



Report from Council

August 2007 Volume 43, No. 2

New Chair, Vice-Chair Elected

At the first meeting of the 2007/08 Council in July, Satnam Sidhu of Re/Max Crest Realty, North Vancouver, was elected as Chair of the Real Estate Council for the 2007/08 term. Judi Whyte of Prudential Sussex Realty, West Vancouver, was elected as Vice-Chair.

There are 16 members of the Real Estate Council, including three members appointed by the provincial government. Thirteen members are chosen



Satnam Sidhu



Judi Whyte

through an election process open to all real estate licensees in the province. The elected members are comprised of three representatives and nine brokers representing the various provincial counties. One individual is elected as the strata/rental property management member.

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.

All Licensees are Engaged by a Brokerage

The Council is aware that some licensees who hold a licence to provide two or more services (i.e. trading services and rental property management services) mistakenly believe that they may provide rental management services (or strata management services as the case may be) independent of their related brokerage. In addition, some licensees mistakenly believe that, because they hold a higher level of licence (i.e. associate broker or managing broker level), they may provide real estate services outside of their related brokerage.

The Council reminds all licensees that section 7(3) of the *Real Estate Services Act* states that:

- (3) A managing broker, associate broker or representative
- (a) must not provide real estate services other than on behalf of the brokerage in relation to which they are licensed, and
- (b) is not entitled to and must not accept remuneration in relation to real estate services from any person other than the brokerage in relation to which they are licensed.

Licensees with questions are asked to

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

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REAL ESTATE COUNCIL OF B.C. CHAIR

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JUDI WHYTE
EXECUTIVE OFFICER
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GERRY MARTIN
JIM MCNEAL
ANN PETRONE
RAMESH RIKHI
WAYNE STRANGLUND
LIZ TUTT

STATISTICS (AUGUST 2007)

REPRESENTATIVES: 15,934
ASSOCIATE BROKERS: 1,878
MANAGING BROKERS: 1,364
BROKERAGES: 1,408

Role of the Council

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

Report from Council

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

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A Note from the Chair

I was pleased to be elected as Chair of the Council for the 2007/08 term. I look forward to working with the members of the Council, including our newest member, Bryon Brandle from Vernon.

This year, the number of Council members has been reduced to 16, including the three government appointed public members. This reduction in the size of Council is in accordance with the *Real Estate Services Act* (RESA) and was phased in beginning in 2005. The number of members will remain at 16.

As you are aware, Philip Jones retired from the Council effective June 30, 2007. Philip provided outstanding leadership as Vice-Chair and Chair over the past two years, which have been particularly challenging with the continued implementation of RESA, the licensing of strata managers and the introduction of the Council's Relicensing Education Program (REP).

This Report contains 10 full pages of discipline decisions which is a record, albeit one that I'm not particularly happy about. While I have a number of concerns about this, what concerns me most is the number of discipline decisions involving managing brokers. As a former managing broker, I know first-hand the issues and challenges that managing brokers face on a daily basis. Despite this, I believe that managing brokers must rigorously adhere to the requirements of RESA and the Council Rules. In particular, I remind all managing brokers of section 3-1(1) of the Council Rules:

3-1 Managing broker responsibilities

(1) *Supervision* – A managing broker must

(a) be actively engaged in the management of their related brokerage,

(b) ensure that the business of the brokerage is carried out competently and in accordance with the Act, regulations, rules and bylaws, and



Satnam Sidhu

(c) ensure that there is an adequate level of supervision for related associate brokers and representatives and for employees and others who perform duties on behalf of the brokerage.

Managing brokers are looked up to and respected within the industry. They are often a mentor for newer licensees and, in that regard, must lead by example. While the Council expects all licensees to meet their responsibilities and maintain the high professional standards that the industry and consumers have come to expect, this is especially true for managing brokers. I trust that all managing brokers will agree.

*On behalf of Council,
Satnam T. Sidhu, Chair*

REP Reminder

As of January 1, 2007, all licensees who are renewing their licence or becoming licensed for the first time are asked to sign a REP Declaration Form. On the form, licensees acknowledge that, as a condition of licence renewal, they must

complete the mandatory REP course and one elective course from an approved list of courses by their next licence renewal.

Licensees are encouraged to commence their REP education sooner rather than later in order to avoid any

delay in their licence renewal.

Further information about REP and a list of approved REP courses is available on the Council's website at www.recbc.ca. Questions about REP may be directed to the Council at info@recbc.ca.

Council Office Closures

The Council office will be closed on September 3, 2007 for Labour Day, October 8, 2007 for Thanksgiving and November 12, 2007 for Remembrance Day.

Pre-Sale Marketing Reminder

Licensees are reminded that the *Real Estate Development Marketing Act* requires that a Disclosure Statement be filed with the Office of the Superintendent of Real Estate before marketing a development unit in a development property. In accordance with *Policy Statement #1 - Disclosure Statement Requirements for Development Property Consisting of Five or More Strata Lots*, marketing includes engaging in any

transaction or other activity that will or is likely to lead to a sale or lease.

It is the Superintendent's view that marketing includes the use of "letters of intent", "priority lists", "reservation agreements" (which would include reservation or priority fees), "conversion rights", "rights of first refusal", or any similar agreement that carries with it the

right to acquire a strata lot.

Accordingly, developer's representatives, including any individuals licensed under the *Real Estate Services Act*, should verify that a disclosure statement has been filed by the developer before using any such agreement or receiving any deposit, other consideration or fee on behalf of the developer.

Risks Associated With Purchasing "Pre-Sale" Residential Units

Over the past few months, issues have arisen with respect to the termination of pre-sale contracts by developers. In response to these events, the Superintendent of Real Estate has prepared a bulletin which outlines some of the risks associated with pre-sale real estate contracts. The bulletin has been published on the Superintendent's website at www.fic.gov.bc.ca/pdf/real_estate/REDMA-07-02.pdf

Licensees who work with buyers of pre-sale units are encouraged to familiarize themselves with this information and to make it available to their clients. Licensees with questions may contact the Superintendent's office at 604-953-5300.



Disclosure Forms Reminder

Licensees are reminded they are no longer required to submit copies of disclosure forms to the Council office. This includes disclosure of

remuneration, disclosure of benefits and the Disclosure of Interest in Trade forms. The Council does, however, require that these forms be held on file

at the brokerage and in the licensee's own personal file in the event these forms are required at some future date (e.g. for a Council investigation).

Paying and Receiving Referral Fees

Some licensees pay or receive referral fees. Typically, referral fees are *paid* by a licensee for receiving a 'lead' which results in the licensee earning remuneration. A licensee might *receive* a referral fee for referring a client to another licensee or service provider if that client uses the services of that other person. The following are issues that licensees should be aware of related to the payment or receipt of referral fees.

Paying a referral fee to an unlicensed person

A licensee may pay an unlicensed person a referral fee as long as

- the unlicensed person does not solicit, for the purposes of making a referral, the names of persons who may want to acquire or dispose of real estate;
- the practice of making referrals is not the main business of the unlicensed person making the referral; and
- the unlicensed person making the referral does nothing else that would require them to be licensed.

Those who intend to pay a referral fee to an unlicensed person have an obligation to first ensure that person satisfies the above criteria. Section 6-1 of the Council Rules prohibits the payment of any remuneration to an unlicensed person in relation to real estate services if that person is required to be licensed. For this reason, it is important that a brokerage has clear policies, and advise its licensees accordingly, with respect to the payment of referral fees. It may also be useful to obtain independent accounting advice with respect to any tax implications that may be associated with the payment of referral fees to unlicensed persons.

Paying a referral fee to another licensee

Licensees must only receive remuneration related to the provision of

real estate services from the brokerage with which they are engaged. Therefore, any form of remuneration, including referral fees, must be paid to the related brokerage for disbursement to the licensee. No remuneration may be paid directly to the licensee. The definition of 'remuneration' is very broad and includes any commission, fee, gain, or reward.



Disclosure that a referral fee is to be paid

Section 3-3(f) of the Council Rules requires a licensee to disclose to a client "all known material information respecting the real estate services" being provided. If a licensee has agreed to pay a referral fee, that is a material fact which must be disclosed to the client. This is true whether the referral fee is to be paid to a licensee or to an unlicensed person.

Example

Mr. Seller, who wants to sell his home, is referred to Licensee Good by Ms. Referrer. Licensee Good would like to pay Ms. Referrer a referral fee for the 'lead'. Licensee Good must disclose to Mr. Seller the intention to pay a referral fee to Ms. Referrer, and the amount of that referral fee.

Receiving referral fees

Section 5-11 of the Council Rules requires a licensee to disclose in writing to a client any remuneration the licensee anticipates receiving that is not to be paid directly by that client. Therefore, if a licensee is to receive a referral fee for referring a client to another service provider, be that another licensee or another person providing services related to real estate (e.g. a mortgage broker, appraiser, etc.), they are required to disclose to the client the details of this referral. Those details include

- the source (who is paying the referral fee);
- the amount, or if the amount is unknown, the likely amount or method of calculation of the amount; and
- any other relevant facts related to the referral fee.

Again, remuneration is a very broadly defined term, and includes any form of benefit, whether it be money or otherwise (e.g. mortgage points). All referral fees, benefits, and other forms of remuneration must be received through the brokerage with which the licensee is engaged.

Example

Mr. Seller, a client of Licensee Good, wants to purchase a home in the market area worked by Licensee Best. Licensee Good refers Mr. Seller to Licensee Best on the understanding that Licensee Best agrees to pay Licensee Good a referral fee if Mr. Seller buys a home through Licensee Best. In order to comply with section 5-11 of the Council Rules, Licensee Good must disclose to Mr. Seller that he anticipates receiving a referral fee from Licensee Best if Mr. Seller buys a home through Licensee Best. He must also disclose the amount or the method of calculation of the amount.

Disclosure of Material Latent Defects

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

Section 5-13 of the Council Rules requires disclosure of known material latent defects and that section defines a material latent defect as follows:

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

- (a) a defect that renders the real estate
 - (i) dangerous or potentially dangerous to the occupants,
 - (ii) unfit for habitation, or
 - (iii) unfit for the purpose for which a party is acquiring it, if
- (A) the party has made this purpose known to the licensee, or
- (B) the licensee has otherwise become aware of this purpose;
- (b) a defect that would involve great expense to remedy;
- (c) a circumstance that affects the real estate in respect of which a local government or other local authority has given a notice to the client or the licensee, indicating that the circumstance must or should be remedied;
- (d) a lack of appropriate municipal building and other permits respecting the real estate.”

Further, section 5-8 of the Council

Rules requires that disclosure to be in writing and separate from any agreement under which real estate services are provided and separate from any agreement giving effect to a trade in real estate.

satisfy the requirements of the Council Rules. **Timing of the disclosure is critical. Written disclosure of all known material latent defects must be provided to the buyer before there is an accepted offer. This applies whether the PDS, or some other document is to be used to disclose these defects.**

A licensee acting for the seller must ensure that the written disclosure of the material latent defect was provided to the buyer prior to the acceptance of the offer by the seller. Licensees should include the following wording in the Contract of Purchase and Sale whenever a material latent defect is disclosed.

“ T h e b u y e r acknowledges having received separate written disclosure of a material latent defect relating to (general reference to issue).”

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

As a result of recent amendments to the Council Rules, a licensee is not required to disclose a known material latent defect to a buyer if the seller has already disclosed all known material latent defects, in writing, to the buyer.

For example, disclosing the material latent defect on the Property Disclosure Statement (PDS) may now



Important Information for Strata Managers: Filing of Liens

The Law Society of British Columbia, upon being made aware of the issue by a member of the public, has advised the Real Estate Council that strata managers cannot charge a separate fee for the preparation of a Form G–Certificate of Lien and a Form H–Acknowledgment of Payment, as it considers that to be providing legal services.

Section 116 of the *Strata Property Act* gives a strata corporation the authority to register a lien against an owner's strata lot under certain circumstances in a prescribed form – Form G-Certificate of Lien. To remove a lien, the prescribed Form H–Acknowledgement of Payment, is required.

Strata managers, who prepare the above forms, often do so for a fee, which is charged back to the strata corporation or owner's strata fee account, against whose strata lot the lien is registered. Often times, this fee is described as a lien fee or lien

preparation fee.

The Unauthorized Practice Committee of the Law Society considered the issue and has taken the view that preparing Forms G and H for a fee, pursuant to the *Strata Property Act* and *Regulation*, falls within the “practice of law” as defined in the *Legal Profession Act*.

The Law Society has, however, advised that as the prescribed Forms G and H of the *Strata Property Act* allow for a strata manager to sign such forms, the Society will not object to managers preparing these forms, with the proviso that the strata manager does not charge a separate fee for preparing them.

Accordingly, the Law Society has indicated that as long as the preparation of these forms is part of a strata manager's general duties, and is not a service that is provided and billed for separately, it will not consider this matter to warrant its intervention.

In summary, it is important that

strata managers do not charge a fee for the preparation of the lien certificates. Fees may be charged for the administration and enforcement of the debt, including work performed prior to the issuance of a lien certificate, such as letter writing, phone calls, meetings, etc. and for the recovery of the cost for filing and releasing the lien at the applicable Land Title Office, as these activities would not fall within the definition of the “practice of law”. It is important that licensees appropriately define the services covered by the fees that are charged.

Licensees must not engage in the unauthorized practice of law. Licensees should familiarize themselves with the definition section 1(1) of the *Legal Profession Act* and section 15(1) (Authority to practice law) of the same Act. You may find a copy of the Act by accessing www.qp.gov.bc.ca/statreg/stat/L/98009_01.htm.

Form B Information Certificates

The Council frequently receives telephone calls regarding Form B–Information Certificates, a prescribed form under the *Strata Property Act*. These calls often involve a complaint against a strata manager, indicating that a Form B has been altered and/or that the documents that must be attached to the Form are missing.

The Council reminds licensees engaged in providing strata management services that the Form B is a very important document that buyers of a strata lot rely upon. Strata management licensees should be aware that the Form B is a prescribed form under the *Strata Property Act* and is binding on the strata corporation in its dealings with a person

who relied on the certificate and acted reasonably in doing so. Section 59 of the *Act* dictates which items must be disclosed in the Certificate and which documents must be attached to it.

Licensees are reminded that prescribed forms must not be altered in a way that affects the substance or is calculated to mislead. In addition, licensees must ensure that all required documents are, in fact, attached. The most common missing attachment, based on the calls received by the Council, is the owner developer's rental disclosure statement. If the strata manager does not have a copy of the rental disclosure statement on file, the strata manager may wish to contact the

Office of the Superintendent of Real Estate at 604-953-5300 to determine whether a rental disclosure statement was filed with that office and obtain a copy of any such rental disclosure statement.

Licensees are reminded that incorrect or missing information on an Information Certificate could potentially cause harm to the buyers of a strata lot and, accordingly, may result in disciplinary action by the Council against the licensee who prepared the Certificate.

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

Notice of Licensee Resignations

Evelyn Grace Palmer, while licensed as a managing broker and Robert George Palmer, while licensed as a representative with 430871 B.C. Ltd. and 430873 B.C. Ltd. dba Sutton Group – Skaha Realty, Penticton, requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against them as they had decided to permanently retire from real estate practice. Mr. and Ms. Palmer were facing a disciplinary hearing into their professional conduct and would have been required to appear before a hearing committee of the Real Estate Council to respond to these allegations.

Considering the fact that there is likely no greater disciplinary sanction than not being licensed to act again, the Real Estate Council agreed with Mr. Palmer's and Ms. Palmer's requests. The lifetime bans on Mr. and Ms. Palmer's licensing under the *Real Estate Services Act* were effective as of April 28, 2007, although Ms. Palmer surrendered her licence to the Real Estate Council on July 7, 2006 and Mr. Palmer's licence was surrendered to the Real Estate Council on December 27, 2006.

Discipline

Since the June 2007 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

COMPLAINT: Contravention of section 24 of the *Real Estate Services Act*/ making a false or misleading statement in or in relation to the Application for Licensing as a Brokerage

ISSUE: SwiftSure Strata Services Inc., Richmond, contravened section 24 of the *Real Estate Services Act* in that

- (a) Mr. Legg misled the Council in his Director, Officer or Partner Information Form by failing to disclose his criminal record,
- (b) Mr. Legg failed to cooperate with the Council staff when asked to disclose the details concerning his criminal record,
- (c) Mr. Legg submitted a Consent Resolution purported to be signed by the managing broker, which, according to the managing broker, was not signed by him, and
- (d) there was a trust shortage in the accounts of SwiftSure, the magnitude which has not yet been determined.

RESULT: SwiftSure Strata Services Inc.'s licence was cancelled in accordance with section 24 of the *Real Estate Services Act* in that it made a false or misleading statement in or in relation to the Application for Licensing of a Brokerage.

COMPLAINT: Contravention of sections 35(1)(a) and 35(1)(c) of the *Real Estate Services Act* and sections 3-3(1)(b) and 3-3(1)(c) of the Council Rules/ Professional misconduct, duties to clients

ISSUE: Deborah Jo Acheson, representative, Dedicated Property Management Ltd., Delta, committed professional misconduct within the meaning of sections 35(1)(a) and 35(1)(c) of the *Real Estate Services Act* in that she:

- (a) misappropriated funds held or received from, for or on behalf of a principal in relation to real estate services for her own use or benefit by making withdrawals from trust for purposes other than those permitted by sections 30(1) and (2) of the Act, which conduct constituted wrongful taking;
- (b) collapsed term investments held on behalf of clients of the brokerage,

deposited these funds into the strata trust account of the brokerage and falsely characterized these deposits as owner contributions, which conduct constituted deceptive dealings;

- (c) acted contrary to the lawful instructions of clients of the brokerage, contrary to section 3-3(1)(b) of the Council Rules, and
- (d) acted outside of the scope of authority given by clients to the brokerage, contrary to section 3-3(1)(c) of the Council Rules.

RESULT: Deborah Jo Acheson's licence as a representative was cancelled and she will not apply for licensing as a representative for a period of seven (7) years commencing March 31, 2006 for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Deborah Jo Acheson, and a Consent Order was issued. She will also pay enforcement expenses in the amount of \$5,000.00 within two (2) years of the date of the Consent Order. In addition, upon receipt of her application for licensing, she will be subject to a qualification hearing, and further, as a condition of

future licensing, she will pay a discipline penalty in the amount of \$10,000.00

COMPLAINT: Contravention of sections 35(1)(a), 35(1)(d) and 35(1)(e) of the *Real Estate Services Act* by contravening section 25 of the *Real Estate Services Act*, sections 3-1(3)(a) and (b), 2-19, 2-22(1)(a), 7-6, 8-7.2(2)(a), and 8-7.2(2)(b) of the Council Rules/ Professional misconduct, maintain proper books, records and accounts, notice of business change, Council review of accounts, transfer of strata management records

ISSUE: Stephen Edward Le Sage, currently unlicensed, who, while licensed as managing broker of Point Grey Properties Inc., Vancouver:

- (a) failed to be in active charge and control of the business of the brokerage, contrary to section 3-1(3)(a) and (b) of the Council Rules;
- (b) contravened section 25 of the *Real Estate Services Act* in that he failed to maintain proper books, records and accounts of the brokerage;
- (c) contravened section 2-19 of the Council Rules in that he failed to respond promptly in writing to a Council inquiry;
- (d) contravened section 2-22(1)(a) of the Council Rules in that he failed to notify the Council in writing of a change of the brokerage's address;
- (e) contravened section 7-6 of the Council Rules in that he failed to allow the Council's review of the brokerages accounts, financial records and other records related to the dealings of the brokerage;
- (f) contravened section 8-7.2(2)(a) of the Council Rules in that he failed to provide, after ceasing to act for a client, records of a former client within fourteen (14) days of the last bank reconciliation that related to the account of that client;
- (g) contravened section 8-7.2(2)(b) of the Council Rules in that he failed to deliver property management records to the new brokerage retained by the former client within fourteen (14) days of the request of such record by the new brokerage

and, further, failed to make or retain copies of the same;

- (h) while there were sufficient trust funds held by the brokerage, failed to properly account for and remit all rental monies collected on behalf of a client; and
- (i) while there were sufficient trust funds held by the brokerage, failed to properly account for and remit all rental monies that were collected on behalf of a second client.

RESULT: Stephen Edward Le Sage may not apply for licensing as a managing broker prior to November 14, 2009 for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Stephen Edward Le Sage, and a Consent Order was issued. In addition, as a condition of licensing as a managing broker, Mr. Le Sage must successfully complete the Broker's Licensing Course. Mr. Le Sage may not apply for licensing as a representative prior to June 30, 2007 and, as a condition of licensing, Mr. Le Sage must successfully complete the disciplinary education assignments applicable to Chapter 2 (the *Real Estate Services Act*) and Chapter 26 (Communication and Ethics in Property Management) of the Rental Property Management Licensing Course. Mr. Le Sage further consents that any application for licensing under the *Real Estate Services Act* will not be considered unless a Wind Up Report for the brokerage, Point Grey Properties Inc., in a form acceptable to the Council, had been received by the Council at the time of Mr. Le Sage's application, provided that if Mr. Le Sage does not comply with the terms as set out above, any application for reinstatement of his licence will not be considered without a qualification hearing being conducted. Further, Mr. Le Sage must pay a fine in the sum of \$1,000.00 and enforcement expenses of this Consent Order to the Council in the amount of \$3,000.00 as a condition of licensing or by December 14, 2007.

COMPLAINT: Contravention of section 31(1)(c) of the *Real Estate Act* and section 9.12 of Regulation 75/61 under the *Real Estate Act*/misconduct, negligence and incompetence.

ISSUE: Bella Daniels, representative, while licensed with Masters Realty (2000) Inc. dba Re/Max Masters Realty

- (a) misconducted herself within the meaning of section 31(1)(c) of the *Real Estate Act* in that she (i) misrepresented to another licensee that there was an accepted offer on a unit to be sold which she knew was untrue, (ii) permitted an unlicensed assistant to perform activities on her behalf for which a licence was required;
- (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 identify an unlicensed assistant in her advertisements contrary to the Council guidelines; (ii) failed to deliver a Contract of Purchase and Sale and Notice and Disclosure to her agent in a timely manner;
- (c) was incompetent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she (i) distributed advertising to the public in which she published the name of the owner of the units to be sold without the consent of the owner; (ii) acted as a limited dual agent in two transactions in which she was the buyer without withdrawing as the agent for the sellers and without ensuring that the sellers were afforded an opportunity to seek independent legal advice or advice from another agent.

RESULT: Bella Daniels's licence was suspended for seventy (70) days from August 22, 2007 to October 30, 2007 (inclusive) for misconduct, negligence and incompetence as described above. 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*),

Chapter 12 (The Law of Agency) of the Real Estate Trading Services Licensing Course, and to enroll in and attend the first available CPE courses “What Brokerages and Realtors Need to Know About Agency”, “Legal Update”, “Professionalism it Pays! Be Safe or Be Sued” and “Applied Ethics in Real Estate” and to pay enforcement expenses to the Council in the amount of \$15,000.00.

This decision was appealed to the Financial Services Tribunal by Ms. Daniels and on July 19, 2007 the appeal was dismissed with costs of the appeal being awarded to the Real Estate Council and the Financial Services Tribunal in the amount of \$2,500.00 each.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act*, sections 2-19, 2-21 and 2-22 of the Council Rules/Professional misconduct, promptly notify Council of discipline proceedings, promptly reply to Council inquiries

ISSUE: Cordex Realty & Management (BC) Ltd. dba Cordex Realty, Vancouver, currently unlicensed, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it contravened section 2-22 of the Council Rules in that it failed to promptly notify the Council, in writing, of a change in the directors or officers of the brokerage.

ISSUE: Freeman Ming Yee, currently unlicensed, who, while licensed as managing broker, Cordex Realty & Management (BC) Ltd. dba Cordex Realty, Vancouver, committed professional misconduct within the meaning of section 35(1)(a) by

- (a) contravening section 2-21 of the Council Rules in that he failed to promptly notify the Council in writing that the Registrar of Mortgage Brokers had suspended his registration as a sub-mortgage broker, pursuant to a Consent Order dated April 1, 2006, for a

period of four months and that Cordex Realty pay an administrative penalty in the amount of \$50,000 on or before April 30, 2006, pursuant to the said court order; and

- (b) contravened section 2-19 of the Council Rules in that he failed to promptly respond to the inquiries of the Council with respect to his failure to notify the Council of the said disciplinary proceedings under the *Mortgage Brokers Act*.

RESULT: Cordex Realty & Management (BC) Ltd. dba Cordex Realty was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Cordex Realty & Management (BC) Ltd. dba Cordex Realty, and a Consent Order was issued. Further, Cordex Realty & Management (BC) Ltd. dba Cordex Realty and Freeman Ming Yee are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Freeman Ming Yee is prohibited from applying for a licence either as a managing broker, an associate broker, or representative, for a period of sixty (60) days from May 18, 2007 to July 18, 2007, for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Freeman Ming Yee, and a Consent Order was issued. Mr. Yee is required to pay a discipline penalty payable to the Council in the amount of \$5,000 and must successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements under the *Real Estate Services Act*). Further, Freeman Ming Yee and Cordex Realty & Management (BC) Ltd. dba Cordex Realty are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

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

ISSUE: David Winston Toothill, representative, currently unlicensed, who while licensed with Fernie Real Estate Company Ltd., Fernie, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he demonstrated incompetence by

- (a) offering agency representation to the seller when he knew or ought to have known that it was inappropriate as he was a principal in the transaction,
- (b) failing to withdraw his agency representation of the seller when he elected to become involved as a buyer of the property,
- (c) failing to advise the seller and provide the time and opportunity to seek independent legal advice prior to signing the contract of purchase and sale, and
- (d) failing to protect and promote the interests of his client, the seller, and allowing his personal interests to conflict with his duties as a limited dual agent.

RESULT: David Winston Toothill was prohibited from applying for a licence before April 3, 2007 and that as a condition of re-licensing, his new managing broker is to advise the Council in writing that they have read and reviewed the Consent Order and Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver. In addition, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(d) of the *Real Estate Services Act* and section 5-13 of the Council Rules/ Professional misconduct, incompetence, disclosure

ISSUE: Sonya Marie Makayev, representative, National Home Owner Marketing Inc. (Sic) dba Century 21 Lifestyles (Sic), Sicamous, who, while licensed with Shuswap Realty Ltd. (Sic) dba Re/Max Shuswap (Sic), Sicamous, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that she demonstrated incompetence by:

- (a) failing to ensure that the buyers' representative was aware of the existence of a latent defect in accordance with section 5-13 of the Council Rules, namely that a septic service company had pumped out one of the two septic tanks and that it had indicated on an invoice that there may be problems with the septic system;
- (b) providing a document to the buyers that had been amended by her and which suggested that both septic tanks had been inspected and had been approved, when she had no personal knowledge of same and when she had not independently verified it, as it was information that originated from the sellers; and
- (c) favouring the interests of the sellers over the buyers.

RESULT: Sonya Marie Makayev's licence was suspended for thirty (30) days from July 25, 2007 to August 23, 2007 (inclusive) for professional misconduct and incompetence as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Sonya Marie Makayev, and a Consent Order was issued. In addition, as a condition of continued licensing, she is required to successfully complete the discipline education assignments applicable to Chapter 5 ("The Professional Liability of Real Estate Licensees"), Chapter 9 ("Professional Ethics") and Chapter 12 ("Law of Agency"). As a further condition of continued licensing, she is required to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 3(1)(a), 7(5)(a), 25, 35(1)(a), and 35(1)(d) of the *Real Estate Services Act*, sections 3-1(1), 3-1(3)(b), 5-11, 7-4(2), and 8-3 and Parts 7 and 8 of the Council Rules, and sections 3(2) and 42 of the former *Real Estate Act*/ Professional misconduct, licensing, books and records, managing broker responsibility, disclosure, brokerage accounts and records

ISSUE: Genesis Group Real Estate Inc., Victoria, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it:

- (a) permitted an unlicensed assistant to provide real estate services on behalf of the brokerage from on or about November 1, 2004 until on or about March 28, 2006, contrary to sections 3(1)(a) and 7(5)(a) of the *Real Estate Services Act*; and sections 3(2) and 42 of the former *Real Estate Act*;
- (b) did not maintain the trust accounts and records of the brokerage in accordance with the *Real Estate Services Act* and Council Rules, as required by section 25 of the *Real Estate Services Act* and Parts 7 and 8 of the Council Rules in that it: (i) failed to review, date and initial monthly trust asset and liability reconciliations, in accordance with section 7-4(2) of the Council Rules; (ii) failed to ensure that trust reconciliations were prepared in an appropriate form and timely manner, in accordance with section 8-3 of the Council Rules; (iii) failed to ensure that client ledgers did not go into an overdraft position; and (iv) in two trades, failed to disclose to a client the source and amount of the remuneration, in accordance with section 5-11 of the Council Rules.

ISSUE: Douglas Adam Bavington, managing broker, Genesis Group Real Estate Inc., Victoria, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he:

- (a) failed to follow up sufficiently in order to ensure that an unlicensed representative did not provide real estate services on behalf of the brokerage from on or about November 1, 2004 until on or about March 28, 2006, without being licensed before permitting him to engage in activity which required licensing, in accordance with sections 3(1)(a) (requirement of licensing) and 7(5)(a) (requirement for licensing of a representative) of the *Real Estate Services Act*, sections 3-1(1) and 3-1(3)(b) of the Council Rules, and sections 3(2) and 42 of the former *Real Estate Act*;
- (b) failed to ensure that the trust accounts and records of the brokerage were maintained in accordance with the *Real Estate Services Act* and Council Rules, as provided in section 25 of the *Real Estate Services Act*, section 3-1(3)(a), Parts 7 and 8 of the Council Rules in that he: (i) failed to review, date and initial monthly trust asset and liability reconciliations, in accordance with section 7-4(2) of the Council Rules; (ii) failed to ensure that trust reconciliations were prepared in an appropriate form and timely manner, in accordance with section 8-3 of the Council Rules; (iii) failed to ensure that client ledgers did not go into an overdraft position; and (iv) in two trades, failed to disclose to a client the source and amount of the remuneration in accordance with section 5-11 of the Council Rules.

RESULT: Genesis Group Real Estate Inc. was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Genesis Group Real Estate Inc., and a Consent Order was issued.

RESULT: Douglas Adam Bavington was suspended for fourteen (14) days from July 25, 2007 to August 7, 2007 (inclusive) for professional misconduct

as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Douglas Adam Bavington, and a Consent Order was issued. In addition, as a condition of continued licensing, Mr. Bavington must enroll in and attend the first available CPE course "What Brokerages and REALTORS Need to Know About Agency". Further, Mr. Bavington and Genesis Group Real Estate Inc. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(d) of the *Real Estate Services Act* and section 3-3 of the Council Rules/Professional misconduct, incompetence, duties to clients

ISSUE: Colleen Marie Mayes, associate broker, Homelife Glenayre Chilliwack Ltd., Chilliwack, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that she demonstrated incompetence by:

- (a) allowing the insurance policy for a strata corporation to lapse; and
- (b) failing to follow the instructions of a strata corporation with respect to renewal of the insurance policy.

RESULT: Colleen Marie Mayes was suspended for seven (7) days from August 8, 2007 to August 14, 2007 inclusive for committing 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 Colleen Marie Mayes, and a Consent Order was issued. As a condition of continued licensing, she will pay enforcement expenses to the Council in the amount of \$750.00.

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

Report, managing broker responsibilities

ISSUE: Hayworth Communities Inc., Victoria, 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: Leslie Allen Bjola, managing broker, Hayworth Communities Inc., Victoria, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and/or 3-1(3) of the Council Rules in that he failed to ensure that the Accountant's Report was filed by the prescribed date.

RESULT: Hayworth Communities Inc. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Hayworth Communities Inc., and a Consent Order was issued. In addition, as a condition of continued licensing, Hayworth Communities Inc. and Leslie Allen Bjola are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Leslie Allen Bjola was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Leslie Allen Bjola, and a Consent Order was issued. In addition, as a condition of continued licensing, Leslie Allen Bjola and Hayworth Communities Inc. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

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

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

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

RESULT: Worldwide Referrals Realty Inc. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Worldwide Referrals Realty Inc., and a Consent Order was issued. In addition, as a condition of continued licensing, Worldwide Referrals Realty Inc. and Ralph Terry Case are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Ralph Terry Case was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ralph Terry Case, and a Consent Order

was issued. In addition, as a condition of continued licensing, Ralph Terry Case and Worldwide Referrals Realty Inc. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a), section 6(2), and section 7(5)(a) of the *Real Estate Services Act*, and section 3-1(1) of the Council Rules/Professional misconduct, managing broker responsibilities, providing real estate services through an unlicensed representative

ISSUE: Home Team Realty, Victoria, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it provided real estate services through an unlicensed representative contrary to section 7(5)(a) of the *Real Estate Services Act*.

ISSUE: John Gary Davis, managing broker, Home Team Realty, Victoria, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to ensure that an unlicensed representative with Home Team Realty did not engage in activities which required licensing, contrary to section 6 (2) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules.

RESULT: Home Team Realty was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Home Team Realty, and a Consent Order was issued. In addition, as a condition of continued licensing, Home Team Realty and John Gary Davis are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

RESULT: John Gary Davis was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was

entered into between the Real Estate Council and John Gary Davis, and a Consent Order was issued. In addition, as a condition of continued licensing, John Gary Davis and Home Team Realty are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$500.00.

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

ISSUE: Magic Island Realty Ltd., Hornby Island, 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: Wendy Anne Edwards, managing broker, Magic Island Realty Ltd., Hornby Island, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling her responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and/or 3-1(3) of the Council Rules in that she failed to ensure that the Accountant's Report was filed by the prescribed date.

RESULT: Magic Island 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 Magic Island Realty Ltd., and a Consent Order was issued. In addition, as a condition of continued licensing, Magic Island Realty Ltd. and Wendy Anne Edwards are jointly and severally liable to pay enforcement expenses to the Council in the amount

of \$750.00.

RESULT: Wendy Anne Edwards was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Wendy Anne Edwards, and a Consent Order was issued. In addition, as a condition of continued licensing, Wendy Anne Edwards and Magic Island Realty Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

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

ISSUE: Hutton Condominium Services Ltd., Victoria, 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: Philip Michael Gerry, managing broker, Hutton Condominium Services Ltd., Victoria, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and/or 3-1(3) of the Council Rules in that he failed to ensure that the Accountant's Report was filed by the prescribed date.

RESULT: Hutton Condominium Services Ltd., Victoria, 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 Hutton Condominium Services Ltd., and a Consent Order was issued. In addition, as a condition of continued licensing, Hutton Condominium Services Ltd. and Philip Michael Gerry are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Philip Michael Gerry was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Philip Michael Gerry, and a Consent Order was issued. In addition, as a condition of continued licensing, Philip Michael Gerry and Hutton Condominium Services Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

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

ISSUE: Mountain Realty At Big White Ltd., Kelowna, 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: James Ashley Henry, managing broker, Mountain Realty At Big White Ltd., Kelowna, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and/or 3-1(3) of the Council Rules in that he failed to

ensure that the Accountant's Report was filed by the prescribed date.

RESULT: Mountain Realty At Big White 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 Mountain Realty at Big White Ltd., and a Consent Order was issued. In addition, as a condition of continued licensing, Mountain Realty At Big White Ltd. and James Ashley Henry are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: James Ashley Henry, was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and James Ashley Henry, and a Consent Order was issued. In addition, as a condition of continued licensing, James Ashley Henry and Mountain Realty At Big White Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

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

ISSUE: Care Realty Ltd. dba Move Masters Realty, Port Coquitlam, 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: John Alexander McKilligan, managing broker, Care Realty Ltd. dba Move Masters Realty, Port Coquitlam, committed professional misconduct within the meaning of section 35(1)(a)

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

RESULT: Care Realty Ltd. dba Move Masters Realty 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 Care Realty Ltd. dba Move Masters Realty, and a Consent Order was issued. In addition, as a condition of continued licensing, Care Realty Ltd. dba Move Masters Realty and John Alexander McKilligan are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: John Alexander McKilligan was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and John Alexander McKilligan, and a Consent Order was issued. In addition, as a condition of continued licensing, John Alexander McKilligan and Care Realty Ltd. dba Move Masters Realty are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) and (d), 3(1)(a), and 7(5)(a) of the *Real Estate Services Act*; sections 3(2) and 42 of the former *Real Estate Act*; and sections 3-1(1) and 3-1(3)(b) of the Council Rules/Professional misconduct, requirement of licensing, failed to ensure unlicensed representative did not provide real estate services

ISSUE: MAC Marketing Solutions Inc.

(formerly known as MAC Real Estate Corp.), Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it permitted an unlicensed representative to provide real estate services on behalf of the brokerage, contrary to sections 3(1)(a) and 7(5)(a) of the *Real Estate Services Act* and sections 3(2) and 42 of the former *Real Estate Act*.

ISSUE: Cameron David McNeill, managing broker, MAC Marketing Solutions Inc. (formerly known as MAC Real Estate Corp.), Vancouver, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he failed to follow up sufficiently in order to ensure that an unlicensed representative did not provide real estate services on behalf of the brokerage without being licensed before permitting her to engage in activity which required licensing, in accordance with sections 3(1)(a) and 7(5)(a) of the *Real Estate Services Act*, sections 3-1(1) and 3-1(3)(b) of the Council Rules; and sections 3(2) and 42 of the former *Real Estate Act*.

RESULT: MAC Marketing Solutions Inc. (formerly known as MAC Real Estate Corp.) and Cameron David McNeill were reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and MAC Marketing Solutions Inc. (formerly known as MAC Real Estate Corp.) and Cameron David McNeill, and a Consent Order was issued. In addition, as a condition of continued licensing, MAC Marketing Solutions Inc. (formerly known as MAC Real Estate Corp.) and Cameron David McNeill are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 6(2)(b) and 35(1)(a) of the *Real Estate Services Act*, sections 3-1(1)(a) and

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

ISSUE: Paris Realty Ltd. dba Royal LePage Fraser Valley-Aldergrove, Abbotsford, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Carrie Frances Stephenson, managing broker, Paris Realty Ltd. dba Royal LePage Fraser Valley-Aldergrove, Abbotsford, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling her responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and/or 3-1(3) of the Council Rules in that she failed to ensure that the Accountant's Report was filed by the prescribed date.

RESULT: Paris Realty Ltd. dba Royal LePage Fraser Valley-Aldergrove 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 Paris Realty Ltd. dba Royal LePage Fraser Valley-Aldergrove, and a Consent Order was issued. In addition, as a condition of continued licensing, Paris Realty Ltd. dba Royal LePage Fraser Valley-Aldergrove and Carrie Frances Stephenson are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Carrie Frances Stephenson was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate

Council and Carrie Frances Stephenson, and a Consent Order was issued. In addition, as a condition of continued licensing, Carrie Frances Stephenson and Paris Realty Ltd. dba Royal LePage Fraser Valley-Aldergrove are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

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

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

RESULT: Lodging Ovations Corp. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Lodging Ovations Corp., and a Consent Order was issued. In addition, as a condition of continued licensing, Lodging Ovations Corp. is to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 3 of the former *Real Estate Act* and section 9.12 of Regulation 75/61 under the former *Real Estate Act*/Negligence, failing to ascertain the dimensions of a certain property and including the incorrect dimensions in the listing information, providing trading services for which a real estate licence is required while unlicensed.

ISSUE: Richard James Beaudry, representative, Coronation Park Holdings Ltd. dba Royal LePage Coronation Park, Surrey, was negligent within the meaning of section 9.12 of Regulation 75/61 under the former *Real Estate Act* in that he (a) represented in

the listing information that the dimensions of a certain property was 83 x 123 (10,209 square feet) when he knew or ought to have known that those were not the true dimensions of the said property, in that the true square footage of the property was 7,861 square feet; (b) failed to ascertain the correct square footage of the said property; and (c) provided trading services for which a real estate licence was required while unlicensed, contrary to section 3 of the former *Real Estate Act*.

RESULT: Richard James Beaudry was reprimanded 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 Richard James Beaudry, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act* and section 3-1 of the Council Rules/Professional misconduct, managing broker responsibilities

ISSUE: Allan Charles Browne, managing broker, Homelife Glenayre Realty Chilliwack Ltd., Chilliwack, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to have a proper system in place to ensure that strata corporation insurance policies were renewed in a timely fashion in accordance with his duties as managing broker under section 3-1 of the Council Rules.

RESULT: Allan Charles Browne was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Allan Charles Browne, and a Consent Order was issued. As a condition of continued licensing, he is required to pay enforcement expenses

to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 3 of the former *Real Estate Act* and section 9.12 of Regulation 75/61 under the former *Real Estate Act*/Negligence

ISSUE: Larry Kenneth Ferster, managing broker, Royal Pro Real Estate Network Inc., Surrey, who, while licensed as managing broker with Coronation Park Holdings Ltd. dba Royal LePage Coronation Park, Surrey, was negligent within the meaning of section 9.12 of Regulation 75/61 under the former *Real Estate Act* in that while he was a managing broker for Coronation Park Holdings Ltd. dba Royal LePage Coronation Park, a licensee with the brokerage provided real estate services for which a real estate licence was required while unlicensed.

RESULT: Larry Kenneth Ferster was reprimanded 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 Larry Kenneth Ferster, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) of the *Real Estate Services Act* and section 3-2(2)(b) of the Council Rules/Professional misconduct, licensee responsibility

ISSUE: Brian William Schiebel, representative, Nanaimo Realty Co. Ltd. dba Royal LePage Nanaimo Realty, Nanaimo, who, while licensed with Central Island Realty Ltd. (Nan) dba Coldwell Banker Vancouver Island Realty (Nan), Nanaimo, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* and section 3-2(2)(b) of the Council Rules in that he, while acting as the buyer's representative in

connection with the purchase of a property, failed to notify his managing broker immediately that a deposit of a type referred to in section 3-1(4)(a) of the Council Rules had not been received within the time required.

RESULT: Brian William Schiebel was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Brian William Schiebel, and a Consent Order was issued. In addition, as a condition of continued licensing, he is required to both successfully complete the disciplinary education assignments applicable to Chapter 2 (the *Real Estate Services Act*) and enroll in and attend the first available CPE course "Professionalism It Pays! Be Safe or Be Sued" or "Legal Update". Further, he is required to pay enforcement expenses to the Council in the amount of \$750.00.

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

ISSUE: Pei Fu Ton, representative, Royal Pacific Realty (Kingsway) Ltd., Vancouver, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that she, as a representative for the buyer: (i) failed to ascertain and advise the buyer that there was a water course running through the property, limiting the use to which the property could be put; and (ii) failed to ascertain and advise the buyer that the property had no significant or material potential for development.

RESULT: Pei Fu Ton was reprimanded for negligence as described above and, as a condition of continued licensing, she is required 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, to enroll in and attend the first available "Professionalism it Pays! Be

Safe or Be Sued” course and the next available “Electronic Title Searching” course and, further, as a condition of continued licensing, to pay enforcement expenses to the Council in the amount of \$3,251.64.

COMPLAINT: Contravention of sections 9.12 and 9.16 of Regulation 75/61 under the *Real Estate Act*/ Negligence and failing to have a managing broker in active attendance of the business of the brokerage.

ISSUE: Tak Kun Fung, managing broker, Royal Pacific Realty (Kingsway) Ltd., Vancouver, was negligent within the meaning of section 9.12 of Regulation 75/61 under the *Real Estate Act* in that he was not in active charge of the business of the brokerage.

ISSUE: Royal Pacific Realty (Kingsway)

Ltd., brokerage, Vancouver, was in breach of section 9.16 of Regulation 75/61 under the *Real Estate Act* in that it failed to have a managing broker in active charge of the business of the brokerage.

RESULT: Tak Kun Fung was reprimanded for negligence as described above and, as a condition of continued licensing, he is required to successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements under the *Real Estate Services Act*) and Chapter 3 (Business Standards) of the Broker’s Licensing Course, and, as a further condition of continued licensing, Royal Pacific Realty (Kingsway) Ltd. and Tak Kun Fung be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$7,587.16.

RESULT: Royal Pacific Realty (Kingsway) Ltd. was reprimanded and, as a condition of continued licensing, Tak Kun Fung and Royal Pacific Realty (Kingsway) Ltd. are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$7,587.16.

This decision was appealed to the Financial Services Tribunal and on July 31, 2007 the finding of negligence on the part of Tak Kun Fung was set aside and the finding that Royal Pacific Realty (Kingsway) Ltd. failed to have a managing broker in active charge was set aside. With respect to the enforcement expenses of \$7,587.16, the Financial Services Tribunal decided to limit the expenses claimed by the Council to \$3,251.64 to be paid jointly and severally by Tak Fung and Royal Pacific (Kingsway) Ltd.

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

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