



Report from Council

August 2006 Volume 42, No. 1

New Chair, Vice-Chair Elected

At the first meeting of the 2006/07 Council on July 18th, Philip Jones, of Royal LePage East Kootenay Realty, Cranbrook, was elected as Chair and Satnam T. Sidhu of Re/Max Crest Realty, North Vancouver, was elected as Vice-Chair.

There are 19 members



Philip Jones

of the Real Estate Council including three public members appointed by the provincial government. In addition, one member has been appointed by the Council as the rental/strata management representative. The remaining 15 members



Satnam T. Sidhu

are chosen through the recently held elections open to all real estate licensees in the province. Members are elected for two-year terms, with half of the Council elected each year, thus ensuring continuity. The names of the other Council members are listed in the left margin on the next page.

Important Information about Selling Businesses

Under the former *Real Estate Act*, the sale of “a business and the goodwill and assets of it”, with or without a real estate component, was included within the definition of “real estate”. As such, the sale of a business was an activity for which a real estate licence was required and deposit monies had to be held, in trust, by brokerages, in accordance with section 16 of the former Act.

Under the new *Real Estate Services Act*, the sale of a business that does not include a real estate component (i.e. does not include the sale or lease of real property, including an assignment of a lease) is not an activity that requires a real estate licence. Activities that do not require a real estate licence such as the sale of a business without a real estate component are not conducted in the same manner as those requiring a licence.

A business can be sold by selling either the assets or the shares of a business.

In an asset transaction, the parties can choose the assets which are the subject of

the acquisition and liabilities, if any, to be assumed by the buyer. The sale of the assets may or may not include real estate, although generally, such a transaction includes the sale or lease of real property.

The sale of shares is not the sale of real property. Although the assets of the company may include real property, the real property is not the subject matter of the transaction. The buyer is buying the shares of the company. It is the company that owns the assets and is responsible for the liabilities. The assets and liabilities, are in effect, the indirect subject matter of the transaction.

Before proceeding with the sale of a business, brokerages and licensees must determine whether the transaction includes a real estate component.

Selling Businesses with No Real Estate Component

In a share transaction, because the sale of the shares of a company is not the sale of real

property, a licence under the *Real Estate Services Act* is not required. However, a licensee should check with the BC Securities Commission to see if a securities licence is required if less than 100% of the shares is involved in the sale and the sale does not involve the right to occupy land.

Brokerages and licensees that engage in the sale of businesses, that do not include a real estate component, need to be aware of the following and must conduct themselves accordingly:

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JUDI WHYTE

STATISTICS

(AUGUST 2006)

REPRESENTATIVES: 14,417

ASSOCIATE BROKERS: 1,930

MANAGING BROKERS: 1,363

BROKERAGES: 1,401

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.

For further information, contact:
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A Note From the Chair

I was pleased to be elected as Chair of the Council for the 2006/07 term. I look forward to working with the 2006/07 members of the Council including our two newest members, Gerry Martin from Abbotsford and Liz Tutt from Chilliwack. As you are aware, Dougal Shewan retired from the Council effective June 30, 2006. I would like to thank Dougal for his outstanding leadership as Vice-Chair and Chair over the past two years, which have been particularly challenging with the implementation of the *Real Estate Services Act* (RESA) and the licensing of strata managers.

Speaking of strata managers, I would urge individuals licensed in this category to read the important message contained in this *Report*

reminding all strata managers that they must complete the necessary strata education requirements by January 1, 2007 in order to maintain their licence to provide strata management services.

You will also note in this *Report* that this year will continue to be a year of change with the introduction of the Council's Relicensing Education Program in 2007.

On page 9 of this *Report*, you will note that the Council recently suspended the licence of Point Grey Properties Inc. for failing to properly account for trust monies it was holding on behalf of its rental property management clients and for failing to file a mandatory annual Accountant's Report.

I again stress the need for all

brokerages to ensure that they maintain, at all times, proper books and records in accordance with the *Real Estate Services Act*. If a brokerage is unable or does not have the expertise to maintain proper books and records, it must hire the necessary staff to do so. The potential harm to the public of unaccounted for, missing or wrongfully converted monies is of great concern and therefore managing brokers are urged to take corrective action if they are not in compliance with the requirements of the Council Rules.

On behalf of Council members and staff, I hope that you have an enjoyable summer season.

*On behalf of Council,
Philip Jones, Chair*

Selling Businesses (continued from previous page)

•Licensees who list and sell businesses that do not have a real estate component are not doing so in their capacity as real estate licensees. This distinction should be made clear to any party that engages a licensee for that purpose. Licensees should advise their clients that they are not acting as a licensee and that the licensee is not regulated under the *Real Estate Services Act* in relation to the sale, including, the holding of the deposit.

•The Real Estate Errors and Omissions Insurance Corporation (REEOIC), at the present time, is continuing to provide coverage to licensees with respect to the sale of businesses without a real estate component.

•Section 27(5) of the *Real Estate Services Act* provides that a brokerage must ensure that no money, other than money held in relation to real estate services, is paid into its brokerage trust account. This

would, for example, exclude a deposit in relation to the sale of a business without a real estate component.

•Brokerages should make a policy decision with respect to the sale of businesses without a real estate component. For example, a brokerage could decide to provide services with respect to the acquisition or disposition of businesses without a real estate component but ensure that deposits related to such transactions are held in a separate trust account or held by a third party. If the brokerage maintains a separate trust account for such funds, such an account is not subject to the audit and reporting requirements of the *Real Estate Services Act*. In the alternative, a brokerage could decide not to sell any businesses that do not have a real estate component and have a policy statement to that effect in their brokerage policy manual.

Selling Businesses with a Real Estate Component

Brokerages and licensees that engage in the sale of businesses that do include a real estate component are reminded of the following:

•The obligations that were set out under section 39 of the former *Real Estate Act* relating to the delivery of statements of the business to the buyer in the sale of the business are not contained in the *Real Estate Services Act*. However, a licensee still has an obligation to determine what financial information is pertinent under particular circumstances and should not consider the elimination of the specific requirements of section 39 as an indication that they are no longer important or, in some cases, necessary.

•Finally, licensees are reminded not to provide legal or accounting advice and should recommend that their clients obtain advice from their lawyer and/or accountant.

Council Amends Rules

The following is a series of amendments to the Council Rules. The amended Rules have been displayed in a manner in which licensees can clearly see the changes and the effect of the changes as noted in the Description column. The amended Rules take effect September 1, 2006.

Rule	Change	Description
5-1	<p>Section 5-1 is amended</p> <ul style="list-style-type: none"> (a) in subsection (4) (d) by adding the text shown as double-underlined: <ul style="list-style-type: none"> (d) <u>in the case of a service agreement for trading services, the date on which the agreement expires and, in any other case,</u> the duration of the agreement; (b) in subsection (5) (a) by adding the text shown as double-underlined: <ul style="list-style-type: none"> (a) the circumstances in which the agreement may be terminated by either or both <u>of</u> the client and the brokerage; (c) in subsection (5.1) by adding the following paragraph: <ul style="list-style-type: none"> (a.1) the circumstances, in addition to those set out in sections 24 (1) and 39 of the Strata Property Act, in which the agreement may be terminated by either or both of the client and the brokerage; 	<ul style="list-style-type: none"> (a) clarifies that trading service agreements must contain a specific expiry date. (b) corrects a grammatical error. (c) adds the requirement that strata management service agreements include any termination provisions that are in addition to legislative ones detailed in the Strata Property Act. A similar provision with respect to rental property management agreements is already included in this section of the Council Rules.
5-13	<p>Section 5-13 is amended</p> <ul style="list-style-type: none"> (a) in subsection (1), in the beginning of the definition of “material latent defect”, by adding the text shown as double-underlined: <p>material latent defect means a <u>material</u> defect that cannot be discerned through a reasonable inspection of the property, including any of the following:</p> (b) by adding the following subsection: <ul style="list-style-type: none"> (4) As an exception, disclosure to a party is not required under subsection (2) if the party has already received written disclosure of the material latent defect from the client who is disposing of the real estate. 	<ul style="list-style-type: none"> (a) clarifies the definition of material latent defect. (b) a licensee is not required to disclose a known material latent defect to a buyer if the seller has already disclosed all known material latent defects, in writing, to the buyer (e.g. on a Property Disclosure Statement). <p>Note: Timing of the disclosure is critical. Written disclosure of all known material latent defects must be provided to the buyer before there is an accepted offer. This applies whether the PDS, or some other document is to be used to disclose these defects.</p>
7-1.1	<p>7-1.1 Use of holding brokerage trust account</p> <ul style="list-style-type: none"> (1) For the purposes of this section: <p>“holding brokerage” means a brokerage that, on behalf of another brokerage, receives or holds money relating to real estate services provided by the other brokerage;</p> <p>“service brokerage” means a brokerage that, in relation to real estate services provided by the brokerage, arranges with another brokerage for the other brokerage to act as a holding brokerage in relation to those services.</p> 	<p>Some brokerages have arranged to have other brokerages hold trust money so that they are not required to do so. This most typically occurs in ‘mini franchise’ situations where the ‘umbrella franchise’ – identified in this amendment as the ‘holding brokerage’ - agrees to hold trust money on behalf of the ‘mini franchise’ – the ‘service brokerage’ - e.g. ABC Realty holds trust money for ABC Jane Licensee Realty. This amendment is intended to clarify how this money must be held by the holding brokerage, and how any portion that becomes remuneration owed to the service brokerage must be paid to the service brokerage.</p>

Council Amends Rules *Continued*

Rule	Change	Description
	<p>(2) If, by an agreement under section 27 (4) of the Act, the principals agree that money referred to in section 27 (1) or (2) of the Act that is held or received by a licensee is to be paid or made payable to a holding brokerage, the following rules apply:</p> <ul style="list-style-type: none"> (a) the holding brokerage must deposit the money into a separate brokerage trust account maintained in the name of the service brokerage; (b) money withdrawn from that brokerage trust account under section 31 (1) of the Act must be paid as follows: <ul style="list-style-type: none"> (i) if the service brokerage has no related licensees other than a managing broker, in accordance with the instructions of the service brokerage; (ii) in any other case, at the option of the service brokerage, <ul style="list-style-type: none"> (A) into a brokerage trust account maintained by the service brokerage, or (B) into a commission trust account maintained by the service brokerage. 	<p>Please see previous page.</p>
7-2	<p>Section 7-2 (b) (i) is amended by adding the text shown as double-underlined:</p> <ul style="list-style-type: none"> (b) the only money that may be paid into the account is money that <ul style="list-style-type: none"> (i) is intended as remuneration <u>for the brokerage or</u> for a licensee engaged by the brokerage, and 	<p>The recent amendment to section 27 of RESA allows a brokerage that receives remuneration after it has been earned to deposit that remuneration into a commission trust account rather than having to first deposit it into a brokerage trust account. This amendment expands section 7-2 of the Council Rules to allow a brokerage to deposit its own remuneration, if it has already been earned when it is received, into a commission trust account.</p>
7-3	<p>Section 7-3 is amended by deleting the text shown as struck out in the following and substituting the text shown as double-underlined:</p> <p>If a brokerage has a pooled trust account with a savings institution other than a credit union, the brokerage must, before <u>within 30 days after</u> April 30 of every year, provide to the institution</p> <ul style="list-style-type: none"> (a) written notice that the account is a pooled trust account, and (b) a list identifying each person on whose behalf money is held in that account and specifying the amount held for each person <u>as of April 30 of that year.</u> 	<p>This amendment brings the Council Rules directly in line with the reporting requirements of the Canadian Deposit Insurance Corporation.</p>

Council Amends Rules *Continued*

Rule	Change	Description
7-5(3)(b)	<p>Section 7-5 (3) (b) is amended by deleting the text shown as struck out in the following and substituting the text shown as double-underlined:</p> <p style="padding-left: 40px;">(b) in any other case, within 10 working days <u>no later than 10 days after the day on which</u> the negative balance arose, arises, unless the brokerage is able to eliminate the negative balance in that time.</p>	<p>This amendment is intended to clarify the reporting requirements if a trust shortfall occurs that a brokerage is not able to eliminate.</p>
7-9	<p>Section 7-9 is amended by adding the following subsection:</p> <p style="padding-left: 40px;">(2.1) If a brokerage receives money that is subject to subsection (2) by means of direct electronic deposit into a brokerage trust account that receives funds on behalf of more than one strata corporation, the money must be transferred to the applicable trust account under subsection (2) no later than 3 days after the day on which it was received.</p>	<p>The current Council Rules related to the handling of funds by brokerages that provide strata management services do not allow for electronic deposits of strata fees from multiple clients into a flow through account. This amendment establishes criteria for handling funds received in that way, requiring that they be disbursed to the individual client accounts no later than 3 days after receipt.</p>
10-4(3)	<p>Section 10-4(3) is amended by deleting the text shown as struck out in the following and substituting the text shown as double-underlined:</p> <p style="padding-left: 40px;">(3) Grandparented strata management services— As an exception to subsection (1), if</p> <p style="padding-left: 80px;">(a) strata management services are being provided to a principal immediately before January 1, 2006 under an agreement,</p> <p style="padding-left: 80px;">(b) the agreement contemplates that the services will continue to be provided after that date, and</p> <p style="padding-left: 80px;">(c) as of that date, the person providing the services is required to be a licensee,</p> <p style="padding-left: 40px;">the person providing the services must comply with section 5-1 [written service agreements] of these rules as soon as reasonably practicable, but is not otherwise required to comply with that section in relation to those services until January 1, 2007 <u>July 1, 2007</u>.</p>	<p>This amendment extends the time, from January 1, 2006 to July 1, 2007, by which strata management service agreements are required to comply with the content requirements identified in section 5-1 of the Council Rules. This is to allow the profession to amend its ‘standard form’ service agreement, and to provide sufficient time to have these amended agreements explained to and ratified by strata corporation clients.</p>

Relicensing Education Requirements To be Completed by 2009 Licence Renewal

The Real Estate Council of British Columbia recently approved a continuing education program that will require individuals to complete education for licence renewal. The Relicensing Education Program, or REP, requires licensees to complete two courses every licensing cycle as a condition of continued licensing. The first cycle begins on January 1, 2007. This means that licensees must complete two REP courses in the 2007-2009 licensing cycle in order to renew their licence in 2009.

In the first cycle, licensees will be required to complete one elective course and one mandatory course. The mandatory course for the first cycle is *“What Brokerages and REALTORS® Need to Know about Agency”*. Along with their licence renewal forms, licensees will receive a list of approved elective courses and detailed instructions on how to complete the REP requirements.

Many licensees who are members of real estate boards will be familiar with the Professional Development Program (PDP) as a condition of continued board membership. The Council is mindful of the PDP program and is designing its REP program to ensure that its course list contains many of the courses that are being offered through the various boards, including the mandatory course, thus avoiding licensees having to complete two different sets of course requirements.

Course Principles

Under the REP program, licensees must complete a minimum of six classroom hours to receive credit for completing one course. Individuals who complete courses of a longer duration (e.g., a licence upgrade course or Diploma in Urban Land Economics course) will receive credit for completing one course. All pre-licensing and post-licensing courses will satisfy the REP requirement as they will

also be considered licence upgrade courses. It is important to note that, where the successful completion of a course requires an individual to pass an examination, successful completion of the examination is required for a licensee to receive REP course credit.

Licensees should also be aware that they will not receive credit for repeated courses. As well, should a licensee choose to complete more education than required, they will not be permitted to carry forward unused course credits to the second REP cycle. Only those



real estate-related institutes and associations, that have been approved by the Real Estate Council of BC as having the expertise and training to deliver REP courses/seminars for real estate practitioners, may offer approved REP courses/seminars for real estate licensees to take in order to maintain a real estate licence. The Council has determined that licensees who completed *“What Brokerages and REALTORS® Need to Know About Agency”* in 2006 will receive course credit in the first REP cycle.

Licensee Responsibility for Course Reporting

Under the REP program, licensees will be responsible for accurate reporting of course

completion and must keep a detailed and valid record of the REP courses completed as they may be subject to an audit of their reported education. Proof of completed education and attendance records must be kept in a specific education file along with sufficient information about the course including completion certificates and marks. These records must be kept for five years from the renewal date for which the education was used. Licensees will report on the REP coursework completed at the time of licence renewal and certify that the information they have provided is accurate. Should a licensee who is subject to an audit not be able to provide documentary evidence of course completion reported on a licence application, the Council may take disciplinary action including terminating the licence until such time as the required education has been completed.

REP Requirement for Strata Managers in the First Cycle

As a result of the educational requirements required for strata managers beginning January 1, 2006, individuals licensed to provide only strata management services are exempted from the mandatory course in the first REP cycle. As well, individuals licensed as managing brokers to provide only strata management services are exempted from the elective course in the first REP cycle.

Finally, it is important to note that the REP program is only the minimum education requirements that the Council has established to maintain licensing. The Council has always supported and continues to support ongoing education above any mandated requirements. Further information about the REP program will be made available as we get closer to the launch in 2007.

Updated Good Reputation Guidelines

Section 10 of the *Real Estate Services Act* states that every applicant for a real estate licence shall, among other things, be of “good reputation”. For many years, the Council has had guidelines in place to assist licence applicants and the Council in determining whether or not an individual is suitable for licensing in the event that they have a criminal conviction under the Criminal Code of Canada or have contravened a provincial statute.

As a result of a recent review of these guidelines, the Council has amended the mandatory length of time that individuals who have a criminal conviction or who have contravened a provincial statute must wait before they may make an application for

licensing with the Real Estate Council. Licence applicants should be aware that the Council will not consider applications for the following time periods (these time periods run from date of completion of sentence, parole and/or probation):

- until at least two years (previously one year) have elapsed in the case of summary conviction offences related to employment as a licensee (e.g., fraud or theft under \$5,000);

- until at least three years (previously one year) have elapsed in the case of indictable offences unrelated to employment as a licensee (e.g., possession of drugs for trafficking);

- until at least five years (previously two

years) have elapsed in the case of indictable offences related to employment as a licensee (e.g., fraud or theft over \$5000 or other serious offences, e.g., conspiracy to traffic in drugs or serious sexual offences); and

- until at least seven years (previously five years) have elapsed in the case of white collar crime (e.g., fraud or embezzlement where a person is employed in a position of trust).

In addition, a number of other minor wording changes have been added to the guidelines. These changes take effect January 1, 2007 and may be viewed on the Council’s website at www.recbc.ca.

Single Service Licensing for Managing Brokers

As licensees are aware, the Council has historically had two licensing categories: trading and rental property management services. Applicants for a managing broker’s licence must have taken, in addition to the Broker’s Licensing Course, either the Rental Property Management or Trading Services Supplemental Course and examination, enabling them and their brokerage to provide both trading and rental property management services. As a result of the addition of the strata management licensing

category earlier this year, the Council has amended its requirements for obtaining a managing broker’s licence.

Effective January 1, 2007, licensees wishing to obtain their managing broker’s licence will no longer be required to take a Supplemental Course. In that regard, managing brokers may be licensed to a single licensing category (i.e., Trading Services or Rental Property Management Services or Strata Management Services). Those

individuals who wish to be eligible to manage licensees in more than one service category will have to complete the appropriate Supplemental course or courses.

Existing managing brokers will be unaffected by this change and will continue to be licensed in the categories for which they have been qualified.

For further information, please contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca.

Trades in Real Estate Involving Water Licences

Trades in real estate involving land where the water supply is not derived from a well or centralized water supply (e.g., municipal or regional district) may involve the existence of a water licence. Licensees who engage in trades of this type of land should advise their clients to check for the existence of water licences. All water licences must be transferred to the new owner, complete with

consideration, prepayments or arrears. It is important to note that water licences are not recorded in the Land Title Office.

Under the *Water Act*, a person conveying or disposing of land with a water licence is required to report, in writing, the transfer of ownership of that land to the Water Stewardship Division of the Ministry of Environment, via the local office of the

Integrated Land Management Bureau, also known as FrontCounter BC. The Water Stewardship Division can be reached at 1-800-361-8866. The same number can be used to check for the current balance on a water licence account. Further information can be obtained from the Water Licence website at www.lwbc.bc.ca/06search/water.html.

Reminder Notice for Strata Managers

All strata managers must complete the necessary education requirements by January 1, 2007 in order to maintain their licence to provide strata management services after this date. Individuals who were licensed prior to the requirements for licensing as a strata manager came into effect must complete the Grandparented Strata Management Challenge Examination. Individuals who were conducting strata management activities but

were not previously licensed must complete the Grandparented Strata Management Challenge Course and Examination. Licensees who do not successfully complete the Grandparented Strata Management Examination by January 1, 2007, in accordance with section 14 of the *Real Estate Services Act*, will have their temporary licence cancelled as of January 1, 2007. The last available regularly scheduled examination is

December 7, 2006 and the registration cut-off date for this exam is November 7, 2006. The Council strongly urges you not to wait until the last examination date. Further details are available on the UBC Real Estate Division's website at www.sauder.ubc.ca/re_licensing/programs/licensing/strata_management.cfm. Upcoming examination and registration cut-off dates are as follows:

Registration Cut-Off Date	Examination Date
September 19, 2006	October 19, 2006
November 7, 2006	December 7, 2006

Trust Accounts and the *Builders Lien Act*

Licensees engaged in providing rental property management and/or strata management services should be aware of requirements of the *Real Estate Services Act* (RESA) in relation to holdbacks under the *Builders Lien Act*.

The *Builders Lien Act* provides that an owner (e.g., a strata corporation, an individual owner or a company) must administer a holdback account together with the respective contractor and that any holdback monies must be held in trust for the contractor from whom the holdback was retained. In addition, the holdback monies can only be paid out of this account with the agreement of all the persons who administer the account, meaning the owner and the contractor. Such holdback accounts under the *Builders Lien Act* are deemed to be trust accounts under that legislation.

If a brokerage is holding money on behalf of an owner in relation to real estate services,

section 27 of RESA requires that the funds be held in a brokerage trust account. Thus, if an owner (e.g., a strata corporation) is holding funds pursuant to the holdback provisions of the *Builders Lien Act*, and those funds are held on behalf of the owner by a brokerage, section 27 requires that the funds be held in trust by the brokerage. As well, the Council Rules require that a managing broker must be a signatory to this account.

Finally, it is important to note that a brokerage can only withdraw holdback funds in accordance with section 30 of RESA. In that regard, the owner could not instruct a brokerage to release holdback funds unless the contractor also agreed to the release.

For further information, please review Part 7 of the Council Rules available on the Council's website at www.recbc.ca.



Notice of Licensee Resignation

Boyd Alex McMillan, while licensed with Homelife Glenayre Realty Chilliwack Ltd., requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against him as he has decided to permanently retire from real estate practice.

Mr. McMillan was facing a disciplinary hearing into his professional conduct and would have been required to appear before a hearing panel of the Real Estate Council to respond to these allegations.

Considering the fact that there is likely no

greater disciplinary penalty than not being licensed to act again, the Real Estate Council agreed with Mr. McMillan's request. The lifetime ban on Mr. McMillan's licensing under the *Real Estate Services Act* is effective as of June 20, 2006.

Council Suspension Order

**IN THE MATTER OF THE REAL ESTATE SERVICES ACT AND
IN THE MATTER OF POINT GREY PROPERTIES INC.,
STEPHEN EDWARD LE SAGE
SUSPENSION ORDER UNDER SECTION 45
ORDER TO HOLD PROPERTY UNDER SECTION 46**

Upon reviewing the Affidavit of Lisa Holst, Manager, Accounting and Audit, of the Real Estate Council of British Columbia sworn this 30th day of June, 2006, I am of the opinion that:

1. There has been conduct on the part of Point Grey Properties Inc. and Stephen Edward Le Sage, its managing broker, in respect of which a Disciplinary Committee could make an Order under section 43 of the *Real Estate Services Act*.

2. The length of time required to complete an investigation or hold a disciplinary hearing, or both, would be detrimental to the public interest.

I CONSIDER it in the public interest to make an Order under section 45(2) of the *Real Estate Services Act* suspending the licences of Point Grey Properties Inc. and Stephen Edward Le Sage effective immediately and order that neither the brokerage nor the licensee Stephen Edward Le Sage provide any real estate services to or on behalf of any member of the public and I make the Order accordingly.

FURTHER I consider it in the public interest to make an Order pursuant to section

45(2)(c) of the *Real Estate Services Act* requiring Point Grey Properties Inc. and Stephen Edward Le Sage to cease all dealings with the brokerage trust accounts, brokerage commission trust account, brokerage general account and any other brokerage accounts currently held at the Bank of Montreal, Broadway and Arbutus Branch, Vancouver, British Columbia until further direction by the Real Estate Council and I make the Order accordingly.

FURTHER I consider it in the public interest to make an Order pursuant to section 46(2)(a) to prohibit the named licensees Point Grey Properties Inc. and Stephen Edward Le Sage from withdrawing any further funds from the brokerage trust accounts, brokerage commission trust account, brokerage general account and any other brokerage accounts currently held at the Bank of Montreal, Broadway and Arbutus branch, Vancouver, British Columbia until further direction by the Real Estate Council and I make the Order accordingly.

FURTHER I consider it to be in the public interest to make an Order pursuant to section 46(3) requiring Stephen Edward Le Sage,

signing officer of the brokerage trust accounts, commission trust account and general account to hold the funds in these accounts until further direction of the Real Estate Council and I make the Order accordingly.

FURTHER I consider it to be in the public interest to make an Order pursuant to section 46(3) requiring the Bank of Montreal, Broadway and Arbutus branch, Vancouver, British Columbia, to hold all trust funds, securities, term deposits, general accounts, and client accounts on deposit for Point Grey Properties Inc. or in the name of Point Grey Properties Inc. until further Order of the Real Estate Council and I make the Order accordingly.

TAKE NOTICE that Point Grey Properties Inc. and/or Stephen Edward Le Sage may, pursuant to section 45(6) of the *Real Estate Services Act* require a disciplinary hearing to be held by delivering written notice to the Real Estate Council.

Dated at the City of Vancouver, Province of British Columbia this 30th day of June, 2006.
Allan Corbett
Discipline Committee Chair

Disciplinary Decisions

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

➤ **Complaint:** Contravention of section 3(1) and section 9.12 of Regulation 75/61 under the *Real Estate Act*/Acting as an agent without a valid agent's licence and Negligence

■ **Issue:** Barbara Yung Li Lung, representative, Macdonald Realty Westmar, Richmond, (a) breached section 3(1) of the *Real Estate Act* by acting or holding herself out as an agent without a valid or subsisting agent's licence by conducting property management services independent of her agent; and (b) was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she: (i) failed to adequately clarify the scope of her duties with the seller when she agreed to look after his property for him while a tenant was residing in the property; (ii) failed to inspect or adequately inspect the property on a regular basis when she agreed to look after the property for the seller, which resulted in the property being left in a poor and messy condition; and (iii) failed to advise and/or provide the seller with sufficient opportunity to obtain independent legal advice before permitting the seller to sign numerous extensions to the contract and before permitting the seller to enter into a new contract with the buyer.

✍ **Penalty:** Barbara Yung Li Lung's licence was suspended for thirty (30) days from August 2, 2006 to August 31, 2006 (inclusive) for a breach of section 3(1) and negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Barbara Yung Li Lung, and a Consent Order was issued. In addition, as a condition of continued licensing, she was required to

successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available "Professionalism it Pays! Be Safe or Be Sued" or "Legal Update" course and to pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of section 9.12 of Regulation 75/61 under the *Real Estate Act*, section 35(1)(a) of the *Real Estate Services Act* and section 2-19 of the Council Rules under the *Real Estate Services Act*/Negligence and professional misconduct

■ **Issue:** Christopher Hon Fai Lee, associate broker, Royal Pacific Riverside Realty Ltd., Richmond, who, while licensed as a managing broker with Louwin Management Ltd., Richmond, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he:

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

(ii) as managing broker for the said brokerage, contravened section 2-19 of the Council Rules in that he failed to promptly respond to the written inquiries to him by the Council with respect to an Office and Records Inspection Report dated December 17, 2004, and thereby committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*.

✍ **Penalty:** Christopher Hon Fai Lee's licence was suspended for twenty-eight (28) days from July 19, 2006 to August 15, 2006 (inclusive) for negligence and professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Christopher Hon Fai Lee, and a Consent

Order was issued. In addition, as a condition of continued licensing as an associate broker, he was required to successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, and to pay enforcement expenses to the Council in the amount of \$500.00. Further, as a condition of relicensing as a managing broker, Christopher Hon Fai Lee was required to successfully complete the Broker's Licensing Course and Examination and to successfully complete the Rental Property Management Supplemental Course and Examination.

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

■ **Issue:** Donald Wayne Judiesch, representative, Macdonald Realty Kelowna, Kelowna, contravened section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he

(i) failed to act in accordance with his duties as a limited dual agent when he permitted the seller to sign the addendum to the contract incorporating an agreement for sale without the benefit of independent legal or other appropriate professional advice, particularly when

a) the credit-worthiness of the buyer was unsettled,

b) the transaction changed to incorporate vendor financing and

c) Macdonald Realty Kelowna would be seeking remuneration regardless of whether the buyer had complied with the obligations under the agreement for sale; and

(ii) failed to advise the seller that the deposit that was funded by Donald Wayne Judiesch was not immediately reimbursed by the buyer and that the repayment of this sum was secured by a mortgage against the buyer's Alberta property.

Penalty: Donald Judiesch's licence was suspended for twenty-one (21) days from June 21, 2006 to July 11, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Donald Wayne Judiesch, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignment applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$500.00.

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

Issue: John Crae Partington, representative, Re/Max Front Street Realty, Penticton, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he, in relation to one matter:

(i) failed to advise the buyers to seek independent legal advice before entering into a building contract; and in relation to another matter

(ii) failed to provide different buyers with a list of professionals from which they could choose a builder if they chose to develop their property.

Penalty: John Crae Partington's licence was suspended for fourteen (14) days from July 12, 2006 to July 25, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and John Crae Partington, and a Consent Order was issued. In addition, as a condition of continued licensing, he was required to successfully complete the disciplinary education assignments applicable to Chapter

2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available "Professionalism it Pays! Be Safe or Be Sued" course and to pay enforcement expenses to the Council in the amount of \$500.00.

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

Issue: Harjinder Walia, representative, Sutton Centre Realty, Burnaby, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he failed to ensure that the clause in the Contract of Purchase and Sale regarding the holdback and work to be performed by the seller specifically outlined what exactly had to be painted in the property and what was to happen in case of a dispute over the work that was to be done.

Penalty: Harjinder Walia's licence was suspended for fourteen (14) days from July 19, 2006 to August 1, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Harjinder Walia, and a Consent Order was issued. In addition, as a condition of continued licensing, he was required to successfully complete the disciplinary education assignment applicable to Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course, and to pay enforcement expenses to the Council in the amount of \$500.00.

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

Issue: Dennis William Nisbet, associate broker, Coldwell Banker Westburn Realty, Burnaby, was negligent within the meaning of section 9.12 of Regulation 75/61


under the *Real Estate Act* in that he failed to ensure that the clause in the Contract of Purchase and Sale regarding the holdback and work to be performed by the seller specifically outlined exactly what had to be painted in the property and what was to happen in case of a dispute over the work that was to be done.

Penalty: Dennis William Nisbet was suspended for fourteen (14) days from June 21, 2006 to July 4, 2006 (inclusive) for negligence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Dennis William Nisbet, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignment applicable to Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$500.00.

Complaint: Contravention section 15 of the *Real Estate Act* and section 12.01 of Regulation 75/61 under the *Real Estate Act*/ Failure to keep proper and up to date books, records and accounts

Issue: Louwin Management Ltd., Richmond, contravened section 15 of the *Real Estate Act* and section 12.01 of Regulation 75/61 under the *Real Estate Act* in that it failed to keep proper and up to date books, records and accounts as noted in an Office and Records Inspection Report dated December 17, 2004.

Penalty: Louwin 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 Louwin Management Ltd. and a Consent Order was issued. In addition,



as a condition of continued licensing Louwin Management Ltd. is to pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of section 3-3 of the Council Rules (failed to ensure Accountant's Report filed), section 7-7 of the Council Rules (failed to file an Accountant's Report) under the *Real Estate Services Act*/ Failure to file Accountant's Report

■ **Issue:** Warren Pacific Realty Ltd., Lytton, contravened section 7-7 of the Council Rules in that it failed to file an Accountant's Report in the prescribed form with the Real Estate Council by the prescribed date.

■ **Issue:** John Robinson Warren, managing broker, Warren Pacific Realty Ltd., Lytton, contravened section 3-3 of the Council Rules in that he failed to ensure that the brokerage had filed an Accountant's Report in the prescribed form with the Real Estate Council on or before the prescribed date.

✍ **Penalty:** Warren Pacific 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 Warren Pacific Realty Ltd. and a Consent Order was issued. In addition, as a condition of continued licensing, Warren Pacific Realty and John Robinson Warren are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

Penalty: John Robinson Warren, managing broker for Warren Pacific Realty Ltd. was suspended for fourteen days from July 5, 2006 to July 18, 2006 (inclusive) 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 John Robinson Warren, and a Consent Order was issued. In addition, as a condition of continued licensing, Warren Pacific Realty Ltd. and John Robinson Warren are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

➤ **Complaint:** Contravention of section 35(1)(d) of the *Real Estate Services Act*/ Incompetence

■ **Issue:** John Robert Bruce MacDonald, representative, Royal LePage Northstar Realty, Surrey, who, while licensed with Sutton Group West Coast Realty, Surrey, was incompetent within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he failed to ensure that the seller was advised to obtain independent legal advice with respect to the buyer's failure to provide the deposit and failed to confirm the parties' intentions to proceed with the transaction.

■ **Issue:** Robert Bruce Vannerus, managing broker, Sutton Group West Coast Realty, Surrey, was incompetent within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he failed to ensure that the seller and her notary were advised of the NSF cheque and the seller was advised to

obtain independent legal advice with respect to the buyer's failure to provide the deposit and failed to confirm the parties' intentions to proceed with the transaction.

✍ **Penalty:** John Robert Bruce MacDonald 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 John Robert Bruce MacDonald, and a Consent Order was issued. Further, as a condition of continued licensing, he must successfully complete the disciplinary education assignment applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course.

✍ **Penalty:** Robert Bruce Vannerus 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 Robert Bruce Vannerus, and a Consent Order was issued. Further, as a condition of continued licensing, he must successfully complete the disciplinary education assignment applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker's Licensing Course.

✍ **Penalty:** John Robert Bruce MacDonald and Robert Bruce Vannerus, as a condition of continued licensing, are jointly and severally required to pay enforcement expenses in the amount of \$500.00.