decision, which can be found at www.justice.govt.nz/courts/

[high_court.html](#) (Stevens & Anor V Premium Real Estate Ltd. HC AK CIV-2005-404-2667 6 December 2006) considered the following issues:

What was the property worth in April 2004?

Was Premium in breach of the Fair Trading Act or negligent/in breach of its contractual duties in the way it, amongst other things, evaluated and marketed the property, and handled the negotiations with the buyer?

Was Premium's failure to disclose what its licensee Riley knew about the buyer misleading and deceptive conduct?

Did the buyer's interests and those of the sellers conflict so as to require Riley to disclose what she knew about the buyer, thus making her failure to do so a breach of fiduciary duty?

If the sellers succeed on any of the causes of action, what is the appropriate relief?

It was common ground between the parties that Premium, as the sellers' agent, owed them fiduciary duties.

Although Premium/Guy advised the sellers they thought the property was worth somewhere in the mid-high \$2 million range in April 2004, and the court found it to be worth approximately \$3.25 million at that time, the court found that this discrepancy did not necessarily mean that Guy was negligent in reaching his view of the value, stating "provided he exercised the reasonable skill and care expected of a competent agent in reaching his view, he will not have acted negligently, even

if that view was wrong." The sellers did not produce any evidence that a competent agent could not have reached the view that Guy did about the value, so the court found no basis on which to conclude that Guy was negligent in relation to his evaluation.

The sellers asserted that Premium advised or encouraged them to accept the offer for \$2.575 million or, at the least, failed to advise them against doing so. The court, however, found that while Guy "portrayed the offer as one worth considering, neither he nor Riley actively advised them to sign." That decision was the sellers' and the court found "there was nothing that could possibly be regarded as actual advice or encouragement". The court found "the root of the problem was that Guy had wrongly assessed the value of the property so that the sellers were not in a position to make an informed decision as to whether the offer was worth accepting." Yet, as noted above, this wrongly assessed value did not amount to negligence in the court's view.

One can only imagine that at this point in the decision, Premium, Guy, and Riley must have thought they'd dodged a bullet! But there were other questions to be answered.

The court found that Riley knew from her past dealings with the buyer that "he was likely to offer a figure below the asking price but obtain a valuation that indicated a higher value. He was likely to suggest that he was purchasing a property for use as a

Continued on next page...

Brokerage Fails to Disclose Relationship with Buyer ...Continued

personal residence but instead re-list it soon after purchase at a higher price. He was likely to use a valuation obtained for financing purposes in future negotiations to support a higher asking price.” The court concluded that Premium’s failure to disclose what it knew about the buyer concealed information that the seller would have regarded as important and which would have affected their view of the offer; therefore, Riley’s failure to tell what she knew about the buyer amounted to misleading and deceptive conduct.

In addressing the question of whether Premium breached a fiduciary duty to the sellers, the court found that Riley “enjoyed an ongoing relationship with the buyer which was significant for Riley in a financial sense. She was in a very good position to assess the likely purpose for which the buyer might be purchasing the property. If it was for the purposes of investment then Riley

would almost certainly benefit from that fact through the re-listing of the property. The circumstances were such that this must have been a real possibility and one that was apparent to Riley, regardless of what the buyer said.” On that basis, the court found that “a conflict existed that required Riley to disclose the extent of her relationship with the buyer.” Failing to do so constituted a breach of fiduciary duty on the part of Premium.

Having found that the sellers succeeded in showing misleading and deceptive conduct, and breach of fiduciary duty, the court turned to appropriate relief. It found that as a result of its misleading and deceptive conduct, Premium was liable for the consequent loss, and found that loss to be \$675,000 (the difference between the property’s true value in April, 2004 – found by the court to be \$3.25 million – and the sale price of \$2.575 million). Reduced by 50% to reflect actual

causative effect of Premium’s conduct, the loss was assessed at \$337,500.

The court found that Premium’s failure to disclose *also* amounted to a breach of its fiduciary duty to the sellers, and held Premium liable for the loss on the transaction, which was determined to be \$67,050 (the commission) and \$675,000 (the full loss based on the difference between the true value and the sale price). The sellers were also awarded interest at 7% on the judgment sums from the date of the sale’s closing, as well as costs.

Total judgment? \$1,079,550, plus interest at 7% for approximately 2½ years (nearly \$200,000), and costs – a very expensive lesson about an agent’s disclosure obligations. In British Columbia, such a fact pattern could also lead to a finding of professional misconduct against the licensees under sections 3-3 and 3-4 of the Council Rules.

Short Term Rental Licensing Requirement

In July 2004, the Business Practices and Consumer Protection Authority (BPCPA) commenced operations in British Columbia. The BPCPA operates under contract to the provincial government and, amongst other groups, it is responsible for licensing travel agents.

The definition of travel agent includes someone who sells or otherwise provides travel services, including accommodation, to a traveler, tourist, or sightseer. In that regard, licensees should be aware that

what the industry has come to know as 'short term vacation rentals' falls within the definition of travel services.



Therefore, a person who is providing travel services by way of arranging **short**

term vacation rentals, or similar accommodation, is likely required to be licensed under the *Business Practices and Consumer Protection Act*.

Any licensee who engages in the management of short term vacation rentals should contact the BPCPA as they likely need to be licensed under the *Business Practices and Consumer Protection Act*. The BPCPA website is located at www.bpcpa.ca and their phone number is 604-320-1667 or toll free 1-888-564-9963.

Council Suspends Licence of SwiftSure Strata Services Inc.

On February 16, 2007, pursuant to section 45 of the *Real Estate Services Act*, the Real Estate Council of British Columbia suspended the real estate licences of **SwiftSure Strata Services Inc.** located at #300—11575

Bridgeport Road, Richmond, B.C. and its related licensee, **James Gilmore Ramsay**, managing broker.

The Real Estate Council suspended these licences in the public interest as a

result of the failure of SwiftSure Strata Property Services Inc. to properly account for trust monies it was holding on behalf of strata property clients. These suspensions remain in effect until further notice.

Disciplinary Decisions

Since the February 2007 *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 27(1)(a) of the *Real Estate Services Act*, sections 2-19, 3-3(1)(a), 3-3(1)(d), 3-3(1)(f), 3-3(1)(g), 3-3(1)(j), 3-4, 5-6, 5-8(2) and 5-10 of the Council Rules under the *Real Estate Services Act*/ Payment into trust, prompt response, duties to clients, duty to act honestly, inducement representations and disclosure.

ISSUE: Kevin Robert Smetaniuk, representative, who, while licensed with Coronation Park Holdings Ltd. dba Royal LePage Coronation Park, Surrey, contravened (i) sections 3-3(1)(a), 3-4 and 5-6 of the Council Rules in that he made an inducement representation to the buyer by representing to her that she did not require financing to pay the entire purchase price of the subject lots as the right to purchase these lots would be assigned prior to completion and he failed to deliver to the buyer a statement signed by him clearly setting out the details of the inducement representation, (ii) sections 5-8(2) and 5-10 of the Council Rules in that he did not make adequate agency disclosure to the buyer as to the nature of his representation and, when he became a

dual agent for both the buyer and the seller, he failed to disclose a substantive change in his agency relationship to both the buyer and seller; (iii) sections 3-3(1)(f) and 3-4 of the Council Rules in that he failed to ensure that the buyer was aware of all of the terms of her offer and failed to use reasonable care and skill when he had the buyer sign a partially completed contract that did not include a date, the date that the offer would expire, the name of the seller, a description of the subject lots, or the nature of his agency representation; (iv) section 27(1)(a) of the *Real Estate Services Act* in that he failed to promptly deliver the initial \$5,000 deposit to the brokerage on receipt; (v) section 3-4 of the Council Rules in that he failed to fully communicate with the buyer, including providing her upon her request with a copy of the offer that she had signed; (vi) section 3-3(1)(a) and (g), and section 3-4 of the Council Rules in that he failed to advise the buyer that her offer had not been accepted by the seller; (vii) section 3-3(1)(a) and (i) of the Council Rules in that he put his personal interests ahead of those of his clients; (viii) section 3-3(1)(j) of the Council Rules in that he failed to promptly and fully disclose the conflict of interest to the buyer when he first became aware of it; (ix) section 2-19 of the Council Rules in that he failed to respond to Council inquiries when requested to do so; (x) sections 3-3(1)

(d), (i), and (j) in that he failed to clarify to the buyer that the \$25,000 cheque payable to himself was a loan from the buyer and that he: (a) failed to take steps to avoid a conflict of interest; (b) failed to promptly disclose the conflict of interest to the buyer; (c) failed to advise the buyer to seek independent legal advice when he first decided to request the \$25,000 loan from the buyer.

RESULT: Kevin Robert Smetaniuk's licence was cancelled and an application for reissuance of his licence would not be considered for a period of five years or until January 4, 2012 and, further, that a qualification hearing would be held pursuant to section 2-6 of the Council Rules should Mr. Smetaniuk apply to become relicensed. In addition, as a condition of licence reissuance, Mr. Smetaniuk shall pay a discipline penalty in the amount of \$5,000 for contravening section 2-19 of the Council Rules in that he failed to

Correction

In the February 2007 *Report from Council* newsletter, it was reported that Margaret Ann Reibin was licensed with Hanna Realty when she contravened the *Real Estate Services Act* when, in fact, the contravention took place while Ms. Reibin was licensed with Re/Max All Points Realty in Coquitlam. We apologize for any inconvenience this may have caused.

respond to Council inquiries and shall pay enforcement expenses to the Council in the amount of \$5,586.20.

COMPLAINT: Contravention of section 25 of the *Real Estate Services Act* and section 7-5(2) of the Council Rules under the *Real Estate Services Act*/ Brokerage records and negative balance in trust accounts.

ISSUE: Dedicated Property Management Ltd., Delta, (a) failed to keep proper books, records, accounts and other records, contrary to section 25 of the *Real Estate Services Act*; and (b) permitted a negative balance in the trust accounts of the brokerage, contrary to section 7-5(2) of the Council Rules.

RESULT: Dedicated Property Management Ltd.'s licence was cancelled.

COMPLAINT: Contravention of sections 31(1)(a) and 37(1) of the *Real Estate Act*, sections 9.12 and 9.16 of Regulation 75/61 under the *Real Estate Act*/Negligence, incompetence and misappropriation.

ISSUE: Master Key Realty Ltd., Chilliwack, breached section 9.16 of Regulation 75/61 under the *Real Estate Act* in that it failed to have a managing broker in regular attendance at the brokerage's office and in active charge of the business of the brokerage being conducted in such office both in regard to the transactions which resulted in the complaints and in the general course of business of the brokerage.

ISSUE: Chrystale Ashworth, managing broker, Master Key Realty Ltd., Chilliwack, was (a) negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she failed to provide the landlords with a copy of the lease agreements in respect of the three properties in accordance with section 37

(1) of the *Real Estate Act*; (b) was incompetent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she (i) failed to promote and protect the interests of her client, the landlords, by failing to offer competent property management services in that she failed to provide proper notice to the tenants at the end of their tenancies that it was the landlord's intention to retain the security deposits; (ii) disregarded awards of an arbitrator under the *Residential Tenancy Act* to pay the tenants their security deposits; (iii) failed to be in active charge of the property management business of the brokerage and in regular attendance at the office of the brokerage; and (c) misappropriated funds which she had received in her capacity as a licensee on behalf of her clients, contrary to section 31(1)(a) of the *Real Estate Act*.

RESULT: Master Key Realty Ltd. was reprimanded and Chrystale Ashworth and Master Key Realty Ltd. were jointly and severally liable for costs in the amount of \$13,728.90 plus the service costs incurred by the Council as a condition of Ms. Ashworth's re-licensing as a managing broker.

RESULT: Chrystale Ashworth's licence as a managing broker was suspended for a period of one year from December 21, 2005 to December 20, 2006 (inclusive) for negligence, incompetence and misappropriation. In addition, as a condition of re-licensing as a managing broker, Chrystale Ashworth was required to successfully complete Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker's Licensing Course. Ms. Ashworth was prohibited from any property management activities until she completed the Property Management Supplemental course and passed the examination. Further, Master Key Realty Ltd. and Chrystale Ashworth were jointly and severally liable for costs in the amount

of \$13,728.90 plus service costs incurred by the Council as a condition of Ms. Ashworth's re-licensing as a managing broker. Ms. Ashworth was immediately eligible to be licensed as a representative or associate broker.

APPEAL: Chrystale Ashworth and Master Key Realty Ltd. appealed the findings of wrongdoing and the penalty aspect of the decision of Council to the Financial Services Tribunal. The Superintendent of Real Estate appealed the penalty aspect of the decision of the Council to the Financial Services Tribunal.

APPEAL DECISION: The Financial Services Tribunal dismissed the appeals of Ms. Ashworth and Master Key Realty Ltd., upheld the findings of wrongdoing by the Council and allowed the appeal of the Superintendent of Real Estate.

The Financial Services Tribunal suspended the managing broker's licence of Ms. Ashworth and the brokerage licence of Master Key Realty Ltd. for a period of three years from January 19, 2006 to January 18, 2009. Ms. Ashworth's licence as an associate broker or as a representative was suspended for a period of sixteen months from January 19, 2006 to May 18, 2007. Council costs were levied at a total of \$13,728.90 and are jointly and severally payable by Chrystale Ashworth and Master Key Realty Ltd. by February 1, 2008 and, in any event, as a condition of Ms. Ashworth's re-licensing. The Council's orders concerning the education requirements noted above were also confirmed. Costs arising from the Financial Services Tribunal appeals in the sum of \$2,000 were assessed and ordered payable by Ms. Ashworth to the Council. This amount is owing immediately.

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

ISSUE: Adriana-Jadranka Matic, representative, Nechako Real Estate Ltd. dba Century 21 In Town Realty, Vancouver, who, while licensed with Coldwell Banker-Horizon Realty, Kelowna, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she: (i) made representations to the buyer of the property, when she ought to have known they were untrue; (ii) was in a conflict of interest in that, having obtained the buyer's agreement that she would act as their renovation contractor, she provided a portion of the renovation work to a business owned and operated by her husband without the buyer's informed consent; and (iii) conducted property management services in relation to the property on behalf of the buyer, contrary to the terms of her licence.

RESULT: Adriana-Jadranka Matic's licence was suspended for thirty (30) days from March 14, 2007 to April 12, 2007 (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 Adriana-Jadranka Matic, and a Consent Order was issued. In addition, as a condition of continued licensing, she was required to successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*) and Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available "What Brokerages and Realtors Need to Know about Agency", "Professionalism it Pays! Be Safe or Be Sued" and "Legal Update" courses and to 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*/Incompetence

ISSUE: Christine Dawn

Robinson, representative, Whistler Real Estate Company Limited, Whistler, was incompetent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she: (i) failed to ensure that the final Contract of Purchase and Sale for the subject property included a clause which provided that the contract was subject to the seller entering into a firm and binding contract with respect to their purchase of another property; (ii) failed to have the buyers and sellers sign and acknowledge receipt of a Limited Dual Agency Agreement prior to acting on their behalf; (iii) failed to follow her clients' instructions in that she forwarded the amended Contract of Purchase and Sale to the buyers prior to her clients' lawyer reviewing same; and (iv) failed to ensure that the agreement, reflecting that the price for the other property would be reduced by \$20,000 by way of a furniture allowance, was in writing.

RESULT: Christine Dawn Robinson's licence was suspended for twenty-one (21) days from February 7, 2007 to February 27, 2007 (inclusive) for incompetence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Christine Dawn Robinson, and a Consent Order was issued. In addition, as a condition of continued licensing, she was required to successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available "Professionalism it Pays! Be Safe or Be Sued" and "Legal Update" courses and to pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Breach of section 31 (1)(c) and section 3(2) of the *Real Estate Act* and section 9.12 of Regulation 75/61 under the *Real Estate Act*/

Negligence/Misconduct

ISSUE: Kenneth Scott Spong, representative, Crest Realty Ltd. dba Re/Max Crest Realty, North Vancouver, was found negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he allowed an individual to act or hold herself out as a representative without being the holder of a valid or subsisting representative's licence issued under the *Real Estate Act* or without being employed by the brokerage, contrary to section 3(2) of the *Real Estate Act*. Mr. Spong misconducted himself within the meaning of section 31(1)(c) of the *Real Estate Act* in that he directed the above-mentioned individual to act or hold herself out as a representative without being the holder of a valid or subsisting representative's licence under the *Real Estate Act*.

RESULT: Kenneth Scott Spong was suspended for seven (7) days, from April 29, 2005 to May 5, 2005 (inclusive) and, as a further condition of continued licensing, that he successfully complete Chapter 2 (*Real Estate Services Act*) and pay costs in the amount of \$5,585.20.

The Financial Services Tribunal issued a decision on January 13, 2006 which referred the Council's decision on penalty back to the Council for reconsideration. The Council reconsidered the issue on penalty on February 28, 2006 and, after reviewing all the circumstances, submissions and precedents, affirmed its original decision of a seven (7) day suspension. The Financial Services Tribunal then considered this matter further and subsequently varied the Order of the Council by suspending Mr. Spong for a period of fourteen (14) days, although the education and costs components of the Council's decision were not varied. As Mr. Spong previously served the seven (7) day suspension from April 29,

2005 to May 5, 2005 (inclusive), he will serve the remaining seven (7) day suspension from March 14, 2007 to March 20, 2007 (inclusive).

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

ISSUE: Bryan Kenneth Velve, representative, Crest Realty Westside Ltd. dba Re/Max Crest Realty, Vancouver, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he failed to make it clear whether or not GST was included in the purchase price of a property.

ISSUE: Mr. Velve's licence was suspended for seven (7) days from April 18, 2007 to April 24, 2007 (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 Bryan Kenneth Velve, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 11 of the Real Estate Trading Services Licensing Course, and to pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act*, sections 3-1, 4-1, 4-2, 2-17(2), 2-19 and 7-4(3) of the Council Rules and sections 4-1, 4-8(2) and 4-8(5) of the Council Bylaws /Professional misconduct, display licence, display sign, update mailing address for delivery, failure to provide business licence and failure to promptly respond to Council inquiries.

ISSUE: Oak Investments Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services*

Act in that it (a) failed to keep the brokerage licence for its head office prominently displayed in the head office; (b) failed to display, on or near the door of its head office, a sign that clearly showed the brokerage licensee name; (c) failed to promptly deliver a notice to the Council updating the licensee's mailing address for delivery; (d) failed to amend its brokerage licence when the brokerage changed its address and failed to provide the Council with a business licence for its new address.

ISSUE: Wayne Kent Nelsen, managing broker, Oak Investments Ltd., Vancouver, (a) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to fulfill his responsibilities as a managing broker as he: (i) failed to ensure the brokerage kept a sign for its head office prominently displayed in the head office; (ii) failed to ensure that the brokerage displayed on or near the door of its head office a sign that clearly showed the brokerage licensee name; (iii) failed to ensure that the Council was allowed an opportunity to review the cheque books and deposit books for the brokerage trust account as they were not available, and therefore, the Council could not determine whether the brokerage had the designation "In Trust" identified on them as required; and (iv) failed to respond promptly in writing to inquiries addressed to him by the Council in connection with its Office and Records Inspection Report.

RESULT: Oak Investments Ltd. was fined the sum of \$250.00 for professional 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 Oak Investments Ltd., and a Consent Order was issued. In addition, should Oak Investments surrender its licence and should the said fine not be paid, then this fine must be paid to the Council

prior to licence reissuance should it apply to have its licence reissued. Further, as a condition of continued licensing, or upon licence reissuance, Oak Investments Ltd. must provide the Council with a copy of its business licence showing its head office address and provide the Council with a photograph of a sign that clearly shows the brokerage licensee name on or near the door of its head office place of business. Further, Oak Investments Ltd. and Wayne Kent Nelsen are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

RESULT: Wayne Kent Nelsen was reprimanded for professional 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 Wayne Kent Nelsen, and a Consent Order was issued. In addition, as a condition of continued licensing as a managing broker, associate broker, or representative, or as a condition of relicensing as a managing broker, associate broker or representative, should he surrender his licence, he must successfully complete Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*). Further, Wayne Kent Nelsen and Oak Investments Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Contravention of sections 7(3) and 35(1)(d) of the *Real Estate Services Act*/real estate to be conducted solely through brokerage, professional misconduct and incompetence.

ISSUE: James Robert Schroeder, representative, Sutton Group-Showplace Realty Ltd., Chilliwack, contravened sections 7(3) and 35(1)(d) of the *Real Estate Services Act* and was incompetent in that regard in that he provided strata management services,

separate from his related brokerage.

RESULT: James Robert Schroeder was reprimanded for incompetence and professional 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 James Robert Schroeder, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Contravention of sections 35(1)(a) and 35(1)(d) of the *Real Estate Services Act*, sections 3-1(3)(a), (b), 3-1(3) and 7-7(1)(b) of the Council Rules under the *Real Estate Services Act*/ Professional misconduct, failure to file Accountant's Report.

ISSUE: Langer Bros. Holdings Ltd. dba Coldwell Banker Boardwalk

Properties (2000), Prince George, committed professional misconduct within the meaning of section 35 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 Real Estate Council by the prescribed date.

ISSUE: Gordon Richard Langer, managing broker, Langer Bros. Holdings Ltd. dba Coldwell Banker Boardwalk Properties (2000), Prince George, committed professional misconduct within the meaning of sections 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* by not fulfilling his responsibilities as a 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 an Accountant's

Report was filed with the Council by the prescribed date.

RESULT: Langer Bros. Holdings Ltd. dba Coldwell Banker Boardwalk Properties (2000) was reprimanded for the contravention described above. In addition, as a condition of continued licensing, Langer Bros. Holdings Ltd. dba Coldwell Banker Boardwalk Properties (2000) and Gordon Richard Langer are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

RESULT: Gordon Richard Langer was reprimanded for professional misconduct as described above. In addition, as a condition of continued licensing, Gordon Richard Langer and Langer Bros. Holdings Ltd. dba Coldwell Banker Boardwalk Properties (2000) are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

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

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