

Report from Council

"Stigmatized" Properties

When selecting a property to buy, most often the physical appearance of a property and the location will be obvious. If a buyer has concerns about the less obvious structural and mechanical aspects of a property, they can have a property inspection done. However, consumers may have other areas of concern that would cause them to avoid a property. Certain events may cause a property to be described as a "stigmatized property", or a "psychologically impacted property". These terms are sometimes applied to a property that has had some circumstance occur in or near it, but which does not specifically affect the appearance or function of the property itself.

Examples of these in a residential context might include:

1. a sexual offender is reported to live in the neighbourhood
2. a former resident was suspected of being an organized crime gang member
3. a death occurred in the property
4. the property was robbed or vandalized
5. there are reports that the property is haunted

The significance of these or any other occurrence can be affected by a person's beliefs, values and perceptions, ethnic background, religion, gender, age and other individual concerns. Therefore, to determine with any certainty all the possible occurrences that might cause a property to be considered "stigmatized" is daunting, if not impossible. Further, in the event of a lawsuit resulting from

an undisclosed stigma, the buyer would have to prove what harmful effect the stigma had because these issues are often personal ones that do not affect the appearance, function or use of the property—the usual tests for determining a material latent defect.

In British Columbia, it is important for consumers to know that sellers and licensees representing sellers are not required by provincial legislation to disclose this type of information about a property unless asked. Therefore, British Columbia buyers, who are concerned about certain types of events in regard to a property, are responsible to make inquiries of licensees who represent them, and of the property owner. When asked, a buyer's agent must make the appropriate inquiries, and sellers and their representatives must respond truthfully.

Stigmas are Difficult to Define

The following example may help to show the difficulty in defining a stigma. Think about your response to this question:

Would it matter to you if a death had occurred in a property you were interested in buying? Some would say "Yes, absolutely!" However, consider the following situations:

1. Would you find a death caused by a violent act or suicide unacceptable?
2. What if the family brought an elderly grandmother home to die in the comfort of her family and familiar surroundings?
3. Suppose it were a crib death of a newborn?



4. What if you learned the owner's pet had recently died in the home? Would you feel differently if the death was natural or if poison was suspected?
5. Would you be concerned if a person had been killed by a car on the street in front of the house?
6. Would you be as concerned by a death that occurred 50 years ago as you would with a recent one?

These examples illustrate how difficult it is to clearly define what a "stigmatized" property might be. What one person might find unacceptable may be of little or no importance to another.

It is impossible to anticipate all the areas of sensitivity individuals may have. While the feelings and concerns of individual buyers are understandable, it is also easy to see that

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Office Closures

The Council office will be closed on
Monday, May 18, 2009 for Victoria Day.

This Issue:



- Guidelines for Team Names
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- REP Sheet

- Fees to Increase July 1
- Parking Stalls and Storage Lockers
- Home Inspectors Must be Licensed in BC
- Disciplinary Decisions

A Note from the Chair



Judi A. Whyte, RI
Chair

This Report contains yet another reminder to licensees and managing brokers about the REP program and making false applications with respect to licence renewals. I would remind managing brokers that, in signing an application, a managing broker certifies that they are satisfied from personal knowledge or from inquires that the

licence renewal applicant is of good reputation and is suitable for licensing, having completed their REP course requirements. Please note that by signing the licence renewal application, the managing broker approves the application.

You will note that the lead article in this Report outlines the important area of “stigmatized” properties and the proper procedure that licensees and their clients should follow when dealing with this kind of issue. As this area is subjective and may impact each client differently, it is important that licensees listen carefully to the needs and concerns of their clients whether they are selling or buying property.

You will see from the article on page 8 that, effective March 31, 2009, home in-

spectors are now required to be licensed in the province. BC is the first province to enact this kind of licensing requirement and it is anticipated that consumer protection will increase as a result. Licensees should familiarize themselves with the information in this article in order to ensure that they are in compliance with the new legislation.

Over the past few months, I have attended annual general meetings of several boards around the province. I continue to be impressed by the quality work that the boards, their members and staff contribute to the industry. I enjoy the opportunity of meeting with licensees and renewing real estate acquaintances made over the years.

Finally, licensees may be interested in knowing that the number of licensees leaving the business has slowed somewhat compared with previous months. This may be a result of increased activity in the market during the month of February 2009. The current number of licensees in the province is 19,300, down from the all-time high of 20,390 in August 2008.

On behalf of the Council,

Judi Whyte, RI
Chair

> *Continued from page 1*

sellers might be unfairly hurt by a requirement to disclose such things. For instance, if the law required that all deaths in properties must be disclosed, regardless of how and when they occurred, the act of bringing a grandmother home to die may cause the owners to lose property value.

When asked, the seller and their licensed representative must disclose the information that is known to them. However, the current owners may have no knowledge of events that occurred before their ownership or the property may have been rented out and the seller may not know of events that occurred during the rental period.

Sellers and licensees acting on behalf of sellers who are concerned that some event may cause the sellers' property to be considered stigmatized will face a dilemma—whether to disclose and risk harming the

property value, or not disclose and risk the buyer learning the information later and commencing an action for damages? Prudent licensees will discuss all the variables with sellers and should suggest obtaining independent legal advice as to the sellers' rights and obligations.

Keep in mind this issue differs from the responsibility to disclose known material latent defects. Sellers and their representatives must disclose all known material latent defects about a property to potential buyers. A definition of the term ‘material latent defect’, and the responsibility of a licensee acting on behalf of sellers to disclose a material latent defect, is contained in section 5-13 of the Council Rules available on the Council's website at www.recbc.ca. ■

This article has been adapted from information published by the Real Estate Council of Alberta. It is printed with that organization's permission.

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STATISTICS

April 2009

Representatives: 16,211
Associate Brokers: 1,762
Managing Brokers: 1,365
Total Licensees: 19,338
Brokerages (including branch offices
and sole proprietors): 1,411

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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Guidelines for Team Names

Section 4-6(5) of the Council Rules provides that, "If the Council approves a team name for a group of related licensees, real estate advertising may also identify the group by this team name."

Approvals of team names are made on a case-by-case basis. In order to have a team name approved, licensees are simply required to submit their request to the Council, in writing, setting out:

- the team name they would like to have approved; and
- the names of the members of the team, both licensed and unlicensed.

Licensees may submit more than one team name for consideration, indicating their order of preference of names for approval. Only one name will be approved.

Over the years, the Council has developed and adopted the following general guidelines to be applied in the approval of team names:

- To ensure that the public is not misled or confused, a team name must not give the impression of being an incorporated company or brokerage, i.e. Joe Blogg and

Company, Joe Blogg Realty, Blogg Real Estate Services.

- Acceptable team names, for example, may include the words, "Team", "Group", "Associates", "Network".
- No team name will be approved that may be confused with an existing brokerage.
- No team name will be approved that is identical to an existing, approved team name.
- A team must consist of more than one person and include at least one licensee.
- Any unlicensed team member must be identified as being unlicensed in any team advertising in which they appear.
- All licensed team members must be licensed with the same brokerage.

Typically, once a request for a team name approval is received by the Council, the licensee who submitted the request will be advised within a week to ten days, in writing, whether or not the name has been approved. The managing broker will be copied with the Council's letter.

It is the obligation of the licensed team members to advise the Council, in writing, when any team member leaves the team or a new member joins. This requirement also



applies when a team member transfers or surrenders their licence.

It is important that all teams remain mindful of the requirement that, in all advertising, the name of their brokerage must be prominently displayed and easily readable in relation to the rest of the advertisement. For example, including the name of the brokerage at the bottom of a website, in small print, does not satisfy the requirements of 4-6(2) of the Council Rules.

Additionally, it is important for all licensed team members to remember that, as individual licensees, they maintain their obligation to comply with all of the provisions of the *Real Estate Services Act*, the Regulations, Bylaws and Council Rules. The fact that one licensee member of the team may be promoted as the "lead" licensee of the team in no way diminishes the other team members' legislated responsibilities and obligations to comply. ■

Real Estate Services Regulation Changes

The provincial government recently amended a number of sections of the Real Estate Services Regulation. The changes took effect March 5, 2009 and are shown below with a brief description of each change.

1. Section 4.7 is amended

a) *by repealing paragraphs (a), (i) and (j) and substituting the following:*

- (a.6) Rule 4-1 [display and keeping of licences];
- (i) Rule 8-2 [trust account and general account records];
- (j) Rule 8-3 [pooled trust account records]; and

(b) *by adding the following paragraphs:*

- (a) Rule 2-17 [mailing address for delivery];
- (a.1) Rule 2-19 [licensee must reply promptly to council];

- (a.2) Rule 2-20 [brokerage must give immediate notice respecting solvency];
- (a.3) Rule 2-21 [licensee must give notice of discipline, bankruptcy or criminal proceedings];
- (a.4) Rule 2-22 [brokerage must give notice of business changes];
- (a.5) Rule 3-1(3) [managing broker responsibilities], except as it relates to the maintenance of trust accounts;
- (j.1) Rule 8-3.1 [preparation of records after termination];
- (m.1) Rule 8-7.1 [strata management records];
- (n.1) Rule 8-9.1 [electronic records];

The effect of this change expands the Council's ability to administer administrative penalties.

2. Section 5.2 is amended by striking

out "\$350,000" and substituting "\$500,000".

The effect of this amendment changes the amount available to cover compensable losses in respect of claims related to a single brokerage from \$350,000 to \$500,000.

3. Section 10.1 is amended in paragraph (b) of the definition of "affiliated person" by striking out "as defined in the Family Relations Act."

The definition of "affiliated person" with respect to Personal Real Estate Corporations has been amended in that the definition of "child" has been expanded.

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

AIT and TILMA Agreements Take Effect April 1, 2009

The Agreement on Internal Trade (AIT) and the BC/Alberta Trade Investment and Labour Mobility Agreement (TILMA) are based on the federal and provincial governments' intention to promote an open, efficient and stable domestic market for long-term job creation, economic growth and stability. This is to be done through the elimination of barriers to the free movement of persons, goods, services and investments within Canada, promotion of equal economic opportunity for Canadians, and the enhancement of competitiveness of business.

The AIT was signed by all provinces, territories and the federal government in 1994. Its objective is to reduce and eliminate, to the extent possible, barriers to the movement of persons, goods, services and investments within Canada. TILMA was signed by BC and Alberta in 2006 and focuses on removing barriers to trade, investment and labour mobility between the two provinces, and required compliance by April 1, 2009. The agreement creates the second-largest economic region in Canada.

The AIT focuses on 11 specific sectors, one of which is labour mobility (Chapter 7). Chapter 7 was amended by the first ministers in December 2008 and included an expedited implementation date of April 1, 2009. The purpose of Chapter 7 is to eliminate or reduce labour mobility barriers. These barriers were created as a result of residency requirements for workers, often as a condition of access to employment opportunities or as a condition of certification, and certification requirements, such as material additional training, experience or assessment requirements. The AIT aims to ensure that any worker certified to perform a profession or occupation by a regulator in any Canadian province or territory will be granted a certification in respect of the same profession or occupation in any other province, without the need for additional material training, work experience, or examinations.

Since 2002, the Council, along with a number of other Canadian real estate regulators, had provided, through a mutual recognition agreement, for labour mobil-

ity by reducing the licensing requirements for licensed individuals transferring from those participating provinces. However, in the months leading up to the implementation of the AIT and TILMA, it became apparent that the Council's policies with respect to the reduced licensing requirements of the Representative's Inter-Provincial Exam, the Broker's Inter-Provincial Exam, and the Accelerated Residential/Commercial Trading Services Applied Practice Course, would likely be seen as barriers to compliance with either the AIT or TILMA.

After careful review of the government's requirements, the Council, at its March 10, 2009 meeting, decided to further eliminate barriers to allow for compliance with the AIT and TILMA. Accordingly, the

The Council has decided to further eliminate barriers to allow for compliance with the AIT and TILMA.

Council will recognize real estate licence applicants from all Canadian jurisdictions that have an occupational standard*, who are currently licensed, qualified to be licensed or who have been unlicensed for less than one (1) year and who are of good reputation and suitable to be licensed at the level and for the category for which they are applying, without additional requirements, subject to applicants signing a declaration that acknowledges their obligations to:

- know, understand and practice in strict accordance with the Real Estate Services Act of British Columbia, including the Regulations, Rules and Bylaws;
- familiarize themselves with the laws of British Columbia as they apply to the business of a real estate licensee;
- only engage in services or provide services as pursuant to their licence level and category; and
- abide by any restrictions or conditions that may be imposed upon the issuance of a real estate licence in British Columbia.

This means that licensees from other

Canadian jurisdictions that have provincial or territorial certification may make application for licensing without first having to be tested on their knowledge of real estate practice in British Columbia. It is important to note that registration with the Council is still required. This includes completing and submitting the appropriate licensing forms, paying the applicable licensing fees, errors and omissions insurance fees, compensation fund fees, having a criminal record check performed, being sponsored by a managing broker in British Columbia and providing certification attesting to the fact that applicants will familiarize themselves with the laws of British Columbia as they apply to the business of a real estate licensee.

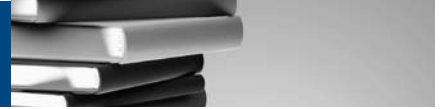
It should be noted that the Council is in the process of making the required amendments to its application forms and By-laws to accommodate these changes and will be ready to accept applications from

applicants from other Canadian jurisdictions under the AIT/TILMA effective May 1, 2009. The application form and other requirements may be found on the Council's website after May 1st, 2009. In addition, the Sauder School of Business (Real Estate Division) has been requested to develop a reading list on real estate practice in British Columbia which will be posted on the Sauder School of Business (Real Estate Division) and the Council websites.

British Columbia licensees wishing to obtain licensing in another Canadian jurisdiction will be subject to the licensing and registration requirements of that jurisdiction. A list of Canadian real estate regulators can be found on the Association of Real Estate Licence Law Officials' website at www.arello.org/resources/regulators.cfm

For further information about the AIT and/or TILMA initiatives, please visit www.ait-aci.ca/index_en.htm or www.tilma.ca. Individuals with questions about licensing may contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca. ■

*Occupational standard means the skills, knowledge and abilities required for an occupation as established by a regulatory authority of a Party and against which the qualifications of an individual in that occupation are assessed.



False or Misleading Statements on a Licence Renewal Application

The Application for Licence Renewal form has been amended and, since January 1, 2009, licence renewal applicants have been required to certify that they have completed the Council's Relicensing Education Program (REP) course requirements. The Council has noticed as a result of random spot-checks, however, that some licence renewal applicants have signed the licence renewal form certifying that they have completed the REP requirements when, in fact, they had not, and that some managing brokers have signed the renewal form without ascertaining whether the licence renewal applicant has completed the required REP courses.

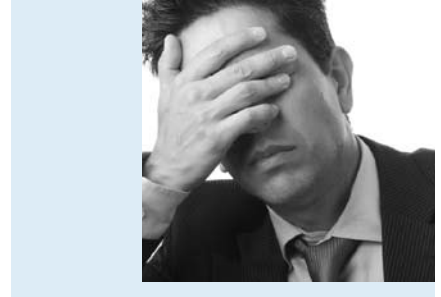
On March 6, 2009, the Council's Complaints Committee considered three files where it was alleged that licensees made or allowed to be made, a false or misleading statement on a licence renewal application form, in relation to the completion of REP course requirements. After considering the evidence presented in each file, the Committee directed that, in the first instance, a letter of warning be issued to both the representative and the managing broker; in the second instance, that the matter be dismissed against the managing broker and a hearing be ordered against the representative; and in the third instance, that a hearing

be ordered against both the representative and the managing broker.

The Council reminds licensees that it is the joint responsibility of both the licence renewal applicant and the managing broker to ensure that the renewal form is true and complete, including the section with respect to the completion of REP courses. If a renewal form is submitted to the Council office, and it is later determined that the REP course requirements have not been completed, the renewal application would be considered to be a false application. This would have serious ramifications for the licence renewal applicant, including whether or not they are suitable for continued licensing or whether they should be suspended for a period of time.

Managing brokers are reminded that, in signing an application, a managing broker certifies that they are satisfied from personal knowledge or from inquiries, that the licence renewal applicant is of good reputation and is suitable for licensing (including the completion of REP requirements), and thereby approves the application.

If an applicant for licence renewal has not completed the REP course requirements, the licence renewal applicant should take



immediate steps to complete them PRIOR to their licence renewal date and PRIOR to submitting the Application for Licence Renewal form. Do not submit the application to Council if the licence renewal applicant is only registered in a course; the courses must be completed before applying. If the licence renewal applicant is not eligible for renewal because they have not completed the REP course requirements, they should notify the Council, in writing, that they do not intend to renew their licence at this time and that they will cease to operate effective the date that their current licence expires.

The Council appreciates the diligence of licensees and managing brokers in ensuring that licence renewal applicants have completed the REP course requirements prior to licence renewal and completed the Application for Licence Renewal properly.

Should you require any further information with respect to REP, please visit the Council's website at www.recbc.ca or contact the Council at 604-683-9664 or toll-free 1-877-683-9664. ■

Fees to Increase July 1

Effective July 1, 2009, the fee for first-time licence applicants and relicensing applicants will increase from \$450 to \$500 and the fee for licence renewal applicants will increase from \$425 to \$475. There will be no change to licence transfer or amendment fees.

The fee increase is necessary as a result of the increased responsibilities of the Council, including:

- The licensing of strata managers in January 2006;

- The introduction of the Relicensing Education Program in January 2007; and
- An increase in compliance and disciplinary activity since 2005.

In addition, the downturn in market activity has affected the number of individuals making application for licensing courses and entering the industry, thereby significantly affecting the Council's revenue stream. Combined with the decrease in interest income on the Council's investments and the anticipated continued decline in

existing licensees, the Council decided that a small increase in the Council's assessment fee was warranted at this time.

The last time the Council increased its assessment fee was in July of 2001 when it was increased by \$50. Since that time, the Council received an indirect increase in fees as a result of the introduction of the *Real Estate Services Act* in 2005, which provided for an application fee for both first-time applicants and renewing licensees. ■

Parking Stalls and Storage Lockers

How should a licensee describe parking stalls and storage lockers when listing a strata lot for sale?

Determining the answer to this question is often more difficult than it appears. Simply because the seller has the use of parking stalls or storage lockers does not necessarily mean that they will be available for the purchaser. Unless it is clear that the parking stall/storage locker will be available to be used by the purchaser, the parking stall/storage locker should not be included on the listing.

Whether the parking stall/storage locker can be included on the listing depends on how it is designated on the strata plan.

There are two main designations of property on a strata plan: property can be designated as either a strata lot or common property. Property that is designated as common property may be further designated as limited common property (LCP).

Parking stalls/storage lockers can be designated as:

- a strata lot or part of a strata lot;
- common property;
- LCP.

It is necessary to examine the strata plan in order to determine the designation of property.

The strata plan will include a legend, which indicates whether the strata plan includes LCP and how it will be shown on the plan. Very often, the areas designated as LCP are designated with an oval that includes, within the oval, the number of the strata lot that is entitled to use the LCP.

If a developer designated parking stalls/storage lockers as LCP, they can be identified by looking at the area in question and at the legend on the front page of the strata plan. LCP designated by a developer can only be removed by a unanimous vote of the owners.

Owners within a strata corporation may also designate common property as LCP. In such cases, the strata corporation must file a sketch plan at the Land Title Office, which identifies the areas designated as LCP and which also identifies the strata

lots that have the use of the LCP. To determine if the strata corporation has designated LCP, it is necessary to obtain a copy of the Common Property Index. The Common Property Index will indicate that a designation of LCP has been filed. The sketch plan can then be ordered from the Land Title Office so that the specific LCP designations can be identified.

When considering the designation of property on a strata plan, it must be remembered that common property, including LCP, is owned by all owners within the strata corporation as tenants in common. The only property that an individual owns exclusively is their strata lot.

Strata Lot or Part of a Strata Lot

Some strata plans designate parking stalls/storage lockers as part of a strata lot or, in some very rare cases, as a separate strata lot. Although such designations are rare, they can easily be identified by looking at the strata plan.

If the parking stall/storage locker is part of a strata lot, the new purchaser will automatically have the use of the area. The listing for the strata lot can identify the parking stall/storage locker by reference to its stall or locker number. It is not necessary to list the parking stall/storage locker separately.

In some cases, parking spaces may be designated as a separate strata lot. If the seller is selling both the residential/commercial strata lot and the parking strata lot, both must be listed for sale and separately transferred to the buyer.

LCP (Limited Common Property)

LCP is common property that is designated for the exclusive use of the owner of a particular strata lot. If property is designated as LCP, although it continues to be owned by all owners within the strata corporation as tenants in common, it may be used exclusively by the owner whose strata lot is identified on the strata plan as being entitled to use the LCP.



If a parking stall/storage locker is designated as LCP, whether by the developer, or by the owners at a later time, the parking stall/storage locker is automatically available for use by the owner of the strata lot to which the parking stall/storage locker is designated.

When listing a strata lot to which the exclusive use of a LCP parking stall/storage locker is attached, the listing should indicate that the parking stall/storage locker is LCP. The numbers of the parking stall(s)/storage locker(s) can be shown on the listing as being the parking space(s)/storage locker(s) number that the buyer will be entitled to use.

CP (Common Property)

If the parking stall/storage locker is designated on the strata plan as common property, it is within the control of the Strata Council, except in cases where there is a developer's lease, which is discussed below.

Common property is owned by all owners as tenants in common. The Strata Council has the authority under the Strata Property Act to permit an owner or a tenant to use common property. If the parking stalls/storage lockers are common property, owners or tenants are entitled to use a particular area as a result of the Strata Council's grant of exclusive use to that owner or tenant.

In some cases, the permission to use the parking stall/storage locker may have been given many years ago. Some owners may not even realize that they are using their

parking stall/storage locker as a result of the permission granted by the Strata Council.

When listing a strata lot where the parking stall/storage locker is common property, it is not possible for the seller to promise a buyer that the buyer will be entitled to use any of the common property. The seller does not own the common property and cannot sell it, or make promises about its use. Only the Strata Council has the power to allocate the use of common property to an owner.

If the parking stall/storage locker is common property, the listing licensee has two choices with respect to what should appear on the listing. The listing can indicate that the parking stall/storage locker is common property and that the buyer must make their own arrangements as to which parking stall/storage locker the buyer will be entitled to use. Alternatively, the seller can contact the Strata Council and ask the Strata Council to confirm, in writing, to the seller, what parking stall/storage locker will be allocated to a new owner. Once the seller has this information in writing, the listing information should indicate that the parking stall/storage locker is common property and that the Strata Council has confirmed, in writing, the parking stall/storage locker that a buyer will be entitled to use. The listing information should include the caveat that a particular common property parking stall or storage locker is available for use in these circumstances “subject to the provisions of the *Strata Property Act*.”

When listing a strata lot, if the parking stall/storage locker is common property, the listing **SHOULD NOT** include the number of the parking stall/storage locker, unless the Strata Council has confirmed in writing what parking stall/storage locker a buyer will be entitled to use. In such cases, the seller is unable to guarantee that the Strata Council will allocate the same common property to the buyer.

Developer's Leases

In a number of developments, the developer has entered into a lease of the common property parking stalls/storage lockers to itself or to a company related to the developer. After leasing the common property, the developer then enters into agreements with purchasers in which the developer subleases one or more parking stalls/storage lockers to each purchaser. Often, the developer will assign one parking stall to

a purchaser. The developer may charge for all subleases or it may charge for only additional parking stalls /storage lockers.

Although the lease and sub-lease agreements vary, generally, the sub-lease provides that the owner must assign the sub-lease to a new purchaser at the time the strata lot is sold.

Leases of common property parking and storage areas are seldom registered on title. This can make discovering whether there is such an arrangement a challenge for the listing licensee. If the seller does not recall whether there was a sub-lease agreement, the licensee should ask the seller to look at the Contract of Purchase and Sale when the seller bought the strata lot for reference to a sub-lease. If the previous contract is not available or does not reference the sub-lease, the licensee should ask the seller to check

Unless it is clear that the parking stall/storage locker will be available to be used by the purchaser, it should not be included on the listing.

with the Strata Council to determine how parking stalls/storage lockers are assigned. If there continues to be confusion, the original Disclosure Statement filed by the developer at the time the strata lots were originally offered for sale may be examined. If the developer created a lease/sub-lease arrangement, it is likely referred to in the Disclosure Statement. Where there is still confusion, the seller may need to obtain legal advice to determine whether there is a valid lease/sub-lease arrangement in place.

If the seller has a sub-lease of a parking stall/storage locker from the developer, the seller can include reference to the parking stall/storage locker when listing the strata lot for sale. The listing should indicate that the area in question is common property and that the seller has a sub-lease to a specific parking stall/storage locker. The number of the parking stall/storage locker can be shown on the listing.

I Bought my Parking Stall/Storage Locker

In a number of cases, sellers of strata lots insist that the listing should include the parking stall/storage locker because the seller bought it from the developer.

If the area in question is designated as common property, unless there is a lease/sub-lease arrangement as referred to above, or, unless the Strata Council has confirmed what parking stall/storage locker the buyer will be entitled to use, the common property parking stall/storage locker **SHOULD NOT** be included on the listing even though the seller may insist they paid for the parking stall/storage locker.

Unfortunately, in some developments, developers charged purchasers for an additional parking stall or a storage locker. However, the developer did not designate the area as LCP nor did the developer enter into a lease/sub-lease arrangement. The area remained common property. In these circumstances, the buyers believed they were “buying” the parking stall/storage locker. However, it is clear that property designated as common property cannot be “bought”. When allocating a parking stall/storage locker, the developer may be acting as the Strata Council. However, the maximum time that a Strata Council can permit an owner to use common property is one year. Although a purchaser may have paid the developer for the use of an additional parking stall/storage locker, at best, they have been given the use of the common property for only one year.

In such circumstances, it may be very difficult for a listing licensee to convince a seller that the common property parking stall/storage locker cannot be included as part of the listing. If the seller is unwilling to be convinced, the listing licensee may be able to resolve the problem by having the seller obtain written confirmation from the Strata Council that the same parking stall/storage locker will be allocated to the new purchaser. If the Strata Council is willing to assign the same parking stall/storage locker that the seller is using, the listing information can reference the number of the parking stall/storage locker. The information that is conveyed to the prospective buyer should include the caveat that a particular common property parking stall or storage locker is available for use in these circumstances “subject to the provisions of the *Strata Property Act*.” However, if the Strata Council is not willing to confirm that the same parking stall/storage locker will be assigned, the listing should not reference the number of the parking stall/storage locker no matter how much the seller insists they “bought” the space in question.

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Home Inspectors Must Be Licensed in BC

As of March 31, 2009, home inspectors in British Columbia are required to be licensed by the Business Practices and Consumer Protection Authority (BPCPA).

On January 30, 2009, the government announced that BC would become the first province to require home inspectors to obtain a licence to better protect buyers and to ensure that home inspectors are qualified to make professional assessments.

The new regulation requires home inspectors to be a member of a recognized association. To further strengthen professional credibility and enhance consumer protection, the BPCPA also requires all home inspectors to carry errors & omission insurance, as well as general liability insurance in order to obtain a licence.

Real estate licensees engaged in trading services should:

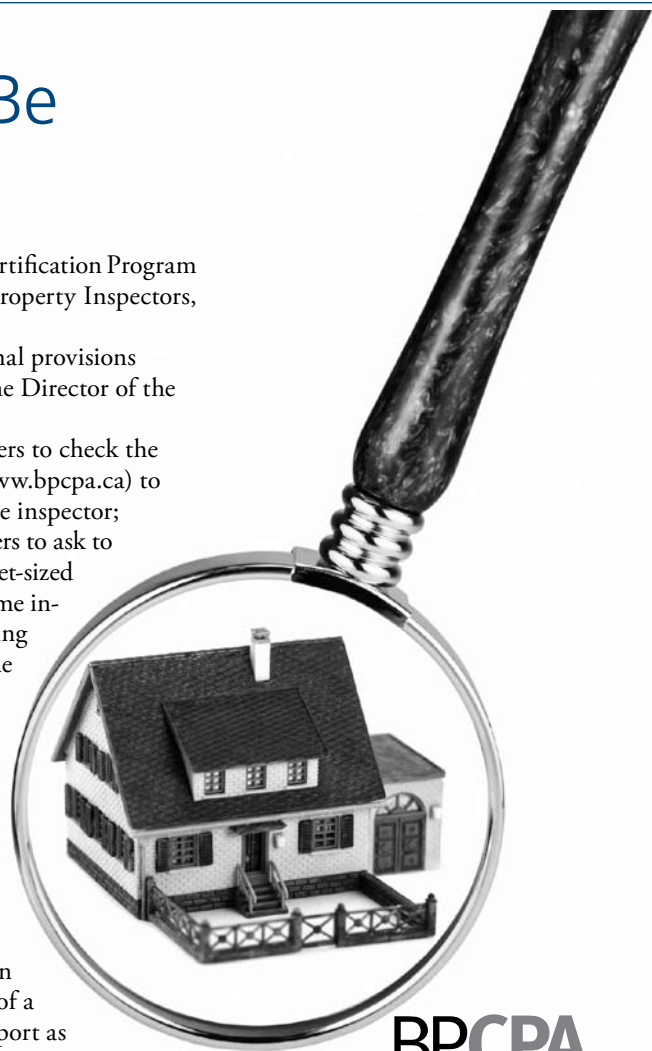
- Be aware that home inspectors are required to be licensed by the BPCPA as of March 31, 2009;
- Be aware that home inspectors are now required to meet training standards of one of the following associations:
 1. Canadian Association of Home & Property Inspectors (BC);
 2. The Applied Science Technologists and Technicians of British Columbia (may also be referred to as the BC Institute of Property Inspectors);

3. The National Certification Program for Home and Property Inspectors, or
4. Satisfy transitional provisions established by the Director of the BPCPA.

- Encourage consumers to check the BPCPA website (www.bpcpa.ca) to find a licensed home inspector;
- Encourage consumers to ask to see the BPCPA wallet-sized licence issued to home inspectors before signing a contract for a home inspection; and,
- Contact the BPCPA with any inquiries or complaints at 1 888 564-9963.

Real estate licensees should NOT:

- Request information about the contents of a home inspection report as it is against the law for home inspectors to disclose the contents except:
 1. With permission from the consumer;
 2. As required by law; or
 3. If, in the opinion of the home inspector, the property poses a serious health or safety risk.
- Make a referral to a home inspector if there is a conflict of interest in relation to a home inspection that results in a material gain for the home inspector.



BPCPA
BUSINESS PRACTICES &
CONSUMER PROTECTION AUTHORITY
OF BRITISH COLUMBIA

Penalties for violation of the regulations can range from having conditions imposed on the home inspector to penalties up to \$5,000.

To find out more information about the new regulation or to ensure a home inspector is licensed by the BPCPA, visit www.bpcpa.ca. ■

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Parking Stall/Storage Locker Checklist

Identify the designation of the area on the strata plan

- If part of a strata lot—parking stall/storage locker numbers can be referenced on the listing
- If a separate strata lot—parking stall/storage locker transferred separately
- If LCP—parking stall/storage locker numbers can be referenced on the listing

- If CP (Common Property)
 - If there is a lease/sub-lease with the developer—parking stall/storage locker should be assigned to new purchaser; parking stall/storage locker numbers can be referenced on the listing
 - If there is no lease/sublease, will the Strata Council confirm which parking stall/storage locker the buyer

will use?

- > If yes—parking stall/storage locker numbers can be referenced on the listing with the annotation in the listing information “subject to the provisions of the Strata Property Act.”
- > If no—parking stall/storage locker numbers CANNOT be referenced on the listing. ■

Disciplinary Decisions

Since the February 2009 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) [professional misconduct – breach of Act or Rules], 35(1)(d) [professional misconduct - incompetence], section 7(3)(a) [must not provide real estate services outside of brokerage], 7(3)(b) [must not accept remuneration outside of brokerage], and 27(1)(b) [payment into trust] of the *Real Estate Services Act*, and section 5-4 [acceptance of offer] of the Council Rules

ISSUE: Wendy Sukminder Lalli, currently unlicensed, while licensed as a representative, Little Oak Realty dba Re/Max Little Oak Realty, Abbotsford, committed professional misconduct within the meaning of sections 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* (“Act”), with respect to the marketing and sale of subdivision lots in a planned subdivision (the “Lands”) by a developer, in or about August 2005 to May 2006, in that she: (a) provided real estate services other than on behalf of the brokerage, in relation to which she was licensed, in contravention of section 7(3)(a) of the Act; (b) accepted remuneration from a person other than the brokerage in relation to which she was licensed, in that on or about October 11, 2005, she accepted remuneration in the amount of \$50,000 in relation to real estate services directly from the developer, in contravention of section 7(3)(b) of the Act; (c) failed to pay or deliver to the brokerage in relation to which she was licensed, remuneration in the amount of \$50,000 received on or about October 11, 2005, by way of payment from the developer, in contravention of section 27(1)(b) of the Act; (d) allowed, permitted and/or assisted the developer to breach the Real Estate Development Marketing Act (“REDMA”), and in particular sections 10,

14, 15, 16 and 18 thereof, in that with respect to the sale of the subdivision lots in the planned subdivision, Lalli provided real estate trading services to the developer and to purchasers of the lots, in circumstances where: (i) the developer received deposits from purchasers in relation to the development without placing the deposits with a brokerage, lawyer, notary public or prescribed person holding as a trustee in a trust account in a savings institution in British Columbia, in contravention of section 18 of REDMA; (ii) deposits were released from the trust account of the brokerage, contrary to the provisions of section 18 of REDMA; (iii) the Contracts of Purchase and Sale provided for deposits that exceeded 10% of the purchase price, in contravention of section 10 of REDMA and Policy Statement 6 of the Superintendent of Real Estate; (iv) purchasers were provided with copies of the Disclosure Statement, which misrepresented the deposit arrangements, in contravention of sections 14 and 16 of REDMA. In particular, the terms of the Contracts of Purchase and Sale entered into were inconsistent with the terms of the Disclosure Statement, in relation to payment of the deposits directly to the developer, and/or in relation to the amounts of the deposit, which exceeded 10%; (v) purchasers were not provided with the Amendment to the Disclosure Statement, in contravention of sections 15 and 16 of REDMA; (vi) the developer entered into purchase agreements with the purchasers of the lots without having obtained a written statement from the purchasers acknowledging that the purchasers had an opportunity to read the Disclosure Statement, in contravention of section 15 of REDMA; (vii) the developer received deposits without any written Contract of Purchase and Sale being entered into with the purchasers, contrary to the developer’s Disclosure Statement; (e) failed to recommend legal advice to the purchasers in each case where the deposit was to be paid to the developer, in contravention of REDMA, and/or where the deposit

exceeded 10% of the purchase price, in contravention of REDMA; (f) failed to deliver Contracts of Purchase and Sale to her brokerage upon acceptance, pursuant to section 5-4 of the Council Rules; (g) failed to provide copies of the Contracts of Purchase and Sale to the licensee representing the purchases until approximately eight months after acceptance, pursuant to section 5-4 of the Council Rules; and (h) demonstrated incompetence in relation to the marketing and sale of the lots in the subdivision.

RESULT: Wendy Sukminder Lalli’s licence was cancelled with no right to reapply for licensing for two years or until January 21, 2011 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 Wendy Sukminder Lalli, and a Consent Order was issued. Further, Wendy Sukminder Lalli was ordered to successfully complete the disciplinary education assignment applicable to Chapter 2 (The *Real Estate Services Act*), Chapter 5 (The Professional Liability of Real Estate Licensees) and Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, to enrol in and attend the first available CPE course “Contracts: Keep on Top of Changes” or “Risk Management for Realtors” as provided by the British Columbia Real Estate Association, and to pay enforcement expenses to the Council in the amount of \$750.00. Upon Ms. Lalli becoming re-licensed and as a condition of continued licensing, Ms. Lalli’s managing broker(s) and their successors must (i) be provided with a copy of the Consent Order; (ii) for a one-year period following her re-licensing, provide quarterly reports to the Council commencing the third month after she becomes relicensed indicating that the managing broker has reviewed her contracts and other work in general; and (iii) promptly report to the Council anything of an adverse nature with

Disciplinary Decisions, *cont'd*

respect to her activities for that one-year period.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct—breach of Act or Rules] and 30(3) [withdrawals from trust] of the *Real Estate Services Act*, and section 3-1 [managing broker responsibilities] of the Council Rules

ISSUE: Little Oak Realty Ltd. dba Re/Max Little Oak Realty, Abbotsford, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it allowed the release of deposits contrary to the provisions of section 18 of REDMA and section 30(3) of the *Real Estate Services Act*.

ISSUE: Donald Mark Goertz, managing broker, Little Oak Realty Ltd. dba Re/Max Little Oak Realty, Abbotsford, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Council Rules and Bylaws; and (b) failed to ensure that there was adequate supervision in relation to the licensee in relation to the sale of the subdivision lots in the subdivision, in contravention of section 3-1 of the Council Rules.

ISSUE: Ronald Wayne Paul Todson, managing broker, Little Oak Realty Ltd. (Miss) dba Re/Max Little Oak Realty (Miss), Mission, while licensed as managing broker with Little Oak Realty Ltd. dba Re/Max Little Oak Realty, Abbotsford, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Council Rules and Bylaws; and (b) failed to ensure that there was ad-

equate supervision in relation to the licensee in relation to the sale of the subdivision lots in the subdivision, in contravention of section 3-1 of the Council Rules.

ISSUE: Robert James Johnston, managing broker, Landmark Realty Corp., Abbotsford, while licensed as managing broker with Little Oak Realty Ltd. dba Re/max Little Oak Realty, Abbotsford, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Council Rules and Bylaws; and (b) failed to ensure that there was adequate supervision in relation to the licensee in relation to the sale of the subdivision lots in the subdivision, in contravention of section 3-1 of the Council Rules.

RESULT: Little Oak Realty Ltd. dba Re/Max Little Oak 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 Re/Max Little Oak Realty, and a Consent Order was issued. Further, Re/Max Little Oak Realty was ordered to pay a discipline penalty to the Council in the amount of \$10,000.00 and pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Donald Mark Goertz 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 Donald Mark Goertz, and a Consent Order was issued. Further, Donald Mark Goertz, Ronald Wayne Todson, and Robert James Johnston were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Ronald Wayne Paul Todson 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 Ronald Wayne Paul Todson, and a Consent Order was issued. Further, Ronald Wayne Paul Todson, Donald Mark Goertz, and Robert James Johnston were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Robert James Johnston 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 Ronald James Johnston, and a Consent Order was issued. Further, Robert James Johnston, Donald Mark Goertz, and Ronald Wayne Todson were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct – breach of Act or Rules] of the *Real Estate Services Act*, and sections 3-2(1) [keep managing broker informed] and 5-4 [acceptance of offer] of the Council Rules

ISSUE: Satwinder Singh Brar, representative, Lighthouse Realty Ltd., Abbotsford, committed professional misconduct pursuant to section 35(1)(a) of the *Real Estate Services Act* in that, while acting for the purchasers of 19 subdivided lots in the subdivision of the Lands by the Developer, in or about August 2005 he: (a) failed to protect the interests of the purchasers, as: (i) the Contracts of Purchase and Sale provided for payment of the deposits to the Developer, contrary to section 18 of REDMA; (ii) the Contracts of Purchase and Sale were inconsistent with the terms of the Develop-

er's Disclosure Statement; in relation to payment of the deposit directly to the Developer, and in relation to the amounts of the deposit, which exceeded 10%; (iii) the deposit amounts exceeded 10% of the purchase price, contrary to section 10 of REDMA and Policy Statement No. 6 of the Superintendent of Real Estate; and (b) failed to promptly deliver copies of 19 accepted Contracts of Purchase and Sale to the purchasers and to the managing broker of his brokerage, for a period of approximately eight months, contrary to section 3-2(1) and section 5-4 of the Council Rules.

RESULT: Satwinder Singh Brar was suspended for forty-five (45) days from March 18, 2009 to May 1, 2009 (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 Satwinder Singh Brar, and a Consent Order was issued. Further, Satwinder Singh Brar was ordered to enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2009" course and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], 35(1)(c) [wrongful taking or deceptive dealing], 35(2) [conduct unbecoming] of the *Real Estate Services Act*, and sections 3-2(3) [respond to managing broker] and 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Brian William Schiebel, representative, West Coast Realty Ltd. (Nan) dba Sutton Group–West Coast Realty (Nan), Nanaimo, while licensed with Central Island Realty Ltd. (Nan) dba Coldwell Banker Vancouver Island Realty (Nan), Nanaimo, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he:

(a) contravened sections 35(1)(a) and 35(1)(c) of the *Real Estate Services Act* and section 3-4 of the Council Rules when he, while attempting to purchase a residential property for his own use, removed all subject conditions, including a subject to financing condition, from the Contract of Purchase and Sale without having secured his financing, occupied the property under an Addendum to the Contract of Purchase and Sale before the completion date for the purchase of the property, failed to complete his purchase of the property on the completion date, and then, despite representations to the contrary, failed to surrender possession of the property to the registered owner until or until just before the registered owner obtained a writ of possession for the property from the Supreme Court of British Columbia; (b) contravened sections 35(1)(a) and 35(1)(c) of the *Real Estate Services Act* and section 3-4 of the Council Rules when he, while attempting to purchase a residential property for his own use, provided a deposit cheque to his brokerage, which was returned due to insufficient funds; (c) contravened section 35(1)(a) of the *Real Estate Services Act* and section 3-2(3) of the Council Rules in that he failed to respond promptly to a direction from his co-managing broker, that Mr. Schiebel should contact him right away about the status of Mr. Schiebel's attempt to purchase a residential property for his own use; and (d) contravened sections 35(1)(a) and 35(1)(c) of the *Real Estate Services Act* and engaged in conduct unbecoming by contravening section 35(2) and in particular sections 35(2)(b) and 35(2)(c) of the *Real Estate Services Act* in that he, while attempting to purchase a residential property for his own use, occupied the property without any right to do so on an unknown date, and ordered the locks to the house on the property to be changed without the registered owner's knowledge or consent and despite the fact that the registered owner had previously changed the locks to the house to exclude Mr. Schiebel.

RESULT: Brian William Schiebel was suspended for ninety (90) days from

March 4, 2009 to June 1, 2009 (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 Brian William Schiebel, and a Consent Order was issued. Further, Brian William Schiebel was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*), Chapter 9 (Professional Ethics) and Chapter 10 (The Law of Contract) of the Real Estate Trading Services Licensing Course, and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct – breach of Act or Rules] of the *Real Estate Services Act*, and sections 3-3(1)(c) [act only within scope of authority], 3-3(1)(f) [disclose to client all known information] and 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Linda Anne Innes, currently unlicensed, while licensed as a representative with Sheridan Property Management Ltd., Kamloops, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* with respect to entering into a Natural Gas Fixed Price Program Agreement and Agency Appointment (the "Agreement") executed by Ms. Innes for Sheridan Property Management Ltd., as strata property manager for the Strata Corporation on or about February 15, 2006, in that she: (a) failed to read and understand the Agreement before executing it, contrary to section 3-4 of the Council Rules; (b) failed to inform the client that the Agreement had been entered into, contrary to section 3-3(1)(f) of the Council Rules; (c) failed to act only within the scope of the authority given by the client, contrary to section 3-3(1)(c) of the Council Rules; and (d) failed to act with reasonable care and skill, contrary to section 3-4 of the Council Rules.

RESULT: Linda Anne Innes was suspended for thirty (30) days effective upon licence reissuance 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 Linda Anne Innes, and a Consent Order was issued. Further, as a condition of relicensing, Linda Anne Innes was ordered to successfully complete the disciplinary education assignments applicable to Chapter 6 (Professional Ethics) and Chapter 10 (Law of Contract) of the Strata Management Licensing Course, and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct—breach of Act or Rules] of the *Real Estate Services Act*, and sections 3-3(1)(c) [act only within scope of authority], 3-3(1)(f) [disclose to client all known information] and 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Ronald Grant Johnson, currently unlicensed, while licensed as a representative with Sheridan Property Management Ltd., Kamloops, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* with respect to entering into a Natural Gas Fixed Price Program Agreement and Agency Appointment (the “Agreement”) executed by a licensee for Sheridan Property Management Ltd., as strata property manager for the Strata Corporation on or about February 15, 2006, in that he: (a) failed to read and understand the Agreement before authorizing the licensee to execute it, contrary to section 3-4 of the Council Rules; (b) failed to inform the client that the Agreement had been entered into, contrary to section 3-3(1)(f) of the Council Rules; (c) failed to act only within the scope of the authority given by the client, contrary to section 3-3(1)(c) of the Council Rules; and (d) failed to act with reasonable care and skill, contrary to

section 3-4 of the Council Rules.

RESULT: Ronald Grant Johnson was suspended for thirty (30) days effective upon licence reissuance 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 Ronald Grant Johnson, and a Consent Order was issued. Further, as a condition of relicensing, Ronald Grant Johnson was ordered to successfully complete the disciplinary education assignments applicable to Chapter 6 (Professional Ethics) and Chapter 10 (Law of Contract) of the Strata Management Licensing Course, and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct—breach of Act or Rules] of the *Real Estate Services Act*, and section 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Andrew Louis Raeber, representative, Century 21 Executives Realty Ltd., Vernon, while licensed with Uptown Realty Ltd. dba Macdonald Realty Vernon, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened section 3-4 of the Council Rules by not undertaking a proper and thorough inquiry regarding the seller’s Property Disclosure Statement in which the seller had answered “yes” to the question as to whether he had “...received any other notice or claim affecting the property from any person or public body”.

RESULT: Andrew Louis Raeber was suspended for fourteen (14) days from March 11, 2009 to March 24, 2009 (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 Andrew Louis Raeber, and a Consent

Order was issued. Further, Andrew Louis Raeber was ordered to successfully complete the disciplinary education assignment applicable to Chapter 18 (Local Government Law) of the Real Estate Trading Services Licensing Course, to enrol in and attend the first available “Real Estate E&O Legal Update 2009” course and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*, and sections 3-3(1)(d) [advise client to seek independent advice], 3-3(1)(h) [use reasonable efforts to discover relevant facts], and 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Stuart Michael Spanier, representative, Vernon Realty Inc. dba Re/Max—Vernon, while licensed with Brian Rogers Real Estate Ltd. dba Re/Max Brian Rogers, Vernon, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened sections 3-3(1)(h) and 3-4 of the Council Rules in that he failed to use reasonable efforts to discover relevant facts about the property by not undertaking a thorough and proper inquiry or advising his clients to undertake a thorough and proper inquiry regarding the seller’s Property Disclosure Statement on which the seller had answered “Yes” to the question as to whether he had: “Received any other notice or claim affecting the property from any person or public body”, and (b) contravened section 3-3(1)(d) of the Council Rules in that he failed to advise his clients to seek independent professional advice with respect to the seller’s Property Disclosure Statement, prior to the removal of the subject with respect to the Property Disclosure Statement.

RESULT: Stuart Michael Spanier was suspended for fourteen (14) days from

Disciplinary Decisions, *cont'd*

February 25, 2009 to March 10, 2009 (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 Stuart Michael Spanier, and a Consent Order was issued. Further, Stuart Michael Spanier was ordered to successfully complete the disciplinary education assignment applicable to Chapter 18 (Local Government Law) of the Real Estate Trading Services Licensing Course, to enrol in and attend the first available “Real Estate E&O Insurance Legal Update 2009” course and to pay enforcement expenses to the Council in the amount of \$750.00.

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

ISSUE: Tracey Lynn Chow, representative, Shewan Real Estate Ltd. dba Royal LePage - Wolstencroft, Langley, 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 in that she failed to act with reasonable care and skill, as representative for the seller, in relation to a Contract of Purchase and Sale dated August 15, 2007 for a strata property located on 7th Avenue, Vancouver, by failing to ensure that the buyer was made aware of the damage to the floor, baseboards and walls, some or all of which damage was partially hidden from view.

RESULT: Tracey Lynn Chow was suspended for seven (7) days from February 25, 2009 to March 3, 2009 (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 Tracey Lynn Chow, and a Consent Order was issued. Further, Tracey Lynn Chow was ordered to enrol in

and attend the first available “Real Estate E&O Insurance Legal Update 2009” course and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1) [professional misconduct] of the *Real Estate Services Act* and section 31(1)(c) [professional misconduct] of the *Real Estate Act*

ISSUE: Nasimbanu Charania, managing broker, FTNZ Holdings Ltd. dba Nasim & Associates Realty, Lake Cowichan, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that she, as managing broker with FTNZ Holdings Ltd. dba Nasim & Associates Realty with respect to the sale by ZC and the said Nasimbanu Charania of a property by way of a Contract of Purchase and Sale to GM and BW, in which transaction Nasimbanu Charania acted as a limited dual agent: (a) failed to disclose a latent defect, namely water ingress at the property, and, in so doing, misconducted herself, contrary to section 31(1)(c) of the *Real Estate Act*; (b) acted in a conflict of interest when she acted as a limited dual agent at the same time as representing her husband and herself in the sale of the property, and, in so doing, misconducted herself, contrary to section 31(1)(c) of the *Real Estate Act*; and (c) represented to the buyers in a Property Disclosure Statement that she was not aware of any moisture and/or water problems in the walls, basement or crawl space, and that she was not aware of any damage due to water, which representations were untrue or misleading as she was aware of water ingress which she wrongly believed to have been remedied, and, in so doing, misconducted herself, contrary to section 31(1)(c) of the *Real Estate Act*.

RESULT: Nasimbanu Charania was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Accep-

tance of Findings and Waiver was entered into between the Real Estate Council and Nasimbanu Charania, and a Consent Order was issued. Further, Nasimbanu Charania was ordered to pay a discipline penalty to the Council in the amount of \$4,000.00, successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course and Chapter 3 (Business Standards) of the Broker's Licensing Course, and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1) [professional misconduct] and 35(1)(a) [breach of act or rules] of the *Real Estate Services Act*, and section 3-3(1)(b) [duties to clients] of the Council Rules

ISSUE: Michael Geoffrey Macdonald, managing broker, Nechako Real Estate Ltd. dba Century 21 In Town Realty, Vancouver, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* by contravening section 35(1)(a) of the Act and section 3-3(1)(b) of the Council Rules, in that he failed to take reasonable steps to deal with conflicts of interest when he became aware or should have been aware that a licensee of the brokerage was acting in a limited dual agency capacity in five transactions where the licensee was a principal to the transactions and had an interest in the subject properties.

RESULT: Michael Geoffrey Macdonald 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 Geoffrey Macdonald, and a Consent Order was issued. Further, Michael Geoffrey Macdonald was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00, to successfully complete the disciplinary education

Disciplinary Decisions, *cont'd*

assignment applicable to Chapter 2 (Mandatory Requirements under the *Real Estate Services Act*) of the Broker's Licensing Course, to enrol in and attend the first available CPE course "Professionalism It Pays! Be Safe or Be Sued!" or "Legal Update", and to pay enforcement expenses to the Council in the amount of \$1,000.00.

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

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

RESULT: Oceanridge Realty 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 Oceanridge Realty Ltd., and a Consent Order was issued. Further, Oceanridge

Realty Ltd. and Kenneth York Leong are jointly and severally liable to pay a discipline penalty to the Council in the amount of \$1,000.00 and to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Kenneth York Leong 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 York Leong, and a Consent Order was issued. Further, Kenneth York Leong and Oceanridge Realty Ltd. are jointly and severally liable to pay a discipline penalty to the Council in the amount of \$1,000.00 and to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act* [professional misconduct] and section 7-7(1) [failure to file Accountant's Report] of the Council Rules

ISSUE: Trevor James Renard dba Fox Strata Management, Pemberton, 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: Trevor James Renard dba Fox Strata Management was reprimanded for the contravention described above after a hearing was held with respect to the above. Further, Trevor James Renard dba Fox Strata Management was ordered to pay enforcement expenses to the Council in the amount of \$1,119.50.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct – breach of Act or Rules] and 6(2)(b) [managing broker responsibilities] of

the *Real Estate Services Act*, sections 3-1(1)(a) and (b), 3-1(3) [managing broker responsibilities] and 7-7(1)(b) [failure to file Accountant's Report] of the Council Rules

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

RESULT: Facilitech 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 Facilitech Property Management Ltd., and a Consent Order was issued. Further, Facilitech Property Management Ltd. and Lawrence Bruce McGillivray are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Lawrence Bruce McGillivray 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

Disciplinary Decisions, *cont'd*

Estate Council and Lawrence Bruce McGillivray, and a Consent Order was issued. Further, Lawrence Bruce McGillivray and Facilitate Property Management Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

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

ISSUE: Brynelsen Benzon Realty Corp., Vancouver, 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: Brynelsen Benzon Realty Corp. 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 Brynelsen Benzon Realty Corp., and a Consent Order was issued. Further, Brynelsen Benzon Realty Corp. was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 7(5)(a) [relationships between brokerages and other licensees] of the *Real Estate Services Act*

ISSUE: Deborah Marlene Petrovitch, currently unlicensed, while licensed as a representative, Sutton Group – Showplace Realty Ltd., Chilliwack, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she contravened section 7(5)(a) of the *Real Estate Services Act* in that she

permitted an unlicensed individual to provide real estate services on behalf of the brokerage, contrary to section 7(5)(a) of the *Real Estate Services Act*.

RESULT: Deborah Marlene Petrovitch 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 Deborah Marlene Petrovitch, and a Consent Order was issued. Further, Deborah Marlene Petrovitch was ordered to successfully complete the disciplinary education assignment applicable to Chapter 2 (The *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, to enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2008" course and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct—breach of Act or Rules] of the *Real Estate Services Act*, and sections 3-3(1)(i) [promptly disclose conflict to client] and 5-9 [disclosure of interest in trade] of the Council Rules

ISSUE: Parkside Realty Inc. dba Royal LePage Parkside Realty, Summerland, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it failed to take reasonable steps to avoid a conflict of interest by acting as a limited dual agent in circumstances where it could not act impartially, contrary to section 3-3(1)(i) of the Council Rules.

ISSUE: Kevin Michael Kole, representative, Parkside Realty Inc. dba Royal LePage Parkside Realty, Summerland, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to take reasonable steps to avoid a conflict of interest by acting as a limited dual agent in circum-

stances where he could not act impartially, contrary to section 3-3(1)(i) of the Council Rules; and (b) failed to provide the buyer with a Disclosure of Interest in Trade form disclosing that Mr. Eden and Mrs. Eden were associates of the seller, contrary to section 5-9 of the Council Rules.

ISSUE: Allan Verlan Eden, managing broker, Parkside Realty Inc. dba Royal LePage Parkside Realty, Summerland, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to provide or cause to be provided to the buyer a Disclosure of Interest in Trade form disclosing that he was an associate of the seller, contrary to section 5-9 of the Council Rules.

RESULT: Parkside Realty Inc. dba Royal LePage Parkside 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 Royal LePage Parkside Realty, and a Consent Order was issued. Further, Royal LePage Parkside Realty, Kevin Michael Kole and Allan Verlan Eden are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Kevin Michael Kole 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 Kevin Michael Kole, and a Consent Order was issued. Further, Kevin Michael Kole was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, and to enrol in and attend the first available CPE course "What Brokerages and Realtors Need to Know about Agency". Further, Kevin Michael Kole, Allan Verlan Eden and Royal LePage Parkside Realty are jointly and severally liable to pay

Disciplinary Decisions, *cont'd*

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

RESULT: Allan Verlan Eden 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 Allan Verlan Eden, and a Consent Order was issued. Further, Allan Verlan Eden, Kevin Michael Kole and Royal LePage Parkside Realty 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) [professional misconduct—breach of Act or Rules] of the *Real Estate*

Services Act, and section 5-1 [written service agreements] of the Council Rules

ISSUE: Mindy Katherine McPherson, managing broker, Top Producers Realty Ltd., Mission, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she (a) provided agency representation to parties to real estate transactions when agency representation was inappropriate as she was, at times (i) a buyer in her own right; (ii) an associate of a buyer, as the term associate is defined at section 5-7 of the Council Rules; or (iii) an associate of a seller; and (b) failed to ensure that buyers and her brokerage entered into or waived a written service agreement, as contemplated by section 5-1 of the Council Rules, which included all material terms and conditions, including

the date the agreement would be effective, the date when it would expire, and a general description of the services, when the said buyers were entering into list back agreements with her brokerage concurrently with Contracts of Purchase and Sale.

RESULT: Mindy Katherine McPherson 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 Mindy Katherine McPherson, and a Consent Order was issued. Further, Mindy Katherine McPherson was ordered to pay to the Council a discipline penalty in the amount of \$1,000.00 and enforcement expenses in the amount of \$750.00. ■

Feedback?

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

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