

# Report from Council

## The Harmonized Sales Tax and Real Estate

The federal Harmonized Sales Tax is scheduled to take effect in British Columbia on July 1, 2010. This is a tax that combines the provincial sales tax and the federal Goods and Services Tax (the 'GST') to create a new Harmonized Sales Tax ('HST') with a rate currently set at 12%. While the application of the HST to trades in real estate is complex, generally the rules of its application appear to be similar to those of the GST. This means that the HST will apply to real estate services provided by licensees, e.g. commissions, as well as to certain trades in real estate, e.g. sales of new residential housing and commercial property sales and leases.

Both Canada Revenue Agency and BC's Ministry of Finance have published extensive information concerning the general application of the HST, transitional rules, exemptions, and rebates. The Canada Revenue Agency information is posted at [www.cra-arc.gc.ca/gncy/hrmn-ztn/bc/menu-eng.html](http://www.cra-arc.gc.ca/gncy/hrmn-ztn/bc/menu-eng.html). The Ministry of Finance information is posted at [www.sbr.gov.bc.ca/business/Consumer\\_Taxes/Harmonized\\_Sales\\_Tax/hst.html](http://www.sbr.gov.bc.ca/business/Consumer_Taxes/Harmonized_Sales_Tax/hst.html).

Licensees should be cautious about providing advice concerning the application of the HST to trades in real estate. Both the buyer and the seller should be advised that if they have any questions regarding HST liability, transi-

tional rules, exemptions, or their right to apply for a rebate, they should seek independent professional advice from an accountant or tax lawyer, or from the nearest Canada Revenue Agency office. The following clause should be inserted in a Contract of Purchase and Sale where one or both of the parties to the trade wishes to obtain such independent advice:

### Receipt of Professional Advice by Buyer/Seller Concerning Tax Liability Clause

Subject to the *(select either Buyer or Seller or both Buyer and Seller)* receiving and approving professional advice concerning any and all tax implications to the *(select either Buyer or Seller or both Buyer and Seller)* resulting from the purchase and sale of the Property, including GST and HST liability, exemptions, transitional provisions and rebates, by *(date)*.

This condition is for the sole benefit of the *(select either Buyer or Seller or both Buyer and Seller)*.

Licensees with questions may contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email [info@recbc.ca](mailto:info@recbc.ca). ■



*Licensees should be cautious about providing advice concerning the application of the HST to trades in real estate*

### Office Closures

The Council office will be closed on **Monday, May 24, 2010** for Victoria Day and **Thursday, July 1, 2010** for Canada Day.

### This Issue:



- Harmonized Sales Tax and Real Estate
- Reminder about Providing Real Estate Services
- Deposits and the 'Standard Form' Contract of Purchase and Sale
- Adding New Terms on a Subject Removal Addendum
- Recently Approved REP Elective Courses
- Guidelines for Team Names
- Changes to Trading Services Licensing Course Content
- FINTRAC Fines Real Estate Brokerage
- Council Employment Opportunity: Compliance Officer
- Disciplinary Decisions

# A Note from the Chair



William R. Brown,  
Chair

The lead article of this Report outlines important information for licensees relating to the Harmonized Sales Tax (“HST”) that is slated to be introduced in B.C. on July 1, 2010. As the HST impacts many areas of the real estate industry, I would encourage you to familiarize yourself with the information contained in the article.

This edition also contains important information about the Contract of Purchase and Sale relating to acceptable forms of deposits and the practice of adding new terms on a subject removal addendum. These articles contain important practice related information and are well worth reading.

As we head into spring, the real estate market continues to be active in most areas of the province. Despite the active market conditions, I remind you to

ensure that you take the time necessary to avoid making any costly errors on contracts. Checking and re-checking information will help protect your clients and can save you in the long term.

During April, those licensees in districts of the province where a Council election is taking place will receive voting papers and biographical information about each of the candidates. I encourage those of you receiving ballots to cast your vote and return it to the Council office by the deadline date in order to make your vote count!

On behalf of the Council,

**William R. Brown**  
Chair

## Reminder about Providing Real Estate Services

While licensees may be licensed to provide a variety of real estate services, they may not offer services that are not provided by their related brokerage. For example, an individual may be licensed to provide trading services and rental property management services. If the brokerage they are licensed in relation to does not provide rental property management services, the individual licensee cannot offer those services.

Further, the Council reminds managing brokers to ensure that licensees engaged by their brokerage only provide real estate services in the name of and on behalf of their related brokerage, and not on their own behalf. For example, a licensee

providing trading services on behalf of ABC Realty may not provide rental property management services independent of ABC Realty.

There are two limited exemptions related to the rental management of real estate that is owned by a licensee or a licensee’s family as outlined in section 9-1 – 9-2 of the Council Rules. Please see the Council Rules at [www.recbc.ca/consumer/rules.htm](http://www.recbc.ca/consumer/rules.htm) for further information on these exemptions.

Licensees with questions may contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email [info@recbc.ca](mailto:info@recbc.ca). ■

900–750 West Pender Street  
Vancouver, BC, Canada V6C 2T8  
Tel 604-683-9664  
Toll-free 1-877-683-9664  
Fax 604-683-9017  
[info@recbc.ca](mailto:info@recbc.ca)  
[www.recbc.ca](http://www.recbc.ca)

Office Hours:  
Monday–Friday 8:30am–4:30pm

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

#### COUNCIL MEMBERS

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

#### STATISTICS

*April 2010*

Representatives: 16,700  
Associate Brokers: 1,787  
Managing Brokers: 1,325  
Total Licensees: 19,812  
Brokerages (including branch offices  
and sole proprietors): 1,404

#### 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](http://www.recbc.ca).

#### Canada Post

Return undeliverable addresses to:  
Real Estate Council of BC  
900–750 West Pender Street  
Vancouver, BC, Canada V6C 2T8

PM# 40016497

Printed on 100% post-consumer  
recycled paper

# Deposits and the ‘Standard Form’ Contract of Purchase and Sale

The ‘standard form’ Contract of Purchase and Sale (the “CPS”)<sup>1</sup> available for the use of real estate board members in relation to common residential trades contains pre-printed wording which identifies a wide variety of acceptable forms of deposit. It also allows sellers and buyers to determine by mutual agreement what form a deposit may or must take.

The Council has recently been discussing with the British Columbia Real Estate Association (BCREA) issues related to acceptable forms which a deposit may take. These discussions have led to two articles, written by lawyer Brian Taylor, being published by BCREA. One article explains a change that has been made to

the CPS related to deposits which are made by way of uncertified (personal) cheque. The other article addresses issues related to cash deposits. The Council encourages licensees to review these articles, which may be found under the Guide Tab within WEBForms™ as well as on the BCREA page on the REALTOR Link® website.

Given that it is the CPS that establishes what form a deposit may or must take, if a brokerage is not prepared to accept deposits in one or more of the forms identified in the CPS, that brokerage and its related licensees should make sure that their clients are, at the commencement of the relationship, aware of and consent

to the brokerage’s policy of not accepting those forms of deposit. Mr. Taylor’s article, entitled ‘Brokerage Refusal to Accept Cash Deposits’, provides guidance to brokerages and licensees in this regard.

Where a buyer wishes to pay the deposit in a manner other than by the methods described in Section 2 of the CPS (e.g. wishes to pay by wire transfer, credit card<sup>2</sup>, or money order), the buyer’s representative should insert that method of payment in the “terms” portion of Section 2.

The following table lists the different forms of deposits allowable under the March 1, 2010 revised version of the CPS, with a brief description of each.

Form of Deposit	Benefits of Form of Deposit	Potential Issues With Form of Deposit
Uncertified (personal) cheque	Convenient, readily available.	Must be cleared by issuer’s financial institution. Potential for issuer to ‘stop payment’ after it has been deposited but prior to being cleared. Uncertainty whether funds are available until cheque has cleared.
Certified cheque	Verifies funds are available at time of issue. Creates certainty.	Requires attendance at issuing financial institution. No longer available at some institutions.
Bank draft	Verifies funds are available at time of issue. Creates certainty.	Requires attendance by issuer at issuer’s financial institution.
Cash	Certainty.	Potential FINTRAC reporting requirements. Greater risk of theft.
Lawyer/notary/brokerage trust cheque	Not used for deposits—more for tender on completion.	

Based on the foregoing, it might be considered ‘best practice’ to encourage deposits to be by way of certified cheque or bank draft, as they create the most certainty with little risk of theft. In researching with various financial institutions, the Council was advised that many financial institutions consider certified cheques and bank drafts to be very similar. They are treated as if they are cash in the sense that, when they are issued, the money is taken out of the account. The only way they will not be ‘honoured’ is if they are physically returned to the

institution to be re-deposited. Once they are handed over (for example, to the brokerage that will be holding it in accordance with the CPS), the institution will not accept a request to stop payment. If they are lost, the financial institution will likely require a statutory declaration, or similar statement, verifying that loss. One financial institution advised the Council that it no longer issues certified cheques.

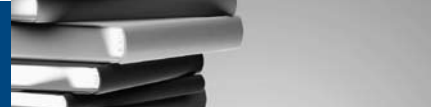
Licensees should be aware, however, that financial institution policies can and do

change over time, and policies may vary between financial institutions. For example, the time required to clear a personal cheque may be different between types of institutions (e.g. credit unions, trust companies, chartered banks) and depending on where the cheque is drawn (e.g. local, regional, national, or international institution). **For this reason, brokerages are strongly advised to check with their own financial institution as to their cheque handling and clearing policies, and have their institution confirm its policies in writing. ■**

<sup>1</sup> Licensees should be aware that BCREA produces various ‘standard form’ contracts of purchase and sale for use depending on the type of real estate involved; e.g. commercial, business assets, manufactured homes, etc. These versions of the CPS do not all treat deposits in the same manner described in this article, or in the BCREA articles to which this information refers. Standard forms are also created by others to meet their own needs. For example, some developers produce their own contracts for use in the sale of their projects; some commercial brokerages create their own contracts for use in the sale of commercial properties; brokerages that are not members of a board may also create their own contracts of purchase and sale. Licensees using these other forms of contracts of purchase and sale should familiarize themselves with the differences and advise clients to seek independent legal advice wherever there is concern about any aspect of a particular form.

<sup>2</sup> The use of credit cards for payment of deposits is rare. Not only must the parties to the trade agree in the contract that the deposit is to be paid by credit card, but the brokerage that is to hold the deposit must be a ‘merchant’ with respect to the use of that credit card. Brokerages considering accepting deposits by credit card must first satisfy themselves as to the terms and conditions of acting as a ‘merchant’ in this way, and must ensure that such deposits, in the full amount required by a contract of purchase and sale, (i.e. without service charges being deducted) are deposited promptly and retained in the brokerage trust account.





## Recently Approved REP Elective Courses

Licenses may be interested to know that the Council has approved a number of new Relicensing Education Program (“REP”) courses. Some of these courses are intended specifically for licenses providing commercial trading services and/or property management services.

Since late 2009, 21 courses have been added to the list of REP approved courses, including the mandatory course for the second REP cycle, *Real Estate E&O Insurance Legal Update 2010*. A commercial version, the *Real Estate E&O Insurance Commercial Legal Update*, has also been added and may be completed in lieu of the mandatory course.

In addition, a number of Commercial Series courses from the Real Estate Board of Greater Vancouver (REBGV) are now REP approved. Individuals interested in taking commercial courses may wish to consider the following courses and can register for these through the REBGV:

- *Introduction to Commercial Leasing,*
- *Introduction to Commercial Real Estate Investment Analysis,*
- *Taxation & Analysis of Commercial Investment Property,*
- *Listing & Selling Commercial Investment Property, and*
- *Introduction to Listing & Selling Commercial Investment Property.*

Other new REP approved courses include a number of courses offered through Langara College that are “in-class” versions of the UBC Sauder School of Business Real Estate Division, Diploma in Urban Land Economics courses. The courses are offered at Langara College through a licensing agreement with the university and are as follows:

- *Real Estate Law—PROP 1004,*
- *Real Estate Mathematics—PROP 1024,*
- *Real Estate Finance—PROP 1023,*
- *Real Estate Appraisal—PROP 1005,*
- *Real Estate Investment Analysis—PROP 1020,*
- *Residential Construction—PROP 1022, and*
- *Property Management Residential—PROP 1001.*

Licenses engaged in providing property management services (rental and strata) may be interested in Langara College’s *Advanced Strata Management*, a new course for strata managers developed in conjunction with the strata management industry. As well, the Professional Association of Managing Agents (PAMA) has introduced *Residential Tenancy Law for Property Managers*.

More in-depth, academically focused commercial courses, available online through the UBC Sauder School of Business Real Estate Division, have also been added to the REP course list. These are professional development courses developed in conjunction with the Appraisal Institute of Canada (AIC) as part of the AIC’s continuing education program.

- *Business Enterprise Valuation,*
- *Multi-Family Property Valuation,*
- *Office Property Valuation,*
- *Lease Analysis, and*
- *Green Value—Valuing Sustainable Commercial Buildings.*

Finally, individuals working toward their Accredited Buyers Representative ABR® designation may want to consider taking the newly added National Association of REALTORS® Real Estate Buyer’s Agent Council (REBAC) *Accredited Buyers*



Since late 2009,  
21 courses have been  
added to the list of REP  
approved courses

*Representative (ABR)®* course, adapted by Sharon Black and Brian Taylor. This course is offered through the BCREA and its member boards.

For more information about these courses, licenses can contact the course provider directly, or Council Education staff Caroline Allen and Zachary Rockafellar, who would be pleased to assist you in determining which courses are best suited for you in fulfilling your REP requirements. Please contact them by email [callen@recbc.ca](mailto:callen@recbc.ca) or [zrockafellar@recbc.ca](mailto:zrockafellar@recbc.ca) respectively or by phone at 604-683-9664 or toll-free at 1-877-683-9664. ■

# 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.



*Licensees may submit more than one team name for consideration, indicating their order of preference of names for approval*

- 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 section 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. ■

# Changes to Trading Services Licensing Course Content

Every year, the UBC Real Estate Division updates the real estate licensing courses it provides on behalf of the Real Estate Council. The majority of these changes are minor updates (for example, to deal with legal or technological changes over the preceding year) and are carried out as a matter of course by the UBC Real Estate Division. However, after a course review in 2009, the Real Estate Council approved a number of substantive changes for the 2010 edition of the Real Estate Trading Services (RETS) Licensing Course, which, along with the usual updating, have resulted in a significantly revised edition of the RETS Licens-

ing Course for 2010. The following is a brief summary of this year's most notable changes:

- Marketing: a new chapter was added, which includes additional material on the *Competition Act*;
- Negotiation: a new section was added on effective contract negotiation and negotiation approaches;
- Title Registration: major revisions were required to deal with the decision in the *Gill v. Bucholtz* case;
- Green Building: a new section was added on green construction and third party certifications;

- Technology: this chapter was significantly revised, and new materials added on social networking media;
- Mortgages: new material was added regarding lender risk, underwriting and the subprime mortgage market;
- FINTRAC: material dealing with the proceeds of crime (money laundering) and terrorist financing obligations was added.

Licenses who wish to purchase the 2010 edition of the Real Estate Trading Services Licensing Course Manual to use as reference material can visit [www.realestate.ubc.ca/store](http://www.realestate.ubc.ca/store). ■

## FINTRAC Fines Real Estate Brokerage

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) has levied its first fine against a real estate brokerage. HomeLife Effect Realty in Hamilton, Ontario, was fined \$27,000 for violating the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

The brokerage was fined for committing four violations:

- Failure of the brokerage to appoint a person to be responsible for the implementation of a compliance program;
- Failure of the brokerage to develop and apply written compliance policies and

procedures that are kept up to date and approved by a senior officer of the brokerage;

- Failure of the brokerage to assess and document risk; and
- Failure of the brokerage to develop and maintain a written ongoing compliance training program for its employees and agents.

FINTRAC notes that penalties are used as a last recourse after other measures to ensure compliance with the law have been exhausted.

FINTRAC is an independent federal government agency with a mandate to



assist in the detection, deterrence and prevention of money laundering and the financing of terrorist activities.

Additional information can be found at the FINTRAC website at [www.fintrac.gc.ca](http://www.fintrac.gc.ca). ■

## Council Employment Opportunity Compliance Officer

The Council requires an individual to join its compliance team for the intake, assessment and investigation of complaints against real estate licensees. Experience in the real estate industry as a managing broker and/or experience serving as a member of a real estate board's business practices committee is required.

The position requires excellent verbal and written communication skills, excellent judgment and analytical skills, dispute resolution skills, as well as strong organizational abilities and computer proficiency.

This position is based at the Council office in Vancouver. The Council offers a competitive salary and benefits package. Please submit your resume with cover letter outlining qualifications and experience by May 7, 2010 to:

**Maureen Coleman, Manager, Compliance**

Real Estate Council of British Columbia  
750 West Pender Street, Suite 900 Vancouver, BC V6C 2T8  
Fax: 604-683-4117 email: [info@recbc.ca](mailto:info@recbc.ca)

## Disciplinary Decisions

Since the February 2010 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

### Trading Services

#### Mohan (Mike) Singh Marwaha

**ISSUE:** Mohan (Mike) Singh Marwaha, currently unlicensed, entered into a Consent Order with the Council in which he consented to an Order that, while licensed as a representative with Medallion Realty Ltd. dba Sutton Group Medallion Realty, Surrey, he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he: (a) contrary to section 7(3)(a) of the *Real Estate Services Act*, provided real estate services to one or more than one of the Company, SM and TS, other than on behalf of Sutton Group to which he was licensed; (b) contrary to section 7(3)(b) of the *Real Estate Services Act*, accepted remuneration in relation to real estate services from a person other than Sutton Group, to which he was licensed; (c) contrary to section 27(4) of the *Real Estate Services Act*, failed to obtain a written agreement signed by the principals to the Contract and separate from the Contract, pursuant to which the principals agreed that sections 27(1) and 27(2) of the *Real Estate Services Act* did not apply; (d) contrary to section 35(1)(c) of the *Real Estate Services Act*, inserted in the Contract the phrase “The Purchaser is aware of one of Directors Company is Realty with Sutton Medallion” after the Contract was signed by SM and without the knowledge of SM; (e) contrary to section 35(1)(c) of the *Real Estate Services Act*, prepared the Second Contract for Lot 32 between the Company and SM dated June 20, 2007 being 10 months after the Assignment; (f) contrary to section 35(1)(c) of the *Real Estate Services Act*, prepared the 2007 List back between Sutton Group and SM dated June 20, 2007 being 10 months after the Assignment; (g) contrary to section 35(1)(c) of the *Real Estate Services Act*, prepared

the Assignment which discloses only the replacement of the deposit of \$20,000 under the Contract and does not disclose the additional \$20,000 paid by TS as the assignment fee; (h) contrary to section 3-3(1)(d) of the Council Rules, failed to advise SM to obtain independent legal advice with respect to the deposit under the Contract being paid directly to the Company; (i) contrary to section 3-3(1)(f) of the Council Rules, failed to properly and fully advise TS that the size of Lot 32 might change prior to the completion of the purchase by TS; (j) contrary to section 3-3(1)(i) of the Council Rules, was an owner and director of the Company and provided real estate services to the Company and to SM and TS; (k) contrary to section 5-4(6) of the Council Rules, failed to promptly deliver a signed copy of the Contract to Sutton Group; (l) contrary to section 5-9 of the Council Rules, failed to provide to SM a Disclosure of Interest in Trade Form; (m) contrary to section 5-10 of the Council Rules, failed to disclose to SM the nature of the representation he would provide to SM; and (n) contrary to section 5-10 of the Council Rules, failed to disclose to TS the nature of the representation he would provide to TS.

**RESULT:** Mohan (Mike) Singh Marwaha was suspended for one hundred and eighty (180) days from March 24, 2010 to September 19, 2010 (inclusive) and was ordered to 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 \$1,000.00.

#### Leslie Neil Wark

**ISSUE:** Leslie Neil Wark, managing broker, Neil Wark Realty Inc., Delta (formerly known as Neil Wark Realty Inc. dba Re/Max Wark Realty), entered into a Consent Order with the Council in which he consented to an Order that he: (a) committed an act of conduct unbecoming a licensee under section 35(2) of

the *Real Estate Services Act* as a result of his conviction on September 17, 2009 of four counts of indecent assault involving four young girls, contrary to section 141 [S.C. 1953, c. 51] and section 149 [R.S.C. 1970, c. C-34] of the *Criminal Code*, resulting in a Conditional Sentence Order of two-years-less-a-day, followed by a three year Probation Order; and (b) committed an act of professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to promptly notify the Council in writing, in accordance with section 2-21(2) of the Council Rules, that he was charged on September 19, 2007 with various sexual offences under the *Criminal Code*.

**RESULT:** Leslie Neil Wark was suspended for six (6) months from March 17, 2010 to September 16, 2010 (inclusive) and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, and pay enforcement expenses to the Council in the amount of \$1,000.00.

#### Francis Sunil Deo

**ISSUE:** Francis Sunil Deo, currently unlicensed, entered into a Consent Order with the Council in which he consented to an Order that, while he was licensed as a representative with Century 21 Coastal Realty Ltd. (formerly Apex International Services Ltd. dba Century 21 Apex International), Surrey, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, in relation to the sale of property at Geneva Avenue, Abbotsford: (a) failed to disclose in a timely fashion to the buyer in writing, on the prescribed Disclosure of Interest in Trade Form, that he was the owner of the said property, contrary to section 5-9 of the Council Rules; and (b) knowingly failed to disclose to the buyer of the ongoing dispute with the City of Abbotsford regarding a nonconforming structure on the property, namely a carport, which had been built without a permit by a previous owner, contrary to section 35(1)(c) of the *Real Estate Services Act*, and sections 3-4 and 5-13 of the Council Rules.

---

## Disciplinary Decisions, *cont'd*

**RESULT:** Francis Sunil Deo was suspended for thirty (30) days upon licence reissuance, from January 27, 2010 to February 25, 2010 (inclusive) and was ordered to successfully complete the Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Diven Prasad Kisun & Patricia Ann Brown**

**ISSUE:** Diven Prasad Kisun, representative, Homelife Glenayre Realty Company Ltd., Abbotsford, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he (a) with respect to Unit #208: (i) contravened sections 3-3(1)(a) and 3-4 of the Council Rules by failing to ensure that all parties to the said Contract signed the addendum dated July 15, 2006 deleting the original buyer RC and adding YC as the new buyer; (ii) contravened section 3-4 of the Council Rules in that he failed to ensure that the subject to financing clause in the original Contract of Purchase and Sale, which was to be removed on or before June 24, 2006, was extended in writing and agreed to by all parties to the said Contract when YC was added as a buyer by addendum dated July 15, 2006; (iii) contravened sections 3-3(1)(a) and 3-4 of the Council Rules by failing to state the amount of the deposit, or which deposit was being referred to in an addendum to the said Contract dated July 16, 2006, which addendum stated “deposit to be placed in Homelife Glenayre Realty trust account by July 23, 2006”; and (iv) contravened section 3-4 of the Council Rules in that he failed to ensure that there was an extension in writing to the said Contract with respect to the receipt of the second deposit, which was originally due on or before October 23, 2006 and which was not received until June 26, 2007; and (b) with respect to unit #209 (i) contravened sections 3-3(1)(a) and 3-4 of the Council Rules by failing to ensure that all parties to the said Contract signed the said addendum dated June 22, 2006, deleting the original buyer, AG and adding MY and/or nominee as the new buyer; and (ii) contravened section 3-4 of the Council

Rules in that he failed to ensure that the subject to financing clause in the original Contract of Purchase and Sale dated June 4, 2006, which was to be removed on or before June 30, 2006, was extended in writing and agreed to by all parties to the said Contract of Purchase and Sale when MY was added as a buyer on or about June 22, 2006; and (c) with respect to unit 406 which later became unit #106: (i) contravened sections 3-3(1)(a) and 3-4 of the Council Rules by failing to ensure that all parties to the said Contract signed the addendum dated July 27, 2006 deleting the original buyer, RC and/or nominee and by adding the new buyers PZ and OC; (ii) contravened section 3-4 of the Council Rules in that he failed to ensure the subject to financing clause in the original Contract of Purchase and Sale, which was to be removed on or before June 24, 2006, was extended in writing and agreed to by all parties to the said Contract when PZ and OC were added as buyers in the addendum dated July 27, 2006; and (iii) contravened sections 3-3(1)(a) and 3-4 of the Council Rules by failing to state the amount of the deposit or which deposit was being referred to in the addendum to the said Contract which removed the subject to financing clause and which addendum stated “deposit cheque to be deposited in Homelife Glenayre in trust by August 1, 2006”.

**ISSUE:** Patricia Ann Brown, managing broker, Homelife Glenayre Realty Company Ltd., Abbotsford, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by (a) contravening section 3-1(4)(a) of the Council Rules in that she failed to notify the seller or its representative in writing that the deposits in connection with the sale of units 208, 209 and 106 of the said complex had not been received in accordance with the respective Contracts of Purchase and Sale; and (b) contravening section 3-1(1)(c) of the Council Rules in that she failed to ensure that there was an adequate level of supervision of Mr. Kisun's contracts and addendums in connection with the said transactions to ensure that there were proper extensions done with respect to deposits and subject

removal clauses, and that all parties to the said contracts signed the addendums deleting the original buyers and adding the new buyers.

**RESULT:** Diven Prasad Kisun was suspended for fourteen (14) days from March 31, 2010 to April 13, 2010 (inclusive) and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (*The Real Estate Services Act*) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course, to enrol in and attend the first available CPE course “Contracts: Keep on Top of Changes”.

**RESULT:** Patricia Ann Brown was reprimanded and was ordered to enrol in and attend the first available CPE course “Contracts: Keep on Top of Changes”.

**RESULT:** Diven Prasad Kisun and Patricia Ann Brown were further ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### **James Alekson Tedford Realty Corporation**

**ISSUE:** Tedford Realty Corporation, Surrey, currently unlicensed, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

**ISSUE:** James Alekson, currently unlicensed, entered into a Consent Order with the Council in which he consented to an order that while licensed as managing broker with Tedford Realty Corporation, Surrey, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened section 35(1)(d) of the *Real Estate Services Act* by failing to fulfill 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

---

## Disciplinary Decisions, *cont'd*

(b) contravened sections 3-1(1)(a) and (b) and/or 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:** Tedford Realty Corporation was suspended for ninety (90) days from February 3, 2010 to May 3, 2010 (inclusive) but that suspension would be terminated if and when Tedford Realty files an Accountant's Report which discloses that the brokerage has complied with all of the trust accounting and record keeping requirements of the *Real Estate Services Act*, its Regulation, Rules and Bylaws, and that the brokerage's current and total assets equaled or exceeded the current and total liabilities respectively. If the Accountant's Report is received by February 3, 2010, Tedford Realty Corporation will be reprimanded. If the Accountant's Report is not received by May 3, 2010, then the licence of Tedford Realty Corporation will be cancelled.

**RESULT:** James Alekson was suspended for fourteen (14) days from March 17, 2010 to March 30, 2010.

**RESULT:** Further, Tedford Realty Corporation and James Alekson were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### Bradley Shane Morehouse

**ISSUE:** Bradley Shane Morehouse, representative, First Trail Real Estate Ltd. dba Coldwell Banker First Trail Real Estate, Trail, entered into a Consent Order with the Council in which he consented to an Order that, while he was licensed with Kootenay Cornerstone Realty Corp. dba Royal LePage K.C. Realty, Castlegar, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) contravened section 3-3(1)(i) of the Council Rules in that he failed to take reasonable steps to avoid a conflict of interest by undertaking to act as a limited dual agent in a transaction when he was a buyer that conflicted with the interests of the seller; (b) contravened section 3-3(1)(j) of the Council Rules in that he failed to disclose to the seller promptly

that a conflict of interest existed when he acted as a limited dual agent and also as a buyer in a transaction; (c) contravened section 3-3(1)(d) of the Council Rules in that he failed to advise the seller to seek independent legal advice before entering into a Contract of Purchase and Sale dated July 14, 2008 and the Addendum dated July 11, 2008; and (d) contravened section 3-2(2)(a) of the Council Rules in that he presented the seller and the seller acknowledged a Disclosure of Interest in Trade but he did not provide the same to his managing broker for signature.

**RESULT:** Bradley Shane Morehouse was suspended for seven (7) days from March 10, 2010 to March 16, 2010 (inclusive), was ordered to successfully complete the Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

### Llewellyn Pierre Maurice Poulin

**ISSUE:** Llewellyn Pierre Maurice Poulin, representative, Pemberton Holmes Ltd., Victoria, entered into a Consent Order with the Council in which he consented to an Order that, while licensed with Century 21 South Island Realty Ltd., Victoria, he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by: (a) accepting a \$1,000 advance on commission directly from a seller, contrary to section 7(3)(b) of the *Real Estate Services Act*; and (b) failed to deliver the \$1,000 commission advance to his brokerage, contrary to section 27(1) of the *Real Estate Services Act*.

**RESULT:** Llewellyn Pierre Maurice Poulin was suspended for seven (7) days from March 3, 2010 to March 9, 2010 (inclusive), and was ordered to successfully complete the Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

### Dennis Ling Chen & Lillian Chau

**ISSUE:** Dennis Ling Chen, representative, Local Venture Corp. dba Homeland Realty, Vancouver, entered into a Con-

sent Order with the Council in which he consented to an Order that, while licensed with Royal Pacific Realty Corp., Vancouver, he committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that he: (a) provided rental property management services to or on behalf of his family partner, Ms. Chau, the registered owner of the property and failed to fulfill the exemption requirements set out in section 9-2 of the Council Rules; (b) offered to provide real estate services through an unlicensed company, contrary to sections 3(1) and 7(3) of the *Real Estate Services Act*; (c) advertised the provision of real estate services by means of an internet web-site where the name of the related brokerage was not prominently displayed, contrary to section 4-6 of the Council Rules; and (d) failed to make a claim against the tenant's security deposit or to return same to the tenant within 15 days of the end of the tenancy, as required by section 38(1) of the Residential Tenancy Act, SBC 2002, c. 78, contrary to section 3-3 and 3-4 of the Council Rules.

**ISSUE:** Lillian Chau, also known as Lillian Cam, representative, Local Venture Corp. dba Homeland Realty, Vancouver, entered into a Consent Order with the Council in which she consented to an Order that, while licensed with Royal Pacific Realty Corp., Vancouver, she committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that she: (a) offered to provide real estate services through an unlicensed company, contrary to sections 3(1) and 7(3) of the *Real Estate Services Act*; (b) provided rental property management services without complying with the exemption requirements set out in section 9-1 of the Council Rules; and (c) advertised the provision of real estate services by means of an internet web-site where the name of the related brokerage was not prominently displayed, contrary to section 4-6 of the Council Rules.

**RESULT:** Dennis Ling Chen was reprimanded and ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*), and Chapter 8 (Commercial and Residential Tenan-

---

## Disciplinary Decisions, *cont'd*

cies) of the Rental Property Management Licensing Course.

**RESULT:** Lillian Chau was reprimanded and ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*), and Chapter 8 (Commercial and Residential Tenancies) of the Rental Property Management Licensing Course.

**RESULT:** Dennis Ling Chen and Lillian Chau were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Gordon Thomas Tietjen Home and Garden Realty Gordon Tietjen**

**ISSUE:** Home and Garden Realty Gordon Tietjen Ltd., Port Coquitlam, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

**ISSUE:** Gordon Thomas Tietjen, managing broker, Home and Garden Realty Gordon Tietjen Ltd., Port Coquitlam, entered into a Consent Order with the Council in which he consented to an order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by 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:** Home and Garden Realty Gordon Tietjen Ltd. was reprimanded and ordered to pay a discipline penalty to the Council in the amount of \$1,000.00.

**RESULT:** Gordon Thomas Tietjen was reprimanded.

**RESULT:** Further, Home and Garden Realty Gordon Tietjen Ltd. and Gordon Thomas Tietjen were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Eddy Kai Tai Kam**

**ISSUE:** Eddy Kai Tai Kam, representative, Caledonia Realty Ltd., Prince George, entered into a Consent Order with the Council in which he consented to an Order that, while licensed with Langer Bros. Holdings Ltd. dba Coldwell Banker Boardwalk Properties (2000), Prince George, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by failing to promptly reply to Council inquiries as required by section 37(3) and (4) of the *Real Estate Services Act* and section 2-19 of the Council Rules.

**RESULT:** Eddy Kai Tai Kam was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Strata Management Services**

#### **Lawrence Bruce McGillivray Facilitech Property Management Ltd.**

**ISSUE:** Facilitech Property Management Ltd., Vancouver, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it: (a) contravened section 7-7(1) of the Council Rules and section 35 of the *Real Estate Services Act* in that it failed to file an Accountant's Report with the Council for the year ending December 31, 2008 on or before April 30, 2009; and (b) failed to prepare and retain such financial records in connection with its business as are necessary to ensure that appropriate and timely accounting of all transactions relating to real estate services provided by the brokerage and its related licensees, contrary to section 8-1 of the Council Rules.

**ISSUE:** Lawrence Bruce McGillivray, associate broker, Pacific Quorum Properties Inc., Vancouver, entered into a Consent Order with the Council in which he consented to an Order that, while licensed as a managing broker with Facilitech Property Management Ltd., he committed professional misconduct within the meaning of section 35(1)(a) and/or (d) of the *Real Estate Services Act* in that he: (a) failed to fulfill 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*; (b) contravened sections 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 on or before April 30, 2009; (c) failed to ensure that monthly trust reconciliations were prepared in a timely manner and, in any event, no later than 5 days after the end of the month being reconciled, contrary to section 8-2(b) of the Council Rules; (d) failed to ensure that the trust reconciliations prepared included date and initials of the managing broker or person designated by the managing broker, contrary to section 7-4(2) of the Council Rules; (e) failed to remit interest earned on a pooled trust account to the Real Estate Foundation, contrary to section 29 of the *Real Estate Services Act*; (f) failed to ensure that payments were not made out of a trust account which caused a negative balance or caused a negative balance to increase for a trust account that already had a negative balance, contrary to section 7-5 of the Council Rules; (g) failed to transfer money received by electronic deposit into a brokerage trust account no later than 3 days after the day upon which it was received, contrary to section 7-9(2.1) of the Council Rules; (h) failed to prepare records after the termination of real estate services, contrary to section 8-3.1 of the Council Rules; and (i) failed to retain records, original bank statements and cancelled cheques as they were lost in the mail and copies were not requested for a period of 12 months after they were lost, contrary to section 8-10 of the Council Rules.

**RESULT:** Facilitech Property Management Ltd. was reprimanded.

## Disciplinary Decisions, *cont'd*

**RESULT:** Lawrence Bruce McGillivray was reprimanded.

**RESULT:** Facilitech Property Management Ltd. and Lawrence Bruce McGillivray were ordered to be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500.00 and be jointly and severally liable pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Bernard (Bernie) Leong**

**ISSUE:** Bernard (Bernie) Leong, associate broker, Pacific Quorum Properties Inc., Vancouver, entered into a Consent Order with the Council in which he consented to an Order that while licensed as managing broker with Jefferson Management Corporation, Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-1(1)(a) and (b) of the Council Rules in that: (a) between August 1, 2008 and March 1, 2009, he failed to ensure that

the Brokerage promptly deposited money received from owner(s) of a strata into the trust account(s) for the strata corporation, in contravention of section 27(2) (a) of the *Real Estate Services Act*; and (b) on or about March 2009, he allowed the Brokerage to engage a licensee to provide strata management services to a strata, by attending the March 2009 meeting of the strata council, while that licensee was licensed in relation to another brokerage, contrary to section 7(5)(a) and 7(5)(b) of the *Real Estate Services Act*.

**RESULT:** Bernard (Bernie) Leong was reprimanded and was ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

### **Philip Lap Hong Lee**

**ISSUE:** Philip Lap Hong Lee, managing broker, Vancouver Tower Management Ltd., Vancouver, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the

meaning of section 35(1) of the *Real Estate Services Act* in that he: (a) provided trading services for which he was not licensed and, further, provided these services other than on behalf of his brokerage in that he negotiated leases on behalf of an owner of commercial strata units, contrary to sections 3(1)(a) and 7(3) of the *Real Estate Services Act*; and (b) acted in a conflict of interest in that he was employed indirectly by a company owned by the owner of certain strata units in a strata property for whom he negotiated leases, while he was engaged as the strata property manager for the strata property in which these strata units were located and, at the same time, served as secretary of the strata council, contrary to section 3-3(1)(f) and (i) of the Council Rules.

**RESULT:** Philip Lap Hong Lee was reprimanded and was ordered to enrol 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 \$1,000.00. ■

## Feedback?

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

Real Estate Council of British Columbia  
900—750 West Pender Street  
Vancouver, BC, Canada V6C 2T8  
Tel: 604-683-9664 Toll-free: 1-877-683-9664  
info@recbc.ca

Copyright 2010 Real Estate Council of BC

Return undeliverable addresses to:  
Real Estate Council of British Columbia  
900—750 West Pender Street, Vancouver, BC, Canada V6C 2T8  
PM# 40016497

**Disclaimer:** While RECBC makes every effort to ensure that the information in this publication is current and accurate, RECBC does not warrant or guarantee that it will be free of errors. The information contained in this publication is not intended to cover all situations. It is general information only and users/readers are encouraged to seek their own independent advice for particular fact situations.