



Report from Council

April 2008 Volume 43, No. 6

The Role of the Real Estate Council

From time to time the Council receives enquiries with respect to its role in education and setting conduct standards, and, somewhat related, how the Council's disciplinary powers under the *Real Estate Services Act* (RESA) relate to a licensee's conduct with respect to activities that are governed by other legislation.

Section 73(2) of RESA establishes that the objects of the Council are to:

1. administer RESA and the regulations, rules, and bylaws,
2. maintain and advance the knowledge, skill and competency of its licensees,
3. uphold and protect the public interest in relation to the conduct and integrity of its licensees.

Virtually everything the Council does flows from these objectives. The second objective establishes the Council's role with respect to education. The Council establishes education standards both in terms of what is required from an initial licensing perspective, and on an ongoing basis. The recent introduction of the Relicensing Education Program (REP) represents one aspect of this ongoing education, and the continuous articles and information published in the *Report from Council*, the *Licensee Practice Manual*, and the *Office Practice Manual* represent another.

These publications are good examples of how the Council attempts to alert licensees to issues that often go beyond the confines of RESA. Whether providing trading, rental property management, or strata management services, a licensee must be familiar with a wide variety of legislation that affects real property. The Index to the *Licensee Practice Manual* lists 25 such pieces of related legislation upon which the Council has provided information and/or guidance to licensees.

With respect to the second issue, the Council administers RESA, not any other related legislation. However, where a licensee fails to ensure compliance with other legislation in the course of providing real estate services, particularly if the body responsible for enforcing that legislation, be that another administrative body or the courts, finds that a licensee has contravened it, the Council may investigate whether that contravention would also be a contravention of RESA.

Here is an example which ties these two concepts together. Page 240 of the *Licensee Practice Manual* contains information regarding the written notice requirements of the *Residential Tenancy Act* in order to gain access to a rental unit. If the Council were to receive a complaint from a tenant that a licensee, acting as the agent for a landlord, had failed

to provide adequate notice to enter the unit, the Council would advise the complainant that they are able to have this matter investigated by the Residential Tenancy Office, and if that body finds that the licensee has violated the notice requirements, the Council may consider disciplinary action. In this example, 1.) the Council has advised licensees of the requirements of another piece of legislation, 2.) the appropriate administrative body is left to determine if there has been a contravention, and 3.) the Council may consider whether the licensee's action, if found in contravention of the *Residential Tenancy Act*, constitutes professional misconduct under RESA.

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

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STATISTICS

(APRIL 2008)

REPRESENTATIVES: 16,761

ASSOCIATE BROKERS: 1,841

MANAGING BROKERS: 1,360

BROKERAGES: 1,421

Role of the Council

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

Report from Council

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

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A Note From the Chair

This Report contains a number of articles that are of importance to licensees. In particular, I draw your attention to the article about disclosure of material latent defects on page 3. Licensees will recall that the Council has issued similar articles over the past few years urging licensees to familiarize themselves with the disclosure requirements of the *Real Estate Services Act*. This article, and a number of other articles on disclosure, formed the basis of the March 2006 *Special Report to Licensees* called **DISCLOSURE! DISCLOSURE! DISCLOSURE!** This *Special Report*, along with archived copies of all *Report from Council* newsletters from 2004 onward, can be found under the Licensee Information tab on the Council's website at www.recbc.ca.

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) has recently announced changes to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Licensees are expected to understand the existing requirements outlined on pages 101-105 of the *Licensee Practice Manual* as well as the new changes outlined in the article on page 5 of this Report. I encourage you to review these changes.

This month, licensees across the province will receive Council election materials. Council members serve an important role in the B.C. real estate industry by developing policy, enforcing practice standards and ultimately protecting the public interest. The Council hopes that licensees in districts where elections



Satnam Sidhu

are being held will cast their vote.

Finally, it is with great sadness that I announce the recent passing of Dermot Murphy, the Council's second Secretary, who served the Council for 36 years until his retirement in 1995. Dermot had a substantial impact on the real estate industry in B.C. and will be deeply missed by the many people whose lives he touched.

On behalf of Council
Satnam T. Sidhu, Chair

Sauder School of Business Announces New Scholarship

In honour of the Real Estate Council of British Columbia's 50th Anniversary, and in recognition of the longstanding partnership in education between the Council and the Sauder School of Business at UBC, Dean Dan Muzyka announced that the Faculty is creating a new, fully endowed scholarship. It will be awarded each year with preference given to the son

or daughter of a current or former licensee in the province who is enrolled in or who is entering into the B.Com. undergraduate program. The scholarship will be for \$7,500, which will cover a full year's tuition, and is to be called the Real Estate Council of British Columbia Scholarship. Dean Muzyka also announced the doubling of the existing P. Dermot

Murphy Scholarship in Real Estate to the amount of \$4,000. This scholarship has been awarded upon the recommendation of the Faculty to an undergraduate student in Urban Land Economics (now Real Estate) since 1995 in honour of the second Secretary of the Real Estate Council.

Office Closures

The Council office will be closed on Monday, May 19, 2008 for Victoria Day and Tuesday, July 1, 2008 for Canada Day.

Disclosure of Material Latent Defects

In March 2006, the Council issued a *Special Report from Council* newsletter entitled *Disclosure! Disclosure! Disclosure!* outlining the key areas of disclosure for licensees. One area of particular importance relates to disclosure of material latent defects. The Council urges licensees to familiarize themselves with the disclosure requirements contained in the Council Rules.

At common law, a seller, and correspondingly, a seller's agent must disclose all known material latent defects. A latent defect is one that is not visible upon ordinary inspection but which materially affects the property's use or value. On the other hand, a patent defect is one that is readily visible and/or obvious upon ordinary inspection. A patent defect may also materially affect the property's use or value.

Section 5-13 of the Council Rules details this requirement to disclose known material latent defects, and that section defines a material latent defect as follows:

"material latent defect means a latent defect that cannot be discerned through a reasonable inspection of the property, including any of the following:

- (a) a defect that renders the real estate
 - (i) dangerous or potentially dangerous to the occupants,
 - (ii) unfit for habitation, or
 - (iii) unfit for the purpose for which a party is acquiring it, if
- (A) the party has made this purpose known to the licensee, or
- (B) the licensee has otherwise become aware of this purpose;
- (b) a defect that would involve great expense to remedy;
- (c) a circumstance that affects the real

estate in respect of which a local government or other local authority has given a notice to the client or the licensee, indicating that the circumstance must or should be remedied;

(d) a lack of appropriate municipal building and other permits respecting the real estate."

Further, section 5-8 of the Council Rules requires that disclosure to be in writing and separate from any agreement under which real estate services are provided, and separate from any agreement giving effect to a trade in real estate.

As a result of amendments to the Council Rules which took effect September 1, 2006, a licensee is not required to disclose a known



material latent defect to a buyer if the seller has already disclosed all known material latent defects, in writing, to the buyer.

For example, disclosing the material latent defect on the Property Disclosure Statement (PDS) may now satisfy the requirements of the Council Rules. Timing of the disclosure is critical. Written disclosure of all known material

latent defects must be provided to the buyer before there is an accepted offer. This applies whether the PDS or some other document is to be used to disclose these defects.

A licensee acting for the seller must ensure that the written disclosure of the material latent defect is provided to the buyer prior to the acceptance of the offer by the seller. One way that some real estate boards have made it possible for this information to be more readily available is to allow the disclosure document to be attached as a PDF file to the listing information on the MLS® database.

In order to document that written disclosure has been made, licensees should include the following wording in the Contract of Purchase and Sale whenever a material latent defect is disclosed.

"The buyer acknowledges having received separate written disclosure of a material latent defect relating to (general reference to issue)."

Licensees must keep in mind that trading services includes offering real estate for rent or lease. As a result, written disclosure of a material latent defect is required regardless of whether the real estate is offered for sale or for rent or lease. Section 5-13 of the Council Rules also provides that if the client instructs the licensee to not disclose the material latent defect, the licensee must refuse to provide further trading services to the client in respect of the trade in real estate.

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

The REP Sheet

Managing brokers recently received a Council News Bulletin by fax advising that the Relicensing Education Program (REP) is about half-way through its first cycle.

As managing brokers are aware, effective January 1, 2007, the Council introduced REP for all real estate licensees in the province. REP requires licensees to complete two courses as a condition of licence renewal: a mandatory course, "What Brokerages and REALTORS® Need to Know about Agency", and one elective course to be selected from the list of REP approved courses detailed on the Council's REP web page at www.recbc.ca/licensee_info/rep.htm.

Earlier this year, the Council began sending a half-way reminder letter to licensees notifying them that they have one year in which to complete their REP requirements. All licensees will receive this letter at the mid-point of their two-year licence term.

The purpose of the News Bulletin is to remind managing brokers that all licensees must complete their REP requirements in order to renew their licence. **Licensees who do not complete the REP requirements before their licence renewal date will not be able to renew their real estate licence, and therefore will not be able to provide real estate services in the province.**

This may have a significant impact on brokerages as any listings, or rental or strata property managed, will have to be transferred to a another licensee within that brokerage.

The Council appreciates the assistance of managing brokers in ensuring that licensees engaged by their brokerage complete the REP requirements. This will alleviate the prospect of the Council having to terminate the real estate licence of licensees for failure to complete the REP requirements by their licence renewal date.

Further information may be found on the Council's website at www.recbc.ca.

Licensees Must Promptly Provide Records to Their Related Brokerage

Section 3-2 of the Council Rules details general responsibilities of licensees in relation to their brokerages. An important aspect of those responsibilities includes promptly providing the brokerage with the original or copies of records related to the real estate services provided by the licensees. The obligation to provide these records to a brokerage 'promptly' means they must be provided without delay.

This enables the brokerage to fulfill its obligation to maintain timely, accurate, and complete records, and enables the managing broker to fulfill his or her obligation to be in active charge of the business of the brokerage. For example, it is not satisfactory to provide the brokerage with a copy of a Contract of Purchase and Sale only after subjects have been removed; once it has been accepted by all parties, it must be provided to the brokerage

without delay.

The records to be provided include all the records identified in sections 8-4, 8-5, 8-6, and 8-7.1 of the Council Rules that are in the possession of the licensee and were either

- prepared by or on behalf of the licensee, or
- received from or on behalf of a principal.

While the following list is not complete in terms of records which must be provided to the brokerage, it represents records related to trading services which some licensees have not promptly provided:

- Written disclosure statements (e.g. Disclosure of Remuneration, Disclosure of Interest in Trade, etc.)
- Written service agreements (e.g. listing contracts, buyer agency contracts, etc.) and other records that establish the scope of

authority (e.g. fee agreements, etc.)

- Contracts for the acquisition and disposition of real estate (e.g. Contracts of Purchase and Sale, Offers to Lease, Tenancy Agreements, etc.)
- Information necessary to complete the Trade Record Sheet

Licensees who are uncertain about their obligations in this regard should review those sections of the Council Rules identified above. The current Council Rules are available at www.recbc.ca. Follow the links to 'Licensee Information' > 'Real Estate Legislation' > 'Council Rules'.

Further information about a licensee's responsibilities is also available on pages 37-40 of the *Licensee Practice Manual*.

Money Laundering Legislation Will Bring Changes to Real Estate Transactions in 2008

The Government of Canada has announced changes to Canada's anti-money laundering legislation, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PC(ML)TFA). The changes will have an impact on how real estate transactions are conducted in Canada. Real estate licensees should be aware of these new rules and what is expected of them when handling transactions.

The forthcoming amendments will add to existing requirements for the real estate sector, building on obligations that have been in place since 2001. The most significant changes, coming on June 23, 2008, will require that licensees identify clients, keep a client identification / receipt of funds record for every real estate transaction and report **attempted** suspicious transactions.

The federal government has also announced its intention to include real estate developers in future regulations, subjecting them to many of the same rules that apply to real estate licensees. The details regarding obligations for real estate developers will be outlined in future regulations.

Record-Keeping

In addition to existing requirements for licensees under the PC(ML)TFA, once the changes come into effect on June 23, 2008, licensees will also have to keep a client information record for every purchase or sale of real estate. A client information record will set out the client's name, address, date of birth and the nature of the client's principal business or occupation.

If the client is a corporation, licensees will also need to keep a copy of the part of the official corporate records showing the provisions relating to the power to bind the corporation regarding the transaction.

Identifying Your Clients

Currently, if a licensee has identified an

individual before, the licensee does not have to do so again if the licensee recognizes the individual. Once the changes come into effect, if licensees have doubts about the information collected concerning an individual's previous identification, licensees will have to identify that individual again.

If the parties in the transaction are each represented by a different real estate licensee, licensees will have to identify the individual or confirm the existence of the entity that the licensee represents in the transaction.

If some parties in a real estate transaction are not represented by a licensee while other parties are, each licensee that represents a party to the transaction will have to identify or confirm the existence of the parties that are not represented.



Third Party Determination

A third party determination will still have to be made when licensees receive an amount of cash of \$10,000 or more **and** whenever a licensee creates a client information/receipt of funds record. Is the client acting for a third party? This question is the key consideration in making the third party determination.

Developing a Compliance Program

Currently, brokerages are required to appoint a person responsible for implementing a compliance regime. After June 23, 2008, brokerages will be required to make enhancements to their compliance regime, including the following:

- develop, apply and keep up to date **written** compliance policies and procedures. For brokerages, the written compliance policies and procedures need to be approved by a

senior officer of that brokerage;

- develop and maintain a **written** ongoing compliance training program for the brokerage's licensees, employees, or other individuals authorized to act on behalf of the brokerage;
- establish and **document** a review of the brokerage's policies and procedures, risk assessment and training program for their effectiveness. The review will have to be done every two years by either an internal or external auditor or by an employee of the brokerage if the brokerage does not have an auditor;

- New 5th Element – Risk-Based Approach**
-assess and document the risk related to money laundering and terrorist activity financing in a way that is appropriate to the brokerage considering:

- the brokerage's client relationships;
- the brokerage's products, delivery channels and geographic areas where it does business activities; and
- any other relevant factors.

Within 30 days after the above review, the individual responsible for the brokerage's

compliance regime will have to report in writing to one of the brokerage's senior officers, its findings and any updates to the brokerage's compliance policies and procedures, including their implementation.

If a brokerage determines that the risk is high for money laundering or terrorist financing, the brokerage will have to take measures to mitigate the risk, and take reasonable measures to:

- keep client identification information up to date; and
- conduct ongoing monitoring of financial transactions to detect suspicious transactions.

Real estate licensees are expected to meet these new obligations on June 23, 2008.

To learn more, visit FINTRAC's website at www.fintrac.gc.ca or call 1-866-346-8722.

Proper Books and Records: Strata Management Services

The following is intended to be a general description of the books and records that are required to be maintained under the *Real Estate Services Act* (RESA) by a brokerage that provides strata management services; however, a brokerage should refer to Part 8 of the Council Rules when determining the specific requirements. The latest versions of RESA and the Council Rules are posted on the Council's web site (www.recbc.ca).

Section 25 of RESA states that a brokerage's books, accounts, and records must be kept in British Columbia. Section 26 requires a brokerage to maintain its trust accounts with a savings institution in British Columbia. Part 8 of the Council Rules details the books and records that a brokerage must maintain in connection with the real estate services it provides.

A brokerage maintaining records on behalf of a strata corporation where the requirement of those records is established under the *Strata Property Act* (SPA) will have to be familiar with that legislation's requirements as well. Section 5-1(5.1)(e) of the Council Rules requires that a service agreement for the provision of strata management services must include a description of the records to be kept by the brokerage on behalf of a strata corporation, including a description of which, if any, of the records required under section 35 of SPA that the brokerage will retain on behalf

of the strata corporation.

Unless otherwise noted, Section, Part, and Division references in the following information refer to the Council Rules.

Brokerage Accounts and Financial Records

A brokerage must retain sufficient financial

For each account, including trust and general accounts, the brokerage has to retain:

- all banking records relating to all transactions, including statements, cancelled cheques, and other source documents related to deposits and withdrawals,
- a record showing amounts received and disbursed, the reason for the transaction and the unexpended balance, and
- a monthly reconciliation prepared no later than 5 weeks after the monthly accounting cut-off date [section 8-2].

Section 7-9(2) requires that a brokerage maintain at least one separate trust account in the name of each strata corporation for which the brokerage holds or receives funds (e.g. ABC Strata Management Co. in trust for Strata Corp. VR 1234). It also requires the brokerage to maintain at least one other separate trust account if the brokerage is to hold contingency reserve funds or special levy money on behalf of the strata corporation. At least two signatures are required for money to be withdrawn

from these contingency reserve fund/special levy accounts [see section 7-9(6) for a list of eligible signatories].

The Council Rules establish two situations where a brokerage providing strata management services may utilize pooled



records to ensure the appropriate and timely accounting of all transactions. These records must readily distinguish all money held, received, and disbursed on behalf of the brokerage, its related licensees, its strata corporation clients, and other persons [section 8-1].

trust accounts; that is, accounts in which money belonging to more than a single strata corporation is held.

The first is where the brokerage receives money by direct electronic deposit into a brokerage trust account that receives money on behalf of more than one strata corporation. Money from this pooled trust account must be transferred to the separate accounts maintained on behalf of the applicable strata corporations no later than 3 days after its receipt [section 7-9(2.1)].

The second is where a brokerage pays common suppliers from a single account, e.g. utilities. Section 7-9(5) allows a brokerage to transfer money from more than one strata corporation's trust account into a pooled trust account for the purpose of consolidating payments to such suppliers. As with the previous example, this must operate as a flow through account; in this scenario the money must be promptly paid out on behalf of the strata corporation, or returned to the appropriate strata corporation's separate trust account.

With respect to these pooled trust accounts, a brokerage must prepare and retain a separate trust ledger for each strata corporation whose money is held in the account, showing all amounts received and disbursed and unexpended balances in relation to each strata corporation [section 8-3(a)(iii)].

The brokerage must also prepare monthly trust liability and asset reconciliations for each of these pooled trust accounts. These reconciliations must list every strata corporation for which the brokerage holds trust money, and the amount being held for each. They must also reconcile the money held in the account to the unexpended balances in the trust ledgers. These monthly reconciliations must be prepared no later than 5 weeks after the

monthly accounting cut-off date for the account [section 8-3(b)(ii) and (iii)].

If a service agreement with a strata corporation is terminated, a brokerage must continue to prepare the above-noted financial records that relate to the services that were provided to the strata corporation. For example, if a service agreement is terminated effective June 30th, the brokerage must continue to prepare these records until the period ending June 30th has been fully accounted for and reconciled.

General Records [Part 8 Division 2]

A brokerage must retain copies of:

- any written disclosures required by the rules; i.e. disclosures of interest in trade [section 5-9], disclosures of remuneration not paid directly by the strata corporation [section 5-11], disclosures of benefits received as a result of expenditures made by or on behalf of a strata corporation [section 5-12], and disclosures of providing strata management services by a licensee who is an owner in the strata corporation [section 9-3],
- written service agreements and any other records that establish the brokerage's scope of authority respecting their services, and
- the annual financial reports submitted to the Real Estate Council under section 7-7.

Strata Management Records [section 8-7.1]

Separate books, accounts, and records must be maintained with respect to each strata corporation client. The following records, whether original or copies, must be retained with respect to each strata corporation:

- any accounting statements prepared by or on behalf of the brokerage and provided to the strata corporation,
- invoices for expenditures incurred on behalf of the strata corporation, and

- monthly bank statements provided to the strata corporation.

If a service agreement is terminated, the strata corporation may request that copies or originals of these brokerage records be provided to them or their new service provider. The brokerage is obliged to provide the former client with the financial records retained under section 8-2 (see the second paragraph on page 6 under the heading Financial Records), and invoices for expenditures made on behalf of the former client if they have not already been provided to the former client. If these are requested, the brokerage must provide them by the later of 2 weeks following the request, or 4 weeks following the date of termination. Brokerages are required to retain copies of these records as outlined in the next section.

Brokerages will also have obligations under SPA to return or deliver documents to the former client.

General Recordkeeping Requirements [Part 8 Division 3]

All financial records must be kept up to date [section 8-9].

Records may be retained as electronic records so long as they can be readily transferred to printed form [section 8-9.1].

Records must be retained for at least 7 years after their creation. While they do not have to be stored at the head office of the brokerage, they must be available at the head office for inspection by the Real Estate Council, if requested. These records may be originals, or copies of the originals [section 8-10].

If you have questions about any of this information, please email info@recbc.ca or telephone 604-683-9664, or toll free 1-877-683-9664.

Disciplinary Decisions

Since the February 2008 *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 sections 35(1)(a), 35(1)(d), 6(2)(c), and 25 of the *Real Estate Services Act* and sections 3-1, 3-3(1)(a) and (b), 7-5(2) and 7-5(3) of the Council Rules/Professional misconduct, incompetence, brokerage must have managing broker, brokerage records, managing broker responsibilities, duties to clients, and shortages in trust accounts

ISSUE: Kim Wayne Lem, currently unlicensed, who while managing broker, Dedicated Property Management Ltd., Delta, committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* in that he:

- (a) failed to fulfil his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(c) of the *Real Estate Services Act* and sections 3-1, 3-3(1)(a) and (b) of the Council Rules;
- (b) contravened section 25 of the *Real Estate Services Act* in that he failed to maintain proper books, records and accounts of the brokerage in accordance with the *Real Estate Services Act* and Council Rules;
- (c) failed to immediately eliminate a negative balance in the trust account, contrary to section 7-5(2) of the Council Rules; and
- (d) failed to immediately notify the Council of the negative trust balance, contrary to section 7-5(3) of the Council Rules.

RESULT: Kim Wayne Lem's managing broker's licence was cancelled 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 Kim Wayne Lem, and a Consent Order was issued. Further, Kim Wayne Lem will be immediately eligible to apply for licensing as a representative or associate broker but cannot apply to be a managing broker for a period of two years after being licensed in any capacity and, as conditions of licensing, he must successfully complete the disciplinary education assignment applicable to Chapter 2 (the *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course and/or Strata Management Licensing Course and he will be under the direct supervision of a managing broker for a period of one year following licensing, during which time the managing broker will report to the Council anything of an adverse nature with respect to his activities. In addition, he must pay enforcement expenses to the Council in the amount of \$2,000.00.

COMPLAINT: Contravention of sections 35(1)(a), 35(1)(d), 30, 27(1) and (2) of the *Real Estate Services Act*, Part 7 and 8 of the Council Rules, sections 7-7(4), 8-2(c), 8-3, 7-5, 4-6, 5-1, and 3-1 of the Council Rules/Professional misconduct, incompetence, withdrawals from trust account, payment into trust account, brokerage accounts and financial requirements, brokerage records, advertising, contractual matters, and managing broker responsibilities

ISSUE: Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty, Nanaimo, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it contravened various provisions of the *Real Estate Services Act* and the Council Rules in that it:

- (a) failed to have a managing broker actively engaged in the management and supervision of the conduct of a licensee in that it failed to monitor his contracts to ensure that deposits

were received by the brokerage in accordance with the contract, promptly deposited into the brokerage trust account and, where deposits were not received in accordance with the contract, that the transactions were properly documented and the parties duly notified;

(b) failed to maintain proper books, accounts and other records, in accordance with Part 7 and 8 of the Council Rules, including;

(i) failing to include the bank commission trust account in the list of bank accounts accompanying the Accountant's Report, in accordance with section 7-7(4) of the Council Rules;

(ii) failing to prepare general account reconciliations, in accordance with section 8-2(c) of the Council Rules;

(iii) failing to keep separate trust ledgers and to prepare timely monthly trust liability and asset reconciliations for the commission trust account, in accordance with section 8-3 of the Council Rules; and

(iv) failing to make proper withdrawals from a commission trust account, including ensuring there were no shortages in trust accounts creating overdrafts, in accordance with section 30 of the *Real Estate Services Act* and section 7-5 of the Council Rules;

(c) failed to ensure the brokerage immediately notified all parties to an agreement when a deposit has not been received into the trust of the brokerage, in accordance with the terms of the agreement;

(d) failed to ensure that advertising by the brokerage's licensees was compliant with the provisions of section 4-6 of the Council Rules;

(e) failed to ensure that all brokerage rental property management agreements complied with the specific content requirements, in contravention of section 5-1(1)(4) and 5-1(5) of the Council Rules;

(f) failed to ensure that when the brokerage or a representative of the brokerage received or held monies that were not made payable

to the brokerage, the parties entered into a separate written agreement clearly stating that subsections 27(1) and (2) of the *Real Estate Services Act* did not apply; and

(g) failed to ensure a brokerage representative, while acting as a limited dual agent, put into place a contract that clearly set out the rights and responsibilities of the parties, including the name of the seller or alternatively the manner in which the seller would purport to cause title to be transferred on closing, full particulars of the vendor take back mortgage and full documentation including extensions and their terms.

ISSUE: Allan Joseph Lupton, managing broker, Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty, Nanaimo, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that, contrary to his duties as managing broker, as set out in section 3-1 of the Council Rules, he:

(a) failed to be actively engaged in the management and supervision of the conduct of a licensee as the representative for the selling agent pursuant to a contract dated July 24, 2005 involving property with IS as buyer and GH as seller and pursuant to a contract dated August 19, 2005 involving property with JW as buyer and MA as seller;

(b) failed to monitor a representative's contracts as noted above to ensure that deposits were received by the brokerage in accordance with the contractual terms, deposits were promptly deposited into the brokerage trust account and, where deposits were not received in accordance with the contract, that the transactions were properly documented and the parties duly notified;

(c) failed to ensure that the brokerage maintained proper books, accounts and other records, in accordance with Part 7 and 8 of the Council Rules, including:

(i) as set out in section 7-7(4) of the Council Rules, failing to include a bank commission

trust account in the list of bank accounts accompanying the Accountant's Report;

(ii) as set out in section 8-2(c) of the Council Rules, failed to prepare general account reconciliations;

(iii) as set out in section 8-3 of the Council Rules, failed to keep separate trust ledgers and to prepare timely monthly trust liability and asset reconciliations for the commission trust account; and

(iv) failed to ensure withdrawals from the brokerage trust account were made in accordance with section 30 of the *Real Estate Services Act* and section 7-5 of the Council Rules;

(d) failed to ensure the brokerage immediately notified all parties to an agreement when a deposit had not been received into the trust of the brokerage, in accordance with the terms of the agreement;

(e) failed to ensure that advertising by the brokerage's licensees was compliant with the provisions of section 4-6 of the Council Rules;

(f) failed to ensure that all brokerage rental property management agreements complied with the specific content requirements, in contravention of section 5-1(1)(4) and 5-1(5) of the Council Rules;

(g) failed to ensure that when the brokerage or a representative of the brokerage received or held monies that were not made payable to the brokerage, the parties entered into a separate written agreement clearly stating that subsections 27(1) and (2) of the *Real Estate Services Act* did not apply; and

(h) failed to ensure a brokerage representative, while acting as a limited dual agent, put into place a contract that clearly set out the rights and responsibilities of the parties, including the name of the seller or alternatively the manner in which the seller would purport to cause title to be transferred on closing, full particulars of the vendor take back mortgage and full documentation including extensions and their terms.

RESULT: Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty 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 Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty, and a Consent Order was issued. Further, Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty was ordered to pay audit costs to the Council in the amount of \$1,387.50 and pay a discipline penalty to the Council in the amount of \$2,000.00. In addition, Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty and Allan Joseph Lupton are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Allan Joseph Lupton's managing broker's licence was suspended for two (2) years commencing February 27, 2008 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 Allan Joseph Lupton, and a Consent Order was issued. Further, Allan Joseph Lupton and Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00. Mr. Lupton is immediately eligible to be licensed as an associate broker or representative.

COMPLAINT: Contravention of sections 35(1)(a) and 35(1)(d), 7(3), and 27(1) of the *Real Estate Services Act*, sections 3-2(1), 3-4 and 5-10 of the Council Rules/Professional misconduct, incompetence, relationships between brokerages and other licensees, payment into trust account, associate broker and representative responsibilities, duty to act honestly and with reasonable care and skill, disclosure of representation

ISSUE: Brent Kyler Short, representative, Concept 2000 Real Estate (1989) Incorporated (Sur) dba Re/Max 2000 Realty (Sur), Surrey, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened one or more than one of section 7(3)(a) of the Act (providing services other than on behalf of brokerage); section 7(3)(b) of the Act (accepting remuneration other than from brokerage); section 27(1)(a) of the Act (payment to brokerage of money received on behalf of principal); section 27(1)(b) of the Act (payment to brokerage on account of remuneration); section 35(1)(d) of the Act (incompetence); section 3-2(1) of the Council Rules (records); section 3-4 of the Council Rules (reasonable care and skill); and section 5-10 of the Council Rules (disclosure of representation), in that in the proposed purchase of the property by the buyers from the seller, he:

- (a) provided real estate services on behalf of the seller, a real estate developer, at the same time as he was licensed as a representative of the brokerage;
- (b) accepted remuneration in relation to real estate services from the seller at the same time as he was licensed as a representative of the brokerage;
- (c) failed to pay or deliver to the brokerage money received from, for or on behalf of the seller and the buyers in relation to real estate services;
- (d) failed to pay or deliver to the brokerage money received from the seller on account of remuneration for real estate services;
- (e) failed to fully advise the buyers of the risks to the buyers of paying the deposit directly to the seller;
- (f) failed to advise the buyers to seek independent legal advice with respect to the payment of the deposit directly to the seller;
- (g) failed to make clear to the buyers the nature and effect of the subject removal form sent by him to the buyers by facsimile;

(h) failed to provide his managing broker originals or copies of the applicable records set out in section 8-4 and section 8-5 of the Council Rules and

(i) failed to disclose to the buyers the nature of the representation he would provide to them with respect to the proposed purchase of the property.

RESULT: Brent Kyler Short was suspended for forty-five (45) days from February 27, 2008 to April 11, 2008 (inclusive) 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 Brent Kyler Short, and a Consent Order was issued. Further, as a condition of continued licensing, he must successfully complete the disciplinary education assignment applicable to Chapter 2 (the *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35 and 35(1)(d) of the *Real Estate Services Act*/ Professional misconduct, incompetence

ISSUE: Mandeep Singh Grewal, representative, Apex International Services Ltd. dba Century 21 Apex International, Delta, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he contravened section 35(1)(d) of the *Real Estate Services Act* in that he, as a limited dual agent for the sellers:

- (a) failed to ensure that the Contract of Purchase and Sale dated December 17, 2004 contained the date of the sellers' acceptance;
- (b) failed to ascertain the true date of acceptance of the December 17, 2004 contract when calculating the date upon which the subject conditions would expire;

(c) failed to take reasonable steps to contact the buyer to determine the buyer's intentions to proceed with respect to the December 17, 2004 contract;

(d) failed to ensure that the seller's acceptance of the Contract of Purchase and Sale dated April 18, 2005 with respect to the same property was subject to the seller ceasing to be obligated under the December 17, 2004 contract;

(e) failed to ensure that the seller's acceptance of the Contract of Purchase and Sale dated April 25, 2005 was subject to the seller ceasing to be obligated under both the December 17, 2004 contract and the April 18, 2005 contract; and

(f) failed to ensure that the trust release/collapse form was signed by the seller and the buyer in respect of the April 18, 2005 contract prior to the seller entering into an unconditional agreement with the purchase in respect of the April 25, 2005 contract.

RESULT: Mandeep Singh Grewal was suspended for forty-five (45) days from March 12, 2008 to April 25, 2008 (inclusive) 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 Mandeep Singh Grewal, and a Consent Order was issued. Further, as a condition of continued licensing, Mandeep Singh Grewal must successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 10 (The Law of Contract) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course "What Brokerages and Realtors Need to Know About Agency", "Professionalism It Pays! Be Safe or Be Sued!" and "Legal Update". In addition, Mandeep Singh Grewal must pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) and 35(1)(d) of the *Real Estate Services Act*, and sections 5-8 and 5-9 of the Council Rules/Professional misconduct, incompetence, disclosure to seller, disclosure of interest in trade when licensee acquiring property

ISSUE: Amarit Dass, representative, Homelife Glenayre Realty Company Ltd., Abbotsford, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) contravened sections 5-8 and 5-9 of the Council Rules (disclosure of interest in trade) with respect to the purchase of the said property; and

(b) contravened section 35(1)(d) of the *Real Estate Services Act* in that as a limited dual agent, he attempted to assign his interest in the subject property to a third party for more money without disclosing same to the seller.

RESULT: Amarit Dass was suspended for fourteen (14) days from April 2, 2008 to April 15, 2008 (inclusive) 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 Amarit Dass, and a Consent Order was issued. Further, Amarit Dass must successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act* and sections 3-4 and 3-1 of the Council Rules/Professional misconduct, duty to act honestly and with reasonable care and skill, managing broker responsibilities

ISSUE: Kathleen Ann Blake, representative, Colyvan Pacific Real Estate Management Services Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules (duty to act with reasonable care and skill) in that she:

(a) failed to provide the owner of the said property with documents upon request in a timely manner;

(b) failed to act on the said owner's request in a timely manner to proceed with a rental increase presentation to the Residential Tenancy Branch with respect to the upper unit; and

(c) failed to ensure that the said rental property management agreement signed by the said owner had the correct address for the owner with respect to any notices.

ISSUE: Kenneth George Blake, managing broker, Colyvan Pacific Real Estate Management Services Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-1 of the Council Rules in that, as managing broker, he failed to ensure the business of the brokerage was carried out competently with respect to the management of the said property and failed to ensure that there was an adequate level of supervision of a licensee in the management of the said property.

RESULT: Kathleen Ann Blake was suspended for seven (7) days from February 27, 2008 to March 4, 2008 (inclusive) 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 Kathleen Ann Blake, and a Consent Order was issued. Further, she must successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*)

and Chapter 3 (Professional Ethics) of the Rental Property Management Licensing Course. In addition, Kathleen Ann Blake and Kenneth George Blake are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Kenneth George Blake 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 Kenneth George Blake, and a Consent Order was issued. Further, he must successfully complete Chapter 2 (The *Real Estate Services Act*) and Chapter 3 (Professional Ethics) of the Rental Property Management Licensing Course. In addition, Kenneth George Blake and Kathleen Ann Blake are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act* and section 3-4 of the Council Rules/Professional misconduct, duty to act with reasonable care and skill

ISSUE: Nicholas James Aubie, representative, 611032 B.C. Ltd. dba Re/Max Front Street Realty, Penticton, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) failed to use reasonable efforts to ascertain whether the sellers had obtained a building permit or permits and/or inspections and approvals as required from the local government for the renovation work that the sellers had done to the property; and

(b) failed to advise the buyers and/or the representative for the buyers that there was no building permit or permits and no inspections and approvals as required from the local

government for the renovation work that the sellers had done, thereby failing to act with reasonable care and skill contrary to section 3-4 of the Council Rules.

RESULT: Nicholas James Aubie was suspended for seven (7) days from April 9, 2008 to April 15, 2008 (inclusive) 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 Nicholas James Aubie, and a Consent Order was issued. Further, Nicholas James Aubie must successfully complete the discipline education assignment applicable to Chapter 18 (Local Government Law) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE Course "Professionalism It Pays! Be Safe or Be Sued!" or "Legal Update", and 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* and sections 3-3(1)(h) and 3-4 of the Council Rules/ Professional misconduct, duties to clients, duty to act with reasonable care and skill

ISSUE: Scott Andrew Rowlands, representative, Locations West Realty Inc. dba Royal LePage Locations West Realty, Penticton, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he:

(a) failed to use reasonable efforts to ascertain whether the sellers had obtained a building permit or permits and/or inspections and approvals as required from the local government for the renovation work that the sellers had done to the property; and
(b) failed to advise the buyers that there was no building permit or permits and no inspections and approvals as required from the local government for the renovation work

that the sellers had done, thereby failing to use reasonable efforts to discover relevant facts respecting any real estate that his clients were considering acquiring contrary to section 3-3(1)(h) of the Council Rules, and failing to act with reasonable care and skill contrary to section 3-4 of the Council Rules.

RESULT: Scott Andrew Rowlands was suspended for seven (7) days from April 9, 2008 to April 15, 2008 (inclusive) 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 Scott Andrew Rowlands, and a Consent Order was issued. Further, Scott Andrew Rowlands must successfully complete the discipline education assignment applicable to Chapter 18 (Local Government Law) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE Course "Professionalism It Pays! Be Safe or Be Sued!" or "Legal Update", and pay enforcement expenses to the Council in the amount of \$500.00.

COMPLAINT: Contravention of sections 35, 6(1) and 7(5) of the *Real Estate Services Act*, and section 3-1 of the Council Rules/ Professional misconduct, provision of real estate services by unlicensed individuals, managing broker responsibilities

ISSUE: York-West Asset Management Group (B.C.) Inc., Vancouver committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that it contravened section 7(5) of the *Real Estate Services Act* in that it permitted unlicensed persons to provide strata management services.

ISSUE: Moses Michael Chao, managing broker, York-West Asset Management Group

(B.C.) Inc., Vancouver, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that he contravened section 6(1) of the *Real Estate Services Act* and section 3-1 of the Council Rules in that he permitted unlicensed persons to provide strata management services.

RESULT: York-West Asset Management Group (B.C.) Ltd. 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 York-West Asset Management Group (B.C.) Inc., and a Consent Order was issued. Further, York-West Asset Management Group (B.C.) Ltd. was ordered to pay a discipline penalty to the Council in the amount of \$2,500.00 and pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Moses Michael Chao's managing broker's licence was suspended for seven (7) days from April 2, 2008 to April 8, 2008 (inclusive) but he is immediately eligible to be licensed as an associate broker or representative during his suspension period 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 Moses Michael Chao, and a Consent Order was issued. Further, Moses Michael Chao was ordered to pay a discipline penalty to the Council in the amount of \$2,500.00 and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1) (a) and 35(1)(d) of the *Real Estate Services Act* and section 3-4 of the Council Rules/ Professional misconduct, duty to act honestly and with reasonable care and skill.

ISSUE: Lisa Dawn Hilts, representative, RLK

Realty Ltd. (Wsbk) dba Royal LePage Kelowna (Wstbk), Westbank, committed professional misconduct within the meaning of sections 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules in that she, while acting as the seller's representative in connection with the listing and proposed sale of a property, which was in foreclosure, and the management of which had been placed in the hands of a Receiver by order of the Supreme Court of British Columbia:

- (a) failed to explain to the Receiver or his agent in advance and in clear and unequivocal terms the scope of certain work she intended to undertake at the property for the purpose of removing certain unauthorized structures on the property in order to set aside a Stop Work Order which had been issued by the Central Okanagan Regional District;
- (b) failed to obtain the clear and unequivocal consent of the Receiver or his agent to proceed with the work described in sub-paragraph (a) above; and
- (c) failed to seek timely assistance from her managing broker with respect to this matter given its inherent complexities.

RESULT: Lisa Dawn Hilts was suspended for seven (7) days from March 5, 2008 to March 11, 2008 (inclusive) 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 Lisa Dawn Hilts, and a Consent Order was issued. Further, Lisa Dawn Hilts must successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course and enroll in and attend the first available CPE course "What Brokerages and Realtors Need to Know About Agency and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a), 35(1)(d), 35(1)(g), 9(1), 25, 27(1) and (2), and 6(2) of the *Real Estate Services Act*, Part 8 of the Council Rules, sections 7-4, 3-1, 3-3 and 3-4 of the Council Rules /Professional misconduct, incompetence, making an application for a licence, brokerage records, payment into trust, brokerage must have managing broker, brokerage records, other trust account requirements, managing broker responsibilities, duties to clients, duty to act honestly and with reasonable care and skill

ISSUE: Baywood Property Management Ltd., Victoria, committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(g) of the *Real Estate Services Act* in that it:

- (a) represented in a letter to the Council in support of the brokerage application to be licensed for strata services that the brokerage did not hold any monies for special levies or contingency reserves for strata corporations when this representation was untrue as the brokerage did hold special levy and contingency reserve funds for its strata corporation client and, as such, it made a false statement in a document that was required or authorized to be produced or submitted under this Act, contrary to section 9(1) and section 35(1)(g) of the *Real Estate Services Act*;
- (b) did not maintain the trust accounts and records of the brokerage in accordance with the Act, Regulations, Council Rules or Bylaws, in accordance with section 25 of the *Real Estate Services Act* and Part 8 of the Council Rules, including:
 - (i) designating all banking documentation relating to trust accounts as such, in accordance with its duties under section 7-4(3) of the Council Rules; and
 - (ii) paying all money received on account of remuneration into the brokerage trust account, in accordance with section 27(1) and (2) of the *Real Estate Services Act*; and

(c) failed to promptly follow through on the instructions of a strata client of the brokerage to transfer Guaranteed Investment Certificate funds (GIC) to the bank, in accordance with its duties under sections 3-1(1), 3-1(3), 3-3(1)(b) and 3-4 of the Council Rules.

ISSUE: William Kenneth Carter, managing broker, Baywood Property Management Ltd., Victoria, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he:

- (a) represented in a letter to the Council in support of the brokerage application to be licensed for strata services that the brokerage did not hold any monies for special levies or contingency reserves for strata corporations when he ought to have known that this was untrue as the brokerage did hold special levy and contingency reserve funds for its strata corporation client and, as such, he made a false statement in a document that was required or authorized to be produced or submitted under this Act, contrary to section 6(2), section 9(1) and section 35(1)(g) of the *Real Estate Services Act*;
- (b) failed to ensure that the trust accounts and records of the brokerage were maintained in accordance with the Act, Regulations, Council Rules or Bylaws, in accordance with his duties under section 6(2) and section 25 of the *Real Estate Services Act* and section 3-1(1) (b) and (3) and Part 8 of the Council Rules, including:
 - (i) ensuring all banking documentation relating to trust accounts were designated as such, in accordance with his duties under section 7-4(3) of the Council Rules; and
 - (ii) ensuring all money received on account of remuneration was paid into the brokerage trust account, in accordance with section 27(1) and (2) of the *Real Estate Services Act*; and
- (c) failed to ensure the brokerage promptly followed through on the instructions of a strata client of the brokerage to transfer Guaranteed Investment Certificate funds (GIC) to the bank,

in accordance with the duties under section 6(2) and section 25 of the *Real Estate Services Act* and sections 3-1(1), 3-1(3), 3-3(1)(b) and 3-4 of the Council Rules.

RESULT: Baywood Property Management Ltd. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Baywood Property Management Ltd., and a Consent Order was issued. In addition, Baywood Property Management Ltd. and William Kenneth Carter are jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 and to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: William Kenneth Carter 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 William Kenneth Carter, and a Consent Order was issued. In addition, William Kenneth Carter and Baywood Property Management Ltd. are jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a), 7(5)(a), and 6(2) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules/Professional misconduct, relationships between brokerages and other licensees, brokerage must have a managing broker, managing broker responsibilities

ISSUE: Cornerstone Properties Ltd., Victoria, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it permitted an unlicensed

representative to provide real estate services on behalf of the brokerage from January 1, 2006 to on or about June 12, 2007, contrary to section 7(5)(a) of the *Real Estate Services Act*.

ISSUE: Jason Russel Middleton, managing broker, Cornerstone Properties Ltd., Victoria, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to ensure that a former representative with Cornerstone Properties Ltd. did not engage in activities which required licensing, contrary to section 6(2) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules.

RESULT: Cornerstone Properties Ltd. 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 Cornerstone Properties Ltd., and a Consent Order was issued. Further, Cornerstone Properties Ltd. and Jason Russel Middleton are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Jason Russel Middleton 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 Jason Russel Middleton, and a Consent Order was issued. Further, Jason Russel Middleton and Cornerstone Properties Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a), 35(1)(d) and 7(5)(a) of the *Real Estate Services Act*, section 3-1 of the Council Rules/Professional misconduct, relationships

between brokerages and other licensees, managing broker responsibilities.

ISSUE: Border Country Realty (1980) Ltd. dba Coldwell Banker Border Country Realty, Grand Forks, brokerage, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it permitted an unlicensed representative to provide real estate services on behalf of the brokerage from on or about August 1, 2006 to on or about November 26, 2007, contrary to section 7(5)(a) of the *Real Estate Services Act*.

ISSUE: David Guy Marshall, managing broker, Border Country Realty (1980) Ltd. dba Coldwell Banker Border Country Realty, Grand Forks, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he:

(a) permitted unlicensed representatives to provide rental property management services on behalf of the said brokerage without being licensed, contrary to section 7(5)(a) of the *Real Estate Services Act* and section 3-1 of the Council Rules; and

(b) failed to ensure that an individual was properly employed with the brokerage and only allowed to provide those rental property management services as permitted by section 2.14 of the Regulations.

RESULT: Border Country Realty (1980) Ltd. dba Coldwell Banker Border Country Realty 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 Border Country Realty (1980) Ltd. dba Coldwell Banker Border Country Realty, and a Consent Order was issued. Further, Border Country Realty (1980) Ltd. dba Coldwell Banker Border Country Realty must pay a discipline penalty to the Council in the amount of \$1,000.00. In

addition, Border Country Realty (1980) Ltd. dba Coldwell Banker Border Country Realty and David Guy Marshall are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: David Guy Marshall 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 David Guy Marshall, and a Consent Order was issued. Further, David Guy Marshall must successfully complete Chapter 2 (Mandatory Requirements under the *Real Estate Services Act*) of the Broker's Licensing Course. In addition, David Guy Marshall and Border Country Realty (1980) Ltd. dba Coldwell Banker Border Country Realty are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(d) of the *Real Estate Services Act* and section 3-4 of the Council Rules/Professional misconduct, incompetence, duty to act honestly and with reasonable care and skill

ISSUE: Dale Peter Yaffe, representative, Prism Realty Ltd. dba Royal LePage Prism Realty, Quesnel, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules, in that he, as a limited dual agent in the sale of a property from the sellers to the buyers:

(a) failed to document in writing the manner and the extent to which expenses related to the correction of deficiencies at the property would be handled; and
(b) failed to advise the buyers in writing to seek independent legal advice when he first learned that the property may have been used as a marijuana grow operation.

RESULT: Dale Peter Yaffe 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 Dale Peter Yaffe, and a Consent Order was issued. Further, Dale Peter Yaffe was ordered to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act* and section 6-1 of the Council Rules/Professional misconduct, payment to unlicensed persons prohibited

ISSUE: Apex International Services Ltd. dba Century 21 Apex International, Delta, brokerage, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it paid, agreed to or allowed to be paid remuneration to a person in relation to real estate services when the person is required to be licensed in relation to the services but is not licensed, contrary to section 6-1 of the Council Rules.

RESULT: Apex International Services Ltd. dba Century 21 Apex International 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 Apex International Services Ltd. dba Century 21 Apex International, and a Consent Order was issued. Further, Apex International Services Ltd. dba Century Apex International was ordered to pay to the Council a discipline penalty in the amount of \$2,000.00 and enforcement expenses in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1) (a) and 6(2)(b) of the *Real Estate Services Act*,

sections 3-1(1)(a) and (b), 3-1(3) and 7-7(1)(b) of the Council Rules /Professional misconduct, managing broker responsibilities, failure to file Accountant's Report

ISSUE: Golden Eagle Realty Ltd. dba Re/Max Sea to Sky Real Estate Whistler, Whistler, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Michael John Wintemute, managing broker, Golden Eagle Realty Ltd. dba Re/Max Sea to Sky Real Estate Whistler, Whistler, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant's Report was filed with the Council by the prescribed date.

RESULT: Golden Eagle Realty Ltd. dba Re/Max Sea to Sky Real Estate Whistler was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Golden Eagle Realty Ltd. dba Re/Max Sea to Sky Real Estate Whistler, and a Consent Order was issued. In addition, Golden Eagle Realty Ltd. dba Re/Max Sea to Sky Real Estate Whistler and Michael John Wintemute are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Michael John Wintemute 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 Michael John Wintemute, and a Consent Order was issued. In addition, Michael John Wintemute and Golden Eagle Realty Ltd. dba Re/Max Sea to Sky Real Estate Whistler are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1) (a) and 6(2)(b) of the *Real Estate Services Act*, sections 3-1(1)(a) and (b), 3-1(3) and 7-7(1)(b) of the Council Rules /Professional misconduct, managing broker responsibilities, failure to file Accountant's Report

ISSUE: G.C. Management (1991) Ltd., Abbotsford, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: June Edna Muxlow, managing broker, G.C. Management (1991) Ltd., Abbotsford, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate*

Services Act by not fulfilling her responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening sections 3-1(1)(a) and (b) and section 3-1(3) of the Council Rules in that she failed to ensure that the said Accountant's Report was filed with the Council by the prescribed date.

RESULT: G.C. Management (1991) Ltd. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and G.C. Management (1991) Ltd., and a Consent Order was issued. In addition, G.C. Management (1991) Ltd. and June Edna Muxlow are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: June Edna Muxlow 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 June Edna Muxlow, and a Consent Order was issued. In addition, June Edna Muxlow and G.C. Management (1991) Ltd. are jointly and severally liable to

pay enforcement expenses to the Council in the amount of \$750.00.

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

ISSUE: Nexacor Realty Management Inc., Vancouver, currently unlicensed, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

RESULT: Nexacor Realty Management Inc. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Nexacor Realty Management Inc., and a Consent Order was issued. In addition, Nexacor Realty Management Inc. must pay enforcement expenses to the Council in the amount of \$750.00.

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

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