

Report from Council

New Chair, Vice-Chair Elected

First meeting of 08/09 Council held in July

At the first meeting of the 2008/09 Council in July, Judi Whyte of Prudential Sussex Realty, West Vancouver, was elected as Chair of the Real Estate Council for the 2008/09 term. William (Bill) Brown of Brown Bros. Agencies Limited, Victoria, 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 through an

election process open to all real estate licenses 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 right margin on the next page. ■



Judi A. Whyte, RI
Chair

William R. Brown
Vice-Chair

Beware of Fraudulent Practices

A number of recent complaints to the Council involve potentially fraudulent practices. The Council reminds licensees that real estate transactions **must not** be structured to mislead mortgage lenders as to the amount of equity (if any) being provided by buyers. **This is fraud. Licensees who participate are subject to a wide range of penalties.**

Fraud includes contracts that state that some amount of money is to be paid directly to the seller to finish a basement when the basement is already finished and the seller never receives these funds; gift letters from family members where no gift funds are ever paid over; or a separate addendum to the contract crediting back funds to the buyer. The implications

of a licensee participating in these types of deceptions are serious.

Do not confuse acting in the best interest of clients with facilitating fraudulent mortgage applications.

Listing agents must ensure that the Contract of Purchase and Sale spells out the proposed equity and financing being sought, in order to protect the interests of the seller. This may involve rewriting the financing section of the contract. All applicable financial information must be contained within the same contract. "Altered" Contracts of Purchase and Sale, which seek to mislead a lender and a seller, are fraudulent and can be deemed criminal. ■

Do not confuse acting in the best interest of clients with facilitating fraudulent mortgage applications.

Office Closures

The Council office will be closed on the following dates:

- September 1, 2008 for Labour Day
- October 13, 2008 for Thanksgiving

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A Note from the Chair



Judi A. Whyte, RI
Chair

It was indeed an honour for me to be elected as Chair of the Real Estate Council of British Columbia for the 2008–2009 year. I look forward to a positive and productive one—as we did last year under the very able stewardship of Satnam Sidhu. As mentioned in the last *Report from Council*, we welcome newly elected members, Bill Binnie of West Vancouver, Marshall Cowe of Coquitlam, and Bill Phillips of Whistler, to the Council table. We are also pleased to welcome Bruce Turner of Courtenay, as our newly appointed Public Member, replacing William Lim of Vancouver.

As you are aware, this year marks the 50th Anniversary of the founding of the Real Estate Council. It is amazing to me the progress the real estate industry has made and the increased responsibility the Council has received since Herbert R. Fullerton was elected Chair and Irwin Davis appointed Secretary on June 1st, 1958.

As we enter the second half of our 50th year, and as a part of our look toward the future, the Council has adopted a new logo which, in addition to being placed on our *Report from Council* newsletter, will also be used in all of our branding, including letterhead and real estate licences. I hope you like the change.

You will note from the disciplinary section of this Report that the Council continues to be busy with hearings and consent orders. A number deal with very serious breaches of the *Real Estate Services Act* and breaches of the Council Rules. I would encourage you to review them so that you can be apprised of others' mistakes.

It would appear that the real estate market will continue to change over the next year and with that change will come many challenges. As a result, I would urge you to use your best efforts to ensure that you do your part to maintain the high professional standards both the public and other licensees have come to expect at all times.

Best Wishes on behalf of the Council.

Judi Whyte, RI, Chair

Licensees Must Give Notice of Discipline, Bankruptcy, Criminal Proceedings

The Council again reminds licensees of their obligation to immediately disclose to the Council any discipline, bankruptcy or criminal proceedings against them. Section 2-21 of the Council Rules requires licensees to promptly notify the Council, in writing, if:

- (a) the licensee is subject to any disciplinary or regulatory proceedings in which the licensee may be or has been made subject to a discipline sanction under legislation in British Columbia or another jurisdiction regulating (i) real estate, insurance or securities activities, or (ii) mortgage brokers, accountants, notaries or lawyers;
- (b) the licensee has any court order or judgment made against the licensee in relation to (i) real estate services, (ii) a dealing in insurance, mortgages or securities, or (iii) misappropriation, fraud or breach of trust;
- (c) any business that the licensee owns, or of which the licensee has been a director, officer or partner at any time during the

- past 2 years, has any court order or judgment made against the business in relation to (i) real estate services, (ii) a dealing in insurance, mortgages or securities, or (iii) misappropriation, fraud or breach of trust;
 - (d) the licensee is charged with or convicted of an offence under a federal or provincial enactment or under a law of any foreign jurisdiction, excluding (i) highway traffic offences resulting only in monetary fines or demerit points, or both, and (ii) charges initiated by a violation ticket as defined in the *Offence Act* or by a ticket as defined in the *Contraventions Act* (Canada);
 - (e) the licensee is the subject of any bankruptcy, insolvency or receivership proceedings;
 - (f) any business that the licensee owns, or of which the licensee has been a director, officer or partner at any time during the past 2 years, is the subject of any bankruptcy, insolvency or receivership proceedings.
- Licensees must not wait for either licence renewal or licence transfer to report this information to the Council. ■**

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Real Estate Council of BC
CHAIR—Judi A. Whyte
VICE-CHAIR—William R. Brown
EXECUTIVE OFFICER—Robert O. Fawcett

COUNCIL MEMBERS

William (Bill) Binnie
Bryon Brandle
Cynthia A. Chen
Marshall Cowe
John Finlayson
Danny Leung
Gerry Martin
Jim McNeal
Ann Petrone
W. B. (Bill) Phillips
Ramesh Rikhi
Wayne Strandlund
Bruce Turner
Liz Tutt

STATISTICS

August 2008

Representatives: 17,148
Associate Brokers: 1,830
Managing Brokers: 1,367
Brokerages: 1,427

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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Disclosure of Remuneration to Clients Who Aren't Paying For It

New forms available for Rental and Strata Management Services

Section 5-11 of the Council Rules requires that a licensee disclose in writing to the licensee's client all remuneration received or anticipated to be received from anyone other than the licensee's client. The term 'remuneration' is defined in the Act to include "any form of remuneration, including any commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly". A client is defined in the Council Rules as "the principal who has engaged the licensee to provide real estate services to or on behalf of the principal". A licensee must disclose to their clients the source and amount of the remuneration, or, if the amount is not known, the likely amount or the method of calculation.

The amount of remuneration that must be disclosed is the remuneration to be received by the brokerage, because it is the brokerage that is the agent that has contracted to provide the services. Where a brokerage is acting only as the buyer's agent, and that brokerage's remuneration is received from the listing brokerage, the source of the remuneration is the listing brokerage, and the amount to be disclosed to the buyer client is the total amount being offered by the listing brokerage. Where the brokerage is acting as a dual agent, whether through one licensee working with both clients or separate licensees working with the seller and buyer, the source of the remuneration is typically the seller (through the brokerage's listing contract) and the total amount payable to the brokerage is what must be disclosed to the buyer. Licensees may use

the Disclosure of Remuneration (Trading Services) form available on the Council's website at www.recbc.ca or any form of the licensee's choosing so long as it satisfies the disclosure requirements.

If the person to whom the licensee is providing real estate services is not a client, i.e. a customer (an individual with whom there is no agency relationship), there is no obligation to disclose the amount of remuneration to that person, but the licensee is required to disclose to this customer if their related brokerage will be receiving remuneration from any other person in relation to the same trade in real estate. For example, if a licensee/brokerage has a property listed for sale and a buyer, being treated as a customer, wishes the licensee to prepare an offer on the buyer's

behalf to purchase the property, the licensee has an obligation to disclose to that buyer that they are the agent for the seller, and they are being paid by the seller for their services. They do not have to disclose the amount of that remuneration. This type of disclosure to a customer may be verbal.

It is, therefore, very important for licensees to understand the nature of their relationship with those to whom they provide real estate services because that relationship will determine what must be disclosed to whom.

Questions respecting disclosure of remuneration may be directed to info@recbc.ca, or by phoning the Council at 604-683-9664, or toll free 1-877-683-9664. ■

IMPORTANT!

The requirement to disclose remuneration that is not being paid directly by the client applies to trading services, rental property management services and strata management services. The Council has developed disclosure forms for these categories of service that are available on the Council's website at www.recbc.ca. **Licensees may use the disclosure forms developed by the Council or any form of the licensee's choosing so long as it satisfies the disclosure requirements outlined in the article on this page.**

Issues Related to Deposits Received in Relation to Trades in Real Estate

A number of discipline decisions reported in the December 2007 *Report from Council* found licensee conduct wanting in relation to the handling of deposits in real estate trades. The purpose of this article is to discuss the following deposit related issues.

If a deposit is to be held by someone other than a real estate brokerage, a licensee acting for a party to that trade should advise that party to obtain legal advice to ensure there is no concern about either how the deposit is to be held, or the terms upon which it may be released.

If a licensee is to hold or receive the deposit for the purpose of delivering it to a third party, the parties must sign a separate written agreement that disappplies section 27(1) and (2) of the *Real Estate Services Act* (RESA) in so far as that licensee is concerned.

If a deposit is related to a trade involving a development unit subject to the requirements of the *Real Estate Development Marketing Act* (REDMA), a licensee acting for a party to that trade should determine that the person holding that deposit, whether that be their own related brokerage or someone else, is aware that it is being held under the provisions of REDMA, not RESA.

Section 27(1) of RESA requires that licensees promptly deliver to their related brokerage any monies they hold or receive from, for or on behalf of a principal in relation to real estate services. Section 27(2) of RESA requires the brokerage to promptly deposit these monies into a brokerage trust account. It is important to understand that section 27 of RESA applies whenever a licensee holds or receives this money. However, there are scenarios where the parties to a trade wish someone other than a brokerage involved in the trade to hold the deposit.

Deposit to be Held by Someone Not Regulated under RESA

The parties may agree that one of the principals' lawyers, a notary public, accountant, or indeed anyone the principals mutually agree upon, is to receive the deposit.

This agreement should be detailed in the Contract of Purchase and Sale. However, if the money is to be given to a licensee so that that licensee can deliver the deposit to the person who is to hold it, another step is necessary.

Section 27(4) describes that additional step. It requires that the seller and buyer enter into a **separate written agreement** which essentially relieves the licensee and the related brokerage of their obligation to deposit the money into the brokerage's trust account. Once this separate written agreement has been executed, and the deposit clause in the Contract of Purchase and Sale has been properly amended, the licensee must ensure that the deposit is delivered to the person who is supposed to receive it.

To demonstrate, assume that the seller and buyer have agreed that a deposit of \$10,000 is to be held by the seller's lawyer Joe Smith. Randy Ready of ABC Realty, the buyer's agent who is drafting the contract on behalf of the buyer, has agreed to deliver the deposit to Joe Smith. Paragraph 2 of the 'standard' Contract of Purchase and Sale states, in part, the following:

"2. DEPOSIT: A deposit of \$_____ which will form part of the Purchase Price, will be paid on the following terms:_____

All monies paid pursuant to this section (Deposit) will be delivered in trust to _____ and held in trust in accordance with the provisions of the *Real Estate Services Act*."

The seller's lawyer is not licensed under RESA and takes his instructions from the seller. He is not obliged to hold the deposit 'in trust in accordance with the provisions of the *Real Estate Services Act*'. Therefore, the deposit clause should be amended as follows:

2. DEPOSIT: A deposit of \$10,000 which will form part of the Purchase Price, will be paid on the following terms: within 24 hours of acceptance of this offer.

All monies paid pursuant to this section (Deposit) will be delivered in trust to the Seller's lawyer, Joe Smith. The Seller will provide irrevocable instructions to Mr. Smith to hold the Deposit in trust in accordance with the provisions of the *Real Estate Services Act*.

In this scenario, the deposit cheque should be made payable to "Joe Smith, In Trust". The separate written agreement required by section 27(4) of RESA should contain the following components:

Agreement Under Section 27(4) of the Real Estate Services Act (where money is to be held by someone who is not a licensee)

Dated: _____
Re: _____ ("Property")
Between: _____ ("Seller")
and: _____ ("Buyer")
and: _____ ("Brokerage")

With respect to the Contract of Purchase and Sale dated _____ (Contract) in respect of the Property, the Seller and Buyer agree that _____ (Licensee), is not required to deliver monies received from the Buyer or Seller pursuant to the Contract to the Brokerage pursuant to section 27(1) of the *Real Estate Services Act* nor is the Brokerage required to deposit those monies in its brokerage trust account pursuant to section 27(2) of the *Real Estate Services Act*.

Signed:
_____ Seller
_____ Buyer
_____ Licensee on behalf of the Brokerage

Deposit to be Held by Another Licensed Brokerage not Otherwise Involved in the Trade

Some brokerages have entered into service agreements with another brokerage whereby the second brokerage (the 'Holding Brokerage') agrees to hold deposits in relation to trades involving the first brokerage—the 'Service Brokerage'. In these circumstances, section 7-1.1 of the Council Rules requires

Continued from page 4

that there be a separate written agreement under section 27(4) of RESA wherein the parties agree that the deposit will be paid to the 'Holding Brokerage'. Section 7-1.1 also requires that the 'Holding Brokerage' deposits the money into a separate brokerage trust account maintained in the name of the 'Service Brokerage'.

To demonstrate, Randy Ready is licensed with ABC Randy Realty, which has entered into an agreement with ABC Big Realty to provide trust accounting services for ABC Randy Realty. When Randy writes offers, the deposit clause reflects this, but Randy typically agrees to deliver the deposit cheque when received.

In this scenario, because the deposit is to be held by another brokerage, that brokerage is governed by RESA. If other deposit details are the same as in the first scenario, the Deposit clause should read as follows: "2. DEPOSIT: A deposit of \$10,000 which will form part of the Purchase Price, will be paid on the following terms: within 24 hours of acceptance of this offer.

All monies paid pursuant to this section (Deposit) will be delivered in trust to ABC Big Realty and held in trust in accordance with the provisions of the *Real Estate Services Act*."

In this scenario, the deposit cheque should be made payable to "ABC Big Realty, In Trust". The separate written agreement required by section 27(4) of RESA should contain the following components:

Agreement Under Section 27(4) of the Real Estate Services Act (where money is to be held by a holding brokerage)

Dated: _____
Re: _____ ("Property")
Between: _____ ("Seller")
and: _____ ("Buyer")
and: _____ ("Brokerage")
With respect to the Contract of Purchase and Sale dated _____ ("Contract") in respect of the Property, the Seller and Buyer agree that _____ ("Licensee"), is not required to deliver monies received from the Buyer or Seller pursuant to the Contract to the Brokerage pursuant to section 27(1) of the *Real Estate Services Act* nor is the Brokerage required to deposit those monies in its brokerage trust account pursuant to section 27(2) of the *Real Estate*

Services Act but that the monies will be delivered to _____ ("Holding Brokerage") for deposit in a trust account established by the Holding Brokerage.

Signed: _____ Seller
_____ Buyer
_____ Licensee on behalf of the Brokerage

The need for the separate written agreement in both of the above examples is only because Randy Ready has agreed to receive and deliver the deposit to someone other than his brokerage. If Randy is never to hold or receive the deposit in either of these scenarios, there is no need for the separate agreement. The Deposit clause in the contract would still be written as indicated in each scenario.

Deposit to be Held Pursuant to REDMA

When the trade involves a development unit, as defined under REDMA, section 18 of that legislation applies. Section 18(1) of REDMA states that

"A developer who receives a deposit from a purchaser in relation to a development unit must promptly place the deposit with a brokerage, lawyer, notary public or prescribed person who must hold the deposit as a trustee in a trust account in a savings institution in British Columbia."

Deposits are held as a trustee under REDMA, which is different from how they are held as a stakeholder under RESA. One of the significant differences is that there are certain triggering events which, when they occur, oblige the trustee to release the deposit to the developer. This release takes place without the type of signed agreement of the parties required under RESA.

There is a link in the wording between RESA and REDMA with respect to the treatment of deposits. RESA requires that deposits received by a brokerage under section 18 of REDMA be dealt with in accordance with REDMA.

If the 'standard form' Contract of Purchase and Sale is used for a trade related to a development unit that is subject to the provisions of REDMA, the phrase in the deposit clause shown in scenarios 1 and 2 above that states the deposit will be "...held in trust in accordance with the provisions of the *Real Estate Services Act*" essentially

means the deposit must be held in accordance with REDMA.

Therefore, brokerages which hold deposits related to trades that are subject to REDMA should familiarize themselves with the requirements of that legislation, which may be accessed from the Council's website www.recbc.ca by following the links 'Licensee Information > Real Estate Legislation > Real Estate Development Marketing Act'. Further information is also available on the Financial Institutions Commission website www.fic.gov.bc.ca by following the links 'Real Estate > Frequently Asked Questions'.

It is also important to recognize that scenarios 1 and 2 above also apply to trades that are subject to REDMA. If a licensee is going to hold or receive a deposit which the parties have agreed will be delivered to and held by someone other than that licensee's related brokerage, a separate written agreement must be obtained.

Other Requirements Where the Deposit Will be Held by Someone Other Than a Licensed Brokerage

One of the issues that was detailed in discipline decisions published in the December 2007 *Report from Council* was that licensees had not advised their clients to seek legal advice where the deposit was not to be held by a brokerage under RESA. The Council recommends that licensees advise clients to obtain such advice in any circumstance where a deposit is going to be held by a third party other than a real estate brokerage, including by one of the parties to the transaction.

For further information on the proper handling of deposits, refer to the June 2008 *Report from Council* article regarding deposits and the Licensee Practice Manual, commencing on page 67. Questions may also be forwarded to the Council by email to info@recbc.ca or by telephone at 604-683-9664, or toll free at 1-877-683-9664. ■



REP Reminder for Managing Brokers

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

Earlier this year, the Council began sending a half-way reminder letter to li-

cencees notifying them that they have one year in which to complete their REP requirements. All licensees will receive this letter at the mid-point of their two-year licence term.

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

This may have a significant impact on brokerages as any listings, or rental or strata property managed, will have to be transferred to another licensee within that brokerage. The Council appreciates the assistance of managing brokers in ensuring that licensees engaged by their brokerage complete the REP requirements. This will alleviate the prospect of the Council having to terminate the real estate licence of licensees for failure to complete the REP requirements by their licence renewal date.

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

Guidelines for Paperless Offices

In anticipation of moving towards ‘paperless offices’, several brokerages have requested clarification about the possibility of retaining the records required under Part 8 of the Council Rules exclusively in electronic form. In answer to their queries, paperless offices are possible on the following conditions.

Section 25 of the *Real Estate Services Act* (RESA) requires that:

Nothing in RESA or the Council Rules relieves a brokerage of its obligation to meet the requirements imposed by other statutes on the electronic retention of records and books of account

A brokerage must maintain proper books, accounts and other records in accordance with the rules, and must keep these records in British Columbia.

This provision of RESA is not satisfied where

medium on which the records are electronically stored is outside of the province and remotely accessed.

If kept in British Columbia, section 8-9.1 of the Council Rules allows that;

(1) A record required under Division 1 [Financial Records] or 2 [Other Records] of this Part may be retained as an electronic record if the record can be readily transferred to printed form.

(2) A person authorized under the Act, regulations, rules or bylaws to inspect, review or receive a record, may request, for the purpose of inspecting, reviewing or receiving the record, that the record be in printed form.

(3) On receiving a request under subsection (2), a brokerage must promptly transfer the record to printed form.

Provided the records are true copies of the source documents, a brokerage satisfying these requirements may retain documents exclusively in electronic form.

As the Council Rules allow for records provided to a former client to be either originals or copies and for the copies to be either electronic or paper, brokerages providing strata and/or rental property management services might be wise to make provision in their service agreements for the form in which the required documents are to be delivered.



It should also be noted that nothing in RESA or the Council Rules relieves a brokerage of its obligation to meet the requirements imposed by other statutes, whether federal, provincial, or municipal, on the electronic retention of records and books of account.

For more information, please refer to pages 261-262 and 272-273 of the Licensee Practice Manual. Licensees with questions may contact the Council Office at 604-683-9664, toll-free at 1-877-683-9664 or email info@recbc.ca. ■

Team Suspension Policy

Licenses are advised that, effective September 1, 2008, the following policy will apply to “teams” should one or more members have their licence suspended as a result of Council disciplinary action.

Teams with generic names, i.e. The Splendid Team:

More than one licensed team member: In a situation involving a team with a generic name and more than one licensed team member, the name of the suspended licensee must be removed from all advertising material (including but not limited to signage) and deleted from the list of team members on the Council’s records.

One licensed team member with other unlicensed team members: All team advertising must cease.

Team named for team member, i.e. The Jones Team:

More than one licensed team member: If the suspended licensee is not the individual for whom the team is named, only that licensee’s name must be removed from all ad-

vertising (including but not limited to signage) and deleted from the list of team members on the Council’s records.

One member for whom the team is named plus other team members (licensed or unlicensed): If the suspended licensee is the individual for whom the team is named, all team advertising must cease.

More than one licensee team member with the same name

as the team name: The suspended licensee’s name must be removed from all advertising material (including but not limited to signage) and be deleted from the list of team members on the Council’s records.

Informal Partnerships (not required to be registered with Council)

Two or more licensees working and advertising in “partnership”, i.e. call Sally Sales or Clive Closer for all your real estate needs: If only one licensee in the



partnership is suspended, the name of the suspended licensee must be removed from all advertising material (including but not limited to signage). If both of the licensees are suspended concurrently, all licensee advertising, both individual and “partnership” must be removed (including but not limited to signage).

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

New Policy for Submissions as to Penalty and Enforcement Expenses at Hearings

The current Council practice at discipline hearings is that once all of the evidence has been heard, the Discipline Hearing Committee invites the licensees or their legal counsel to make submissions as to the contraventions of the *Real Estate Services Act* (RESA), Regulations and/or Council Rules. At the same time, the Council also invites submissions as to penalty and enforcement expenses, should there be a finding of wrongdoing on the part of a licensee.

Some statutes mandate a two-step model whereby evidence is tendered and submissions are made as to whether there has been a contravention of those statutes. Once that decision is known, a subsequent hearing on the issue of appropriate penalty and enforcement expenses is held. RESA does not require this two-step process; however, a growing level of jurisprudence in this area

recommends that a separate hearing on penalty and enforcement expenses be held. As a result, the Council has amended its procedures to allow for this kind of two-step process. Effective July 1, 2008, legal counsel for the Council will advise licensees who are respondents at a hearing that a separate hearing on penalty and enforcement expenses will be held, should there be findings of wrongdoing made against the licensees within the meaning of the *Real Estate Services Act*, Regulations, or Council Rules by the Discipline Hearing Committee at the hearing.

Licenses may have the option, prior to the commencement of the hearing, of having both stages of the hearing heard together by signing a waiver foregoing their rights to separate hearings as to penalty and enforcement expenses. Having signed a waiver, a licensee may revoke that waiver at any time

up to the conclusion of the evidence for both the Council and the licensee. Once submissions have commenced, the waiver may no longer be revoked.

In certain circumstances, despite having received a request for a waiver by a licensee, the two-step model will be employed due to either the complexity of the issues or the existence of a previous discipline record of the licensee(s) involved.

When separate hearings with respect to the issues of penalty and enforcement expenses are held, the Discipline Hearing Committee may invite written and/or oral submissions on penalty and enforcement expenses.

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

Disciplinary Decisions

Since the June 2008 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], 35(1)(c) [wrongful taking or deceptive dealing], 25 [brokerage records], 27 [payment into trust], and 30 [withdrawals from trust account] of the *Real Estate Services Act*, and section 7-5 [shortages in trust accounts] of the Council Rules

ISSUE: Daniel Arthur Bourke, representative, Pacific Quorum Properties Inc., Vancouver, while licensed as managing broker, Daniel Arthur Bourke dba Farrell Management (Sole Proprietor), Vancouver, committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(c) of the *Real Estate Services Act* in that he: (a) contravened section 25 of the Act by failing to maintain proper books, records and accounts of the brokerage in accordance with the Act and the Council Rules; (b) permitted payments out of the brokerage trust account, which payments resulted in a negative balance in the trust account, contrary to section 7-5(1) of the Council Rules; (c) failed to immediately eliminate a negative balance in the trust account, contrary to section 7-5(2) of the Council Rules; (d) failed to immediately notify the Council of a negative trust balance, contrary to section 7-5(3) of the Council Rules; (e) misappropriated funds held or received from or on behalf of a principal in relation to real estate services for his own use or benefit by making withdrawals from trust for purposes other than those permitted in sections 30(1) and (2) of the Act; and (f) failed to promptly pay or deliver all monies held or received from strata corporation clients to the brokerage trust accounts, contrary to section 27(1)(a) of the Act.

RESULT: Daniel Arthur Bourke dba Farrell Management (Sole Proprietor) was suspended for a period of one year from August 6, 2008 to August 6, 2009 (inclusive) in any category 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 Daniel Arthur Bourke dba Farrell Management (Sole Proprietor), and a Consent Order was issued. Further, Daniel Arthur Bourke will be permanently banned from being licensed as a managing broker, and upon the conclusion of his suspension, Mr. Bourke will be under the direct supervision of his managing broker for a period of one (1) year, during which time the managing broker will report to the Council anything of an adverse nature with respect to Mr. Bourke's activities. In addition, Daniel Arthur Bourke was ordered to pay to the Council a discipline penalty in the amount of \$5,000.00 and enforcement expenses in the amount of \$1,000.00 within two (2) years from the date of the Order herein as a condition of continued licensing.

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

ISSUE: Alan John Nixon, currently unlicensed, who while licensed as managing broker with Crest Realty Ltd. dba Re/Max Crest Realty, North Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-1 of the Council Rules in that he, with respect to the rental property management services of two individuals: (a) was not actively engaged in the management of the brokerage, and (b) failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations and Council Rules by permitting two individuals to provide rental property management services on behalf of the brokerage when not licensed to do so.

RESULT: Alan John Nixon was suspended for twenty-eight (28) days from June 25, 2008 to July 22, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate

Council and Alan John Nixon, and a Consent Order was issued. Alan John Nixon must successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE Courses "Professionalism It Pays! Be Safe or Be Sued! and "Legal Update". Further, Alan John Nixon, Marjan Mazaheri, Douglas Yin Soo and Coral Leanne Ashe are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*

ISSUE: Douglas Yin Soo, representative, Crest Realty Ltd. dba Re/Max Crest Realty, North Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) provided rental property management services on behalf of the brokerage when not licensed to do so; (b) permitted an unlicensed individual to provide rental property management services on behalf of the brokerage when the unlicensed individual was not licensed to do so; (c) paid remuneration to the unlicensed individual for providing rental property management services; (d) received remuneration from a company other than the brokerage for providing rental property management services; and (e) placed the brokerage sign outside the personal office indicating that real estate services were provided from the personal office.

RESULT: Douglas Yin Soo was suspended for twenty-one (21) days from July 9, 2008 to July 29, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Douglas Yin Soo, and a Consent Order was issued. Douglas Yin Soo must successfully complete the disciplinary education assignments applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, en-

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roll in and attend the first available CPE Courses “Professionalism It Pays! Be Safe or Be Sued!” and “Legal Update”. Further, Douglas Yin Soo, Alan John Nixon, Marjan Mazaheri, and Coral Leanne Ashe are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct]

ISSUE: Marjan Mazaheri, representative, Crest Realty Ltd. dba Re/Max Crest Realty, North Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (a) provided rental property management services on behalf of the brokerage, when not licensed to do so; (b) received remuneration from a company and not from the brokerage for providing rental property management services; and (c) placed a brokerage sign outside a personal office indicating that real estate services were provided from the personal office.

RESULT: Marjan Mazaheri was suspended for seven (7) days from July 30, 2008 to August 5, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Marjan Mazaheri, and a Consent Order was issued. Marjan Mazaheri must successfully complete the disciplinary education assignment applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE courses “Professionalism It Pays! Be Safe or Be Sued!” and “Legal Update”. Further, Marjan Mazaheri, Douglas Yin Soo, Alan John Nixon, and Coral Leanne Ashe are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct]

ISSUE: Coral Leanne Ashe, representative, Crest Realty Ltd. dba Re/Max Crest Re-

alty, North Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she provided rental property management services on behalf of the brokerage, when not licensed to do so.

RESULT: Coral Leanne Ashe 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 Coral Leanne Ashe, and a Consent Order was issued. Coral Leanne Ashe must successfully complete the disciplinary education assignment applicable to Chapter 2 (*Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE courses “Professionalism It Pays! Be Safe or Be Sued!” and “Legal Update”. Further, Coral Leanne Ashe, Marjan Mazaheri, Douglas Yin Soo, and Alan John Nixon are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct/contravention of act or rules], 35(1)(d) [professional misconduct/incompetence], 6 [brokerage must have managing broker], 25 [brokerage records], 27(2) [payment into trust], 30 [withdrawals from trust], 31 [payment of licensee remuneration] of the *Real Estate Services Act*, sections 3-1 [managing broker responsibilities], 3-3(1)(i) [avoid any conflict of interest], 3-4 [duty to act with reasonable care and skill], 4-3 [restrictions relating to home and other personal offices], 5-8 [disclosures under this division], 5-9 [disclosure of interest in trade], 5-10 [disclosure of representation], 5-11 [disclosure of remuneration], 5-15 [when licensee remuneration can be paid out of trust account], 7-2 [commission trust accounts], 7-4 [other trust account requirements], 8-2 [trust account and general account records], 8-3 [pooled trust account records], 8-4 [general records], and 8-9 [records must be kept up to date] of the Council Rules.

ISSUE: 688039 B.C. Ltd. dba Sutton Group—Gurdev Sandhu Realty, Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it: (a) failed to have a managing broker, or a person designated by it, keep, review, date and initial proper monthly trust asset and liability reconciliations, including reconciliations of the commission trust account, in accordance with sections 7-4 and 8-3 of the Council Rules; (b) failed to record its general bank account transactions in its books, failed to prepare monthly reconciliations of the general bank account, and failed to keep them up to date, in accordance with section 25 of the *Real Estate Services Act* and sections 8-2 and 8-9 of the Council Rules; (c) in deal number #060053, failed to promptly pay on receipt into the brokerage trust account a deposit cheque received from a buyer on April 5, 2006 until April 19, 2006, in accordance with section 27(2) of the *Real Estate Services Act*; (d) paid remuneration to co-operating brokerages from the commission trust account or the brokerage’s general bank account and not the brokerage trust account, contrary to sections 30 and 31 of the *Real Estate Services Act* and sections 7-2 and 5-15 of the Council Rules; (e) failed to retain proper disclosure of interest in trades as required by section 8-4 of the Council Rules, including deal #050187 relating to an August 24, 2005 Contract of Purchase and Sale, deals #050205 and 050203 relating to December 20, 2005 Contracts of Purchase and Sale, deals #060032 and 060033 relating to March 2006 Contracts of Purchase and Sale, and deals #050007, 060018, 060030 and 060030; (f) in deals #060032 and 060033 relating to March 2006 Contracts of Purchase and Sale, failed to take reasonable steps to avoid a conflict of interest in accordance with section 3-3(1)(i) of the Council Rules; (g) in deal #060053, failed to promptly disclose to a buyer, while in a dual agency relationship, the amount of remuneration to be earned by the brokerage, pursuant to sections 5-11 and 5-8 of the Council Rules; and (h) in deal #060010, failed to promptly disclose, while acting as an agent for a buyer, the amount of remuneration to be earned by the brokerage,

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pursuant to sections 5-11 and 5-8 of the Council Rules.

ISSUE: Gurdev Singh Sandhu, representative, Par Excellence Management Inc. dba Sutton Group—Killarney Realty, Vancouver, while licensed with Sutton Group—Gurdev Sandhu Realty, Vancouver, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he: (a) failed to ensure he complied with section 4-3 of the Council Rules regarding his personal office in that he permitted signage which suggested that real estate services were being provided and he promoted this office on his brokerage business cards; (b) failed to make proper disclosure as required by sections 5-9 and 8-4 of the Council Rules: (i) in deal #050187 relating to an August 24, 2005 Contract of Purchase and Sale, being a purchase by an associated company in which he held a majority interest; (ii) in deals #050205 and 050203 involving December 29, 2005 Contracts of Purchase and Sale to buyers in sales involving an associated company, as seller, in which his wife held a 25% interest; and, (iii) in deals #060032 and 060033 relating to March 2006 Contracts of Purchase and Sale to buyers in transactions where the brokerage was in a limited dual agency, involving an associated company, as seller, in which his wife held a 25% interest; (c) in deals #060032 and 060033 relating to March 2006 Contracts of Purchase and Sale, acted as a limited dual agent in transactions involving an associated company in which his wife held a 25% interest, and as a result, failed to take reasonable steps to avoid a conflict of interest, in accordance with section 3-3(1)(i) of the Council Rules; (d) in deal #060053, failed to promptly disclose to a Buyer, while in a dual agency relationship, the amount of remuneration to be earned by the brokerage, pursuant to sections 5-11 and 5-8 of the Council Rules; (e) in deal #060010, failed to promptly disclose, while acting as an agent for a buyer, the amount of remuneration to be earned by the brokerage, pursuant to sections 5-11 and 5-8 of the Council Rules.

ISSUE: Dalbir Singh Sandhu, representative, Par Excellence Management Inc. dba Sutton Group—Killarney Realty, Vancouver, while licensed with Sutton Group—Gurdev Sandhu Realty, Vancouver, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he, in deal #060053, failed to act with reasonable care and skill prior to the seller signing the listing agreement, in accordance with sections 3-4 and 5-10 of the Council Rules.

ISSUE: Walter Mielke, associate broker, Par Excellence Management Inc. dba Sutton Group—Killarney Realty, Vancouver, while licensed as managing broker with Sutton Group—Gurdev Sandhu Realty, Vancouver, committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that he demonstrated incompetence by failing to fulfill his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6 of the *Real Estate Services Act* and section 3-1 of the Council Rules and without restricting the generality of the foregoing he: (a) failed to ensure Gurdev Sandhu complied with section 4-3 of the Council Rules regarding his personal office and, in particular, he failed to ensure the brokerage signage suggesting that real estate services were being provided was removed and he failed to ensure that advertising promoting this office on brokerage business cards was corrected; (b) failed to ensure that the telephones of the brokerage were consistently answered in the name of the brokerage instead of “Sutton Group—Killarney”; (c) failed to ensure he or a person designated by him kept, reviewed, dated and initialed proper monthly trust asset and liability reconciliations, including reconciliations of the commission trust account, in accordance with sections 7-4 and 8-3 of the Council Rules; (d) failed to ensure that the brokerage recorded its general bank account transactions in its books, prepared monthly reconciliations of the general bank account, and kept them up to date, in accordance with section 25 of the *Real Estate Services Act* and sections 8-2 and 8-9 of the Council Rules; (e) failed

to ensure the brokerage promptly paid on receipt into the brokerage trust account all money held or received from, for or on behalf of a principal in relation to real estate services, including deal #060053, in accordance with section 27(2) of the *Real Estate Services Act*; (f) failed to ensure the brokerage paid remuneration to co-operating brokerages from the brokerage trust account instead of the commission trust account or the brokerage’s general bank account, contrary to sections 30 and 31 of the *Real Estate Services Act* and sections 7-2 and 5-15 of the Council Rules; (g) failed to ensure that related licensees to the brokerage made, and the brokerage retained, proper disclosure, including deals #050187, 050205, 050203, 060032, 060033, 050007, 060018, and 060030, as required by sections 5-9 and 8-4 of the Council Rules; (h) failed to ensure a brokerage representative promptly disclosed to a buyer, while in a dual agency relationship in deal #060053, and to his buyer/client in deal #060010, the amount of remuneration to be earned by the brokerage, pursuant to sections 5-11 and 5-8 of the Council Rules; and (i) failed to ensure that the brokerage took reasonable steps to avoid a conflict of interest, in accordance with section 3-3(1)(i) of the Council Rules in deals #060032 and 060033 relating to March 2006 Contracts of Purchase and Sale, and in particular, failed to ensure that the brokerage withdrew any agency representation in these circumstances.

RESULT: Sutton Group—Gurdev Sandhu 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 Sutton Group—Gurdev Sandhu Realty, and a Consent Order was issued. Further, Sutton Group—Gurdev Sandhu Realty was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, and ordered to undergo an audit of its books and records on or before July 31, 2008 should it continue to be licensed as a brokerage at that time, with the costs of that audit to be borne by Sutton Group—Gurdev Sandhu Realty. Further, Sutton Group—Gurdev Sandhu Realty was or-

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dered to pay the Council's audit costs in the amount of \$1,050.00. In addition, Sutton Group—Gurdev Sandhu Realty and Walter Mielke were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$3,000.00.

RESULT: Gurdev Singh Sandhu was suspended for twenty-one (21) days from July 2, 2008 to July 22, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Gurdev Singh Sandhu, and a Consent Order was issued. Further, Gurdev Singh Sandhu must complete the disciplinary education assignment applicable to Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course and to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Dalbir Singh Sandhu 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 Dalbir Singh Sandhu, and a Consent Order was issued. Further, Dalbir Singh Sandhu must successfully complete the disciplinary education assignment applicable to Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course.

RESULT: Walter Mielke 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 Walter Mielke, and a Consent Order was issued. Further, Walter Mielke 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, and Walter Mielke and Sutton Group—Gurdev Sandhu Realty are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$3,000.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*, sections 3-2(1) [associate broker and representative responsibilities], 3-3(1) [duties to clients], 3-4 [duty to act honestly and with reasonable care and skill] and 5-10(a) [disclosure] of the Council Rules

ISSUE: Barbara Joan Thompson, associate broker, East Kootenay Realty Ltd. dba Royal LePage East Kootenay Realty, Cranbrook, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she, in the sale of her property (the "Thompson Property") and listing of the property owned by the proposed buyer (the "Buyer's Property") of the Thompson Property: (a) failed to promptly provide her managing broker or brokerage a copy of the Contract for the sale of the Thompson property, entered into between herself and her husband as sellers and the proposed buyer, contrary to section 3-2(1) of the Council Rules, (b) failed to promptly provide her managing broker or brokerage a copy of the Disclosure of Interest in Trade form, signed by the licensee and the proposed buyer but not signed by her managing broker, relating to the sale of the Thompson Property, contrary to section 3-2(1) of the Council Rules; (c) failed to recommend to the proposed buyer that if the proposed buyer wished to purchase the Thompson Property, she should list the Buyer's Property with a brokerage other than the licensee's brokerage, contrary to sections 3-3(1) and 3-4 of the Council Rules; (d) failed to recommend to the proposed buyer that she should obtain independent legal advice with respect to the licensee acting as the representative of the licensee's brokerage in listing for sale the Buyer's Property and at the same time the licensee entering into the Contract with the proposed buyer, contrary to sections 3-3(1) and 3-4 of the Council Rules; (e) failed to take reasonable steps to disclose and/or to avoid conflicts of interest in the sale of the Thompson Property and in the listing for sale and proposed sale of the Buyer's Property, contrary to sections 3-3(1) and 3-4 of the Council Rules; and (f) failed to fully and clearly disclose to the

proposed buyer the nature of the representation the licensee and her brokerage would provide, contrary to section 5-10(a) of the Council Rules.

RESULT: Barbara Joan Thompson was suspended for twenty-one (21) days from June 25, 2008 to July 15, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Barbara Joan Thompson, and a Consent Order was issued. Further, Barbara Joan Thompson must successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency), enroll in and attend the first available CPE course "What Brokerages and Realtors Need to Know About Agency". Further, Barbara Joan Thompson and Philip Lawrence Jones are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*, and sections 3-2 [associate broker and representative responsibilities], 5-9 [disclosure of interest in trade], 5-10 [disclosure of representation], and 5-11 [disclosure of remuneration] of the Council Rules

ISSUE: Ka Wai (Rebecca) Yeung, representative, Westmar Realty Ltd. dba Macdonald Realty Westmar, Richmond, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (a) failed to make disclosure in accordance with section 5-9 of the Council Rules to the sellers as owners of the real estate of the fact that the said licensees were directly or indirectly acquiring the real estate under the trade in real estate; (b) before providing trading services to or on behalf of the sellers, failed to disclose to the sellers: (i) the nature of the representation that they were providing to the sellers, as required by section 5-10(a) the Council Rules; (ii) that they were or were expecting to be receiving remuneration from the buyer relating to trading

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services to or on behalf of the buyer in relation to the same trade in real estate, as required by section 5-10(b)(ii) of the Council Rules; (iii) the nature of their relationship with the buyer, as required by section 5-10(b)(iii) of the Council Rules; (c) failed to disclose to the sellers that they received or anticipated receiving, directly or indirectly, remuneration as a result of providing real estate services to or on behalf of the sellers, other than remuneration paid directly by the sellers, as required by section 5-11 of the Council Rules; and (d) failed to keep the managing broker informed of the real estate services being provided, and other activities being performed by the licensees on behalf of the brokerage, as required by section 3-2(2) of the Council Rules.

ISSUE: Tak Ming Ricky Lee, representative, Westmar Realty Ltd. dba Macdonald Realty Westmar, Richmond, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to make disclosure in accordance with section 5-9 of the Council Rules to the sellers as owners of the real estate of the fact that the said licensees were directly or indirectly acquiring the real estate under the trade in real estate; (b) before providing trading services to or on behalf of the sellers, failed to disclose to the sellers: (i) the nature of the representation that they were providing to the sellers, as required by section 5-10(a) of the Council Rules; (ii) that they were or were expecting to be receiving remuneration from the buyer relating to trading services to or on behalf of the buyer in relation to the same trade in real estate, as required by section 5-10(b)(ii) of the Council Rules; (iii) the nature of their relationship with the buyer, as required by section 5-10(b)(iii) of the Council Rules; (c) failed to disclose to the sellers that they received or anticipated receiving, directly or indirectly, remuneration as a result of providing real estate services to or on behalf of the sellers, other than remuneration paid directly by the sellers, as required by section 5-11 of the Council Rules; and (d) failed to keep the managing broker informed of the real estate services being provided, and other activities being performed by the licensees

on behalf of the brokerage, as required by section 3-2(2) of the Council Rules.

RESULT: Ka Wai (Rebecca) Yeung was suspended for fourteen (14) days from August 6, 2008 to August 19, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Ka Wai (Rebecca) Yeung, and a Consent Order was issued. Ka Wai (Rebecca) Yeung must successfully complete the disciplinary assignments applicable to Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course “Professionalism It Pays! Be Safe or Be Sued!” or “Legal Update”. Further, Ka Wai (Rebecca) Yeung and Tak Ming Ricky Lee are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Tak Ming Ricky Lee was suspended for fourteen (14) days from August 27, 2008 to September 10, 2008 (inclusive) for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Tak Ming Ricky Lee, and a Consent Order was issued. Tak Ming Ricky Lee must successfully complete the disciplinary assignments applicable to Chapter 9 (Professional Ethics) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course “Professionalism It Pays! Be Safe or Be Sued!” or “Legal Update”. Further, Tak Ming Ricky Lee and Ka Wai (Rebecca) Yeung 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) [professional misconduct], 6(2) [managing broker responsibilities], and 25 [brokerage records], 27(2) [promptly pay into brokerage trust account] of the *Real Estate Services Act* and sections 3-1 [managing broker responsibilities], 7-4(2) [trust

account requirements], 7-5(2) [take immediate steps to eliminate shortage in trust account], 7-5(3) [notify Council of negative balance], 7-7(1) [failure to file annual Accountant’s Report], 8-1 [financial records], 8-2 [trust account and general account records], 8-3 [pooled trust account records], and 8-11(b) [promptly submit wind up report] of the Council Rules

ISSUE: Priority Realty Corp. dba Sutton Group—Priority Realty, Burnaby, currently unlicensed, committed professional misconduct under section 35(1)(a) of the *Real Estate Services Act* in that it (a) failed to maintain proper and up to date books, accounts and other records in accordance with the Council Rules, contrary to section 25 of the *Real Estate Services Act* and sections 8-1, 8-2 and 8-3 of the Council Rules; (b) failed to take immediate steps to eliminate a trust shortage in the trust account(s) of the brokerage as required by section 7-5(2) of the Council Rules; (c) failed to notify the Council of the said trust shortage as required by section 7-5(3) of the Council Rules; (d) failed to promptly pay into the brokerage trust account all money held or received from or on behalf of a principal in relation to real estate services; (e) failed to file an Accountant’s Report with the Council by the required date as required by section 7-7(1) of the Council Rules; and (f) failed to promptly submit to the Council a report respecting the winding up of the brokerage, completed in accordance with the Council Bylaws, as required by section 8-11(b) of the Council Rules, when the said brokerage ceased to carry on business.

ISSUE: Nicolaas Cornelis Klaver, associate broker, West Coast Realty Ltd. (Coq) dba Sutton Group-West Coast Realty (Coq), Coquitlam, while licensed as managing broker with Sutton Group - Priority Realty, committed professional misconduct under section 35(1)(a) of the *Real Estate Services Act* in that he failed to fulfill his responsibility as managing broker for the said brokerage as required by section 3-1 of the Council Rules and section 6(2) of the *Real Estate Services Act* in that he (a) failed to identify or ascertain a significant shortfall in the trust account(s) maintained by

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the said brokerage; (b) failed to ensure that the said brokerage maintained proper and up to date books, accounts, and other records in accordance with section 25 of the *Real Estate Services Act* and sections 3-1(3) (a), 8-1, 8-2 and 8-3 of the Council Rules; (c) failed to review, date and initial the monthly reconciliations and the monthly trust asset and liability reconciliations for each trust account of the brokerage as required by section 7-4(2) of the Council Rules; (d) failed to ensure that the Accountant's Report for the said brokerage was filed with the Council on or before February 28, 2006; and (e) failed to ensure that all deposits received in relation to real estate services were deposited into the trust account of the brokerage in a timely manner as required by section 27(2) of the *Real Estate Services Act*.

ISSUE: Roland Camarillo Tecson, associate broker, West Coast Realty Ltd. (Coq) dba Sutton Group-West Coast Realty (Coq), Coquitlam, while licensed as managing broker with Sutton Group—Priority Realty, committed professional misconduct under section 35(1)(a) of the *Real Estate Services Act* in that he failed to fulfill his responsibility as managing broker for the said brokerage as required by section 3-1 of the Council Rules and section 6(2) of the *Real Estate Services Act* in that he (a) failed to identify or ascertain a significant shortfall in the trust account(s) maintained by the said brokerage; (b) failed to ensure that the said brokerage maintained proper and up to date books, accounts, and other records in accordance with section 25 of the *Real Estate Services Act* and sections 3-1(3)(a), 8-1, 8-2 and 8-3 of the Council Rules; (c) failed to review, date and initial the monthly reconciliations and the monthly trust asset and liability reconciliations for each trust account of the brokerage as required by section 7-4(2) of the Council Rules; (d) failed to ensure that the Accountant's Report for the said brokerage was filed with the Council on or before February 28, 2006; and (e) failed to ensure that all deposits received in relation to real estate services were deposited into the trust account of the brokerage in a timely manner as

required by section 27(2) of the *Real Estate Services Act*.

ISSUE: Grant Edward Murray, currently unlicensed, while licensed as managing broker with Sutton Group - Priority Realty committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to fulfill his responsibilities as managing broker for the said brokerage as required by section 3-1 of the Council Rules and section 6(2) of the *Real Estate Services Act* in that he failed to ensure that the said brokerage promptly submitted to the Council a report respecting the winding up of the said brokerage, completed in accordance with the Council Bylaws, when the said brokerage ceased to carry on business.

RESULT: Sutton Group—Priority Realty committed professional misconduct as described above. As Sutton Group—Priority Realty ceased operations as of October 16, 2006 and was no longer a licensed entity, should it make an application to be relicensed, such an application would not be considered by the Council until a wind-up report acceptable to the Council had been filed with the Council.

RESULT: Nicolaas Cornelis Klaver was reprimanded for professional misconduct as described above. In addition, Nicolaas Cornelis Kalver would not be eligible to be licensed as a managing broker for a period of two (2) years from May 15, 2006 to May 15, 2008. Further, Nicolaas Cornelis Klaver, Roland Camarillo Tecson and Grant Edward Murray are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$10,189.00.

RESULT: Roland Camarillo Tecson was reprimanded for professional misconduct as described above. In addition, Roland Camarillo Tecson would not be eligible to be licensed as a managing broker for a period of two (2) years from May 15, 2006 to May 15, 2008. Further, Roland Camarillo Tecson, Nicolaas Cornelis Klaver and Grant Edward Murray are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$10,189.00.

RESULT: Grant Edward Murray committed professional misconduct as described above. As Grant Edward Murray has been unlicensed since October 16, 2006, Grant Edward Murray would be immediately eligible to be relicensed as a representative or an associate broker but that any application by Grant Edward Murray to be licensed as a managing broker would be subject to Grant Edward Murray successfully completing the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker's Licensing Course and providing to the Council a wind-up report acceptable to the Council relating to the brokerage, Sutton Group - Priority Realty. Further, Grant Edward Murray, Nicolaas Cornelis Klaver and Roland Camarillo Tecson are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$10,189.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 6(2) (c) [brokerage must have managing broker] of the *Real Estate Services Act*, sections 3-1(1)(b) and (c) [managing broker responsibilities] and 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: National Home Owner Marketing Inc. dba Century 21 Lifestyles, Salmon Arm, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* and contrary to section 6(2)(c) of the *Real Estate Services Act* and section 3-4 of the Council Rules, in that it allowed a brokerage licensee to offer a manufactured home for sale, despite the fact that it did not show an approval sticker or decal establishing that it complied with the requirements of section 21(1)(d) of the Electrical Safety Regulation enacted under the *Safety Standards Act*.

ISSUE: Victor Keith Chancellor, managing broker, Century 21 Lifestyles, Salmon Arm, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker relating to the supervision of brokerage licensees within the meaning of section 6(2)

Disciplinary Decisions, *cont'd*

(c) of the *Real Estate Services Act*, sections 3-1(1)(b), (c) and 3-4 of the Council Rules in that he allowed a brokerage licensee to offer a manufactured home for sale, despite the fact that it did not show an approval sticker or decal establishing that it complied with the requirements of section 21(1)(d) of the Electrical Safety Regulation enacted under the *Safety Standards Act*.

RESULT: Century 21 Lifestyles 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 Century 21 Lifestyles, and a Consent Order was issued. Further, Century 21 Lifestyles and Victor Keith Chancellor are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Victor Keith Chancellor 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 Victor Keith Chancellor, and a Consent Order was issued. Further, Victor Keith Chancellor and Century 21 Lifestyles are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*

ISSUE: Peter Lawrence Finlay Buchanan, representative, Fair Realty Ltd. (Rmd) dba Fair Realty (Rmd), Richmond, while licensed with One Percent Realty Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to determine the amount of the monthly maintenance fees payable by his clients, the sellers, and failed to determine whether there was a special levy imposed by the strata corporation in respect of the strata lot; (b) failed to prepare a Contract of Purchase and Sale clearly setting out the respective responsibilities of the buyer and the seller with respect to the price to be paid

for the property and in that regard included a clause in the Contract of Purchase and Sale which specified that ‘the current special levy to be credited to the buyer by the seller is in excess of \$5,000.00’, when there was no special levy; (c) failed to advise the sellers and his managing broker that there was no special levy on the property, after he had reviewed the Form B Certificate and discovered the contents of that document; and (d) failed to promptly notify the managing broker of conduct that may be improper conduct as defined by section 3-1(2) of the Council Rules.

RESULT: Peter Lawrence Finlay Buchanan 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 Peter Lawrence Finlay Buchanan, and a Consent Order was issued. Further, Peter Lawrence Finlay Buchanan must pay to the Council a discipline penalty in the amount of \$1,000.00 and enforcement expenses in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 7(5)(a) [provision of real estate services by unlicensed representative] of the *Real Estate Services Act*, section 3-1(3) [managing broker responsibilities] of the Council Rules

ISSUE: Westbridge Real Estate Group Ltd. dba Macdonald Realty Squamish Whistler, Garibaldi Highlands, 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 between March 19, 2007 to April 16, 2007, contrary to section 7(5)(a) of the *Real Estate Services Act*.

ISSUE: Candice Claire Dyer, associate broker, Sea to Sky Real Estate Ltd. dba Sea to Sky Premier Properties, Whistler, while licensed as managing broker with Macdonald Realty Squamish Whistler, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she failed to ensure that the

business of the brokerage was carried out in accordance with the *Real Estate Services Act* in which she permitted an individual while unlicensed to provide real estate services on behalf the brokerage, contrary to section 3-1(3) of the Council Rules.

RESULT: Macdonald Realty Squamish Whistler 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 Macdonald Realty Squamish Whistler, and a Consent Order was issued. Further, Macdonald Realty Squamish Whistler and Candice Claire Dyer are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Candice Claire Dyer 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 Candice Claire Dyer, and a Consent Order was issued. Further, Candice Claire Dyer and Macdonald Realty Squamish Whistler are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] of the *Real Estate Services Act*, and sections 3-3 [duties to clients], 3-4 [duty to act with reasonable care and skill], and 5-13(2) [disclosure of latent defects] of the Council Rules

ISSUE: James Peter Hoffman, representative, Coast Realty Group (Parksville) Ltd., Parksville, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening sections 5-13(2), 3-3 and 3-4 of the Council Rules in that he: (a) failed to disclose to the buyers’ representative and/or buyers of property a material latent defect, namely a capital cost assessment or tax increase, contrary to section 5-13(2) of the Council Rules; and (b) failed to act with reasonable care and skill and in the best interests of his clients when he failed to ensure that the sellers of the said property

Disciplinary Decisions, *cont'd*

disclosed on the Property Disclosure Statement for the property that there was a current or pending local improvement levy or charge, in circumstances where the Property Disclosure Statement was incorporated into the Contract of Purchase and Sale such that representations in the Property Disclosure Statement became representations that survived the completion of the Contract of Purchase and Sale, contrary to sections 3-3(1)(a) and 3-4 of the Council Rules caused by his misinterpreting “pending” as being the actual work instead of payment of same.

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

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

ISSUE: 4 Seasons Commercial Realty Corp., 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: Grant Wayne Gaucher, managing broker, 4 Seasons Commercial Realty Corp., Kelowna, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2) (b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and/

or 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant’s Report was filed with the Council by the prescribed date.

RESULT: 4 Seasons Commercial Realty Corp. was reprimanded for the contravention described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and 4 Seasons Commercial Realty Corp., and a Consent Order was issued. Further, 4 Seasons Commercial Realty Corp. and Grant Wayne Gaucher are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Grant Wayne Gaucher 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 Grant Wayne Gaucher, and a Consent Order was issued. Further, Grant Wayne Gaucher and 4 Seasons Commercial Realty Corp. 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) [professional misconduct] and 6(2)(b) [managing broker responsibilities] of the *Real Estate Services Act*, sections 3-1(1)(a) and (b), 3-1(3) [managing broker responsibilities] and section 7-7(1) (b) [failure to file Accountant’s Report] of the Council Rules.

ISSUE: Mountain Realty At Big White Ltd., Big White, 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: Glen Stephen William Nicoll, managing broker, Mountain Realty At Big White Ltd., Big White, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services*

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

RESULT: 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. Further, Mountain Realty At Big White Ltd. must pay a discipline penalty to the Council in the amount of \$1,000.00. In addition, Mountain Realty At Big White Ltd. and Glen Stephen William Nicoll are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Glen Stephen William Nicoll 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 Glen Stephen William Nicoll, and a Consent Order was issued. In addition, Glen Stephen William Nicoll 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 35(1)(a) [professional misconduct], 35(1) (d) [incompetence], 3(1)(a) [requirement of licensing], and 7(5)(a) [provision of real estate services by unlicensed representative] of the *Real Estate Services Act*, and section 3-1(1) [managing broker responsibilities] of the Council Rules

ISSUE: B. Milne Property Sales/Management Squamish Ltd. dba B. Milne Property Sales/Management, Squamish, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate*

Disciplinary Decisions, *cont'd*

Services Act by contravening section 7(5)(a) of the *Real Estate Services Act* in that it: (a) permitted an unlicensed individual to provide real estate services and more specifically strata management services on behalf of the brokerage, contrary to sections 3(1)(a) and 7(5)(a) of the *Real Estate Services Act*; and (b) permitted an unlicensed representative to provide real estate services and more specifically rental property management services on behalf of the brokerage, contrary to sections 3(1)(a) and 7(5)(a) of the *Real Estate Services Act*.

ISSUE: Basil Douglas Milne, managing broker, B. Milne Property Sales/Management Squamish Ltd. dba B. Milne Property Sales/Management, Squamish, committed professional misconduct within the meaning of section 35(1)(a) or 35(1)(d) of the *Real Estate Services Act* and, in particular, whether he fulfilled his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules in that he: (a) failed to ensure that a brokerage representative was properly licensed to provide strata management services on behalf of the brokerage in accordance with sections 3(1)(a) and 7(5)(a) of the *Real Estate Services Act*; and (b) failed to ensure that an unlicensed representative was properly licensed to provide rental property management services on behalf of the brokerage in accordance with sections 3(1)(a) and 7(5)(a) of the *Real Estate Services Act*.

RESULT: B. Milne Property Sales/Management 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 B. Milne Property Sales/Management, and a Consent Order was issued. Further, B. Milne Property Sales/Management and Basil Douglas Milne are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Basil Douglas Milne 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 Basil Douglas Milne and a Consent Order was issued. Further, Basil Douglas Milne and B. Milne Property Sales/Management 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) [professional misconduct] or 35(1)(d) [incompetence] and 3(1)(a) [requirement of licensing] of the *Real Estate Services Act*

ISSUE: Danielle Emily Dobson, representative, Unique Real Estate Accommodations Inc., North Vancouver, while licensed with B. Milne Property Sales/Management Squamish Ltd. dba B. Milne Property Sales/Management, Squamish, committed professional misconduct within the mean-

ing of section 35(1)(a) or 35(1)(d) of the *Real Estate Services Act* in that she provided strata management services on behalf of the brokerage, contrary to section 3(1)(a) of the *Real Estate Services Act* while she was engaged as a representative for rental property management activities with the brokerage.

RESULT: Danielle Emily Dobson 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 Danielle Emily Dobson, and a Consent Order was issued. ■

Feedback?

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

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