

Report from Council

New Chair, Vice-Chair Elected

First meeting of 2011/12 Council held in July

At the first meeting of the 2011/12 Council in July, Bryon Brandle of Re/Max Vernon, Silver Star, was elected as Chair of the Real Estate Council for the 2011/12 term. Michael Ziegler of Newport Realty Ltd., Victoria, was elected as Vice-Chair.

As licensees are aware, 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 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 May, thus ensuring continuity. The names of the other Council members are listed in the right margin on the next page. ■



Bryon Brandle

Michael Ziegler

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. ■

This Issue: >

- New Chair, Vice-Chair Elected
- Licensees Must Give Notice of Discipline, Bankruptcy, Criminal Proceedings
- Alert—Listing Agreements Must be Amended if Commission is to be Increased or Reduced
- E-signatures, Electronic Agreements & Electronic Tablets

- Strata Lot Rental Disclosure Statement Changes
- Advertising of Personal Real Estate Corporations
- Rental Property Management Licensing Scenarios
- False or Misleading Statements on a Licence Application
- Pre-closing Commission Advances
- Disciplinary Decisions

A Note from the Chair



Bryon Brandle,
Chair

It is an honour to be elected as Chair of the Council for the 2011/12 term and I look forward to working with Vice-Chair Michael Ziegler and the other members of the Council. I want to thank past Chair Gerry Martin for his leadership and guidance over the past year.

As mentioned in the June *Report from Council*, we welcome newly elected members Garth Cambrey of North Vancouver, Marylou Leslie of Delta and Susan Lynch of Prince George. We also welcome back re-elected members Abdul Ghouri, Patrick O'Donnell and Michael Ziegler.

As licensees are aware, the ability to rent a strata lot can be of great importance to a buyer. A recent amendment to the *Strata Property Act* has changed certain aspects regarding Rental Disclosure Statements. Further information about this important change can be found in the article on page five.

As noted in the June *Report from Council* newsletter, the Council has changed its criminal record check procedure. As of July 22, 2011, first-time licence applicants (and certain other licence applicants) are now required to obtain an original criminal record check from their local police

agency and submit it along with their application to the Council. Further information about this change can be found on the Council's website.

Speaking of criminal record checks, the Council again reminds licensees of their obligation to immediately disclose to the Council any discipline, bankruptcy or criminal proceedings against them. Further information about this is located on the first page of this Report.

Finally, licensees will note in the Discipline section that a licensee was sanctioned for making a false application regarding completion of Relicensing Education Program course requirements. The Council views this as a serious infraction and I urge licensees to ensure that they have completed their continuing education requirements prior to making application for licence renewal.

On behalf of Council members and staff, I wish you a busy and productive summer.

Bryon Brandle
Chair

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Real Estate Council of BC
CHAIR—Bryon R. Brandle
VICE-CHAIR—R.E. Michael Ziegler
EXECUTIVE OFFICER—Robert O. Fawcett

COUNCIL MEMBERS

Barbara Barry
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Subhadra Ghose
Abdul R. Ghouri
Marylou Leslie
Susan Lynch
Gerry Martin
Susan McGougan
John J. Nagy
Patrick O'Donnell
William B. Phillips
Bruce Turner

STATISTICS

August 2011

Representatives: 17,527
Associate Brokers: 1,749
Managing Brokers: 1,335
Total Licensees: 20,611
Brokerages (including branch offices
and sole proprietors): 1,435

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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Office Closures

The Council office will be closed on **Monday, September 5, 2011** for Labour Day and **Monday, October 10, 2011** for Thanksgiving.

Alert—Listing Agreements Must be Amended if Commission is to be Increased or Reduced

As licensees are aware, there are all sorts of commission rates and fees charged by different licensees and brokerages. Licensees who are working as buyers' agents need to discuss what they charge and how they get paid at the start of their relationship with a buyer to avoid misunderstandings and controversy in the event that the property that suits the buyer does not offer a selling commission that suits the buyer's agent. Such a situation creates a conflict between the buyer's interest in acquiring the property and the buyer's agent's interest in being paid what they expect. In this scenario, licensees must be aware that the interests of their client in acquiring the property trump the licensee's interest in earning a commission.*

The use of a buyer agency agreement can facilitate commission discussions and put the relationship with a buyer on a professional, contractual footing.

As described above, it is not uncommon for a listing agent to have contracted with a seller to offer a selling portion of commission that is lower than what a buyer's agent expects to receive. When this happens, typically the buyer's agent either gets the buyer to top up the difference (easily done if a buyer agency agreement is in place) or, with the buyer's consent, the buyer's agent drafts a clause in the offer whereby the buyer and seller agree that the seller will pay commission to the buyer's agent's brokerage equal to the amount agreed to between the buyer and the buyer's agent. In some instances, the buyer's agent presents a fee agreement setting out that the seller agrees to pay a specific amount to the buyer's agent's brokerage.

Licensees should be mindful that the use of a fee agreement creates a separate contractual relationship between the buyer's agent and the seller not contemplated in the listing agreement, and that agreement in no way modifies the terms of the listing agreement. Further, the buyer's



agent's brokerage will have to collect the fee from the seller and not look to the seller's agent's brokerage for payment.

This being said, a seller's agent must be careful not to put their seller in the position of potentially being contractually obliged to pay more commission than they actually intend. When it is the intention of the parties that the selling portion reflected in the listing agreement is being replaced by the amount set out in the fee agreement, the listing agreement must be amended accordingly. If this is not done, the seller is contractually obligated to pay the total of the commission set out in the listing agreement (paragraph 5 A. of the BCREA MLS® contract) plus the amount set out in the fee agreement.

On a case by case basis, when a change in the buyer's agent's commission is agreed to by the buyer and the seller in the Contract of Purchase and Sale, the listing agreement should also be amended to reflect the change to the overall commission.

A listing amendment provides certainty as to the intentions and obligations of the seller and the listing brokerage to pay the increased amount of commission to the buyer's agent, thus avoiding any misun-

derstandings at the time of completion of the trade.

Buyers' agents should be aware that if the listing is not amended to reflect the amount agreed to in the Contract of Purchase and Sale and the seller decides not to live up to their agreement in the Contract of Purchase and Sale to pay the buyer's agent the extra amount of commission, it is the buyer, not the buyer's agent's brokerage, who would have to successfully sue the seller to enforce that agreement. A buyer is not likely to do that. Further, the buyer's agent could not look to the seller's agent's brokerage for that amount as the brokerage is not a party to the Contract of Purchase and Sale.

In all matters, contractual unintended consequences may arise when licensees, for the sake of expediency, do not properly amend agreements to fully reflect the intentions of the parties. The failure of a licensee to protect the interests of their clients in this regard, by not applying reasonable care and skill, are contraventions of the *Real Estate Services Act* and the Council Rules, which may result in a licensee being subject to professional discipline, should a complaint arise. ■

* For more information on buyers' agents establishing remuneration with buyers, see page 92 of the Professional Standards Manual [7th edition] or click on the Obligations of a Buyer's Agent section within Acting for Sellers in the online PSM at www.rebc.ca

E-signatures, Electronic agreements and Electronic Tablets

The following article was originally published in the June 2010 Report from Council newsletter and is being published again for the benefit of licensees.

With commerce becoming increasingly digitized, electronic agreements and contracts have grown in popularity. Some licensees have started to use electronic tablets when providing real estate services. The tablets contain, for example, the electronic version of service agreements and Contracts of Purchase and Sale of real estate. The signature of the buyer and seller may be captured by their signing on the tablet, much like when we sign on a tablet for receipt of delivery of a couriered package or at a credit card terminal. The agreements can be printed or emailed directly from the tablet.

The Council has considered the question of whether electronic contracts are enforceable when the signature of a party to the contract is not signed in ink, known as a “wet” signature.

The Council has concluded that electronic agreements and the use of signatures written onto an electronic tablet can create enforceable agreements, whether these are service agreements or Contracts of Purchase and Sale of real estate, so long as all of the essential elements of a contract are in place, e.g. the parties to the contract are known, the terms of the contract are clear and the parties have agreed to those terms.

The *Law and Equity Act* requires that a Contract of Purchase and Sale of real estate, in order to be enforceable, must be in writing and signed by the party to be charged or an agent of the party. The courts have expressly supported the view that, while the traditional form of writing is a paper document, the definition does not preclude other forms of expression, including electronic communications.

The reason for the requirement of a signature to a contract is to ensure that



there has been acknowledgement and approval of the terms of the contract. The signature need not be in any particular form and the courts have supported both manual “wet” and electronic signatures, and electronic signatures that are password protected, as well as those that are not.

Licensees are reminded that email communications, where the name of the sender may appear, **are not** sufficient as a replacement for a “wet” signature on a paper contract or an electronic signature captured on a tablet.

Other Issues: Storage and retention of electronic records

There are other issues which should be considered by licensees and their brokerages using electronic technology. The first concern is that many of the companies promoting electronic agreement software are based in the USA and both the production and the storage of the information is subject to different privacy laws, such as the U.S. federal *Patriot Act* which may result in disclosure of confidential client information in circumstances which would not be required in Canada. As well, section 25 of the *Real Estate Services Act* requires that a brokerage must keep proper books, accounts and other records in British Columbia. Several Council Rules may also apply.

The Council has concluded that electronic agreements and the use of signatures written onto an electronic tablet can create enforceable agreements so long as all of the essential elements of a contract are in place

For example, section 8-9.1 of the Council Rules permits electronic storage of records but requires the prompt transfer to a printed form of any record upon the request of the Council. Since section 8-10 of the Council Rules requires licensees to keep records for 7 years, the security and accessibility of the storage facility must also be considered when setting up a method of electronic storage within the brokerage. Brokerages may wish to obtain appropriate legal, accounting and IT advice when considering a paperless record keeping system.

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

Advertising of Personal Real Estate Corporations

Licensees who have a personal real estate corporation (PREC) are reminded that the Council Rules require all advertising to be in the licensee name of the PREC, not the individual's name. For example, if Robert Smith has a PREC with the licensee name of Rob Smith Personal Real Estate Corporation, **all** advertising must refer to Rob Smith Personal Real Estate Corporation, not Robert Smith. There is no requirement that the font size must all be the same, but the term 'personal real estate corporation' must be clearly included. In addition, all advertising must also include the name of the related bro-

kerage in a prominent and easily readable way. As an example, the advertising might appear as:

Rob Smith
Personal Real Estate Corporation
XYZ Realty Ltd.

Licensees with PRECs should review all of their advertising to ensure that it is in compliance with the Council's requirements. This includes, but is not limited to: all websites, business cards, bus benches, for sale signs, magazine/newspaper ads, etc.



Licensees requiring further information should contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca. ■

Strata Lot Rental Disclosure Statement Changes

Determining whether a buyer will be able to rent a strata lot is sometimes confusing. The most significant document in determining whether a buyer can rent a strata lot is the Rental Disclosure Statement. A Rental Disclosure Statement is filed by a developer before any strata lots are offered for sale and indicates which strata lots are designated as rental strata lots and the rental period. In a majority of cases, the developer will identify all strata lots in the development as rental strata lots on the Rental Disclosure Statement.

Until recently, the general rule has been, if the buyer bought a strata lot from the developer and the developer had filed a Rental Disclosure Statement that identified that strata lot as being intended for rent, and the Rental Disclosure Statement had not expired, the buyer was entitled to rent that strata lot notwithstanding a rental bylaw. The rental bylaw would not apply to that strata lot until the Rental Disclosure Statement expired or the strata lot was sold, whichever happened first.

Recent amendments to the *Strata Property Act* have changed the general rule. For all developments for which the Rental



Disclosure Statement was filed on or after January 1, 2010, a rental bylaw passed by a strata corporation does not apply to a strata lot identified in the Rental Disclosure Statement until the expiry of the Rental Disclosure Statement.

The ability to rent a strata lot can be of great importance to a buyer so licensees need to understand the change and alert buyers to it.

Whether they act for a seller, a buyer, or both, licensees are accountable for any information they provide regarding the real estate or a trade in real estate. There-

fore, if a licensee is uncertain about the answer to any question a seller or buyer may have regarding the rental of a strata lot, they should advise that person to obtain independent legal advice.

Steps Licensees Representing Buyers Should Take

Resale—Older Buildings

Because a Rental Disclosure Statement is generally filed in the pre-marketing period, any building that was built by January 1, 2010 would most likely have a Rental Disclosure Statement that was

Continues on page 6

Continued from page 5

filed prior to January 1, 2010. For those buildings, only the first buyer would have the benefit of the Rental Disclosure Statement until the Rental Disclosure Statement expired.

If the building is clearly a building where the Rental Disclosure Statement was filed before January 1, 2010 (i.e. built in the 80s, 90s or early 2000s), the general rule will apply. Buyers of resale strata lots should be advised that they have no protection from a rental bylaw and that a rental bylaw (either existing or one passed in the future) will apply to them.

New Developments

If a strata lot is being sold on behalf of a developer, the licensee should determine whether the Rental Disclosure Statement was filed before or after January 1, 2010.

Before January 1, 2010

A Rental Disclosure Statement filed before January 1, 2010 will protect the developer and **first** buyers from the application of any rental bylaw passed by the strata corporation until the Rental Disclosure Statement expires. A buyer who purchases from a first or subsequent buyer does not have the benefit of a Rental Disclosure Statement.

Therefore, although buyers who purchase from the developer will be protected from a rental bylaw if the Rental Disclosure Statement has not expired, future buyers will be subject to any rental bylaw that a strata corporation passes. The future buyers are not protected even though the Rental Disclosure Statement has not expired.

Buyers from Developers who wish to take advantage of their right to rent should confirm that the rental period in the Rental Disclosure Statement is far enough into the future so that the first buyer's right to rent will not be terminated by the expiry of the Rental Disclosure Statement. In most cases, the rental period for Rental Disclosure Statements filed before January 1, 2010 is at least 99 years, or is for an indefinite or unlimited period.

After January 1, 2010

A Rental Disclosure Statement filed on or after January 1, 2010 will protect the developer and **all buyers** from the appli-

cation of a rental bylaw until the expiry of the Rental Disclosure Statement.

The amendment to the *Strata Property Act* has extended the benefit of the Rental Disclosure Statement from just the first buyer to all buyers until the expiry of the Rental Disclosure Statement. In other words, second, third, fourth, etc. buyers will be able to rent their strata lot as long as the Rental Disclosure Statement has not expired providing that the Rental Disclosure Statement was filed with the Superintendent of Real Estate on or after January 1, 2010.

Essentially, the strata corporation is not able to restrict rentals during the term of the Rental Disclosure Statement. If the buyer sells the strata lot while the Rental Disclosure Statement is in effect, the subsequent buyer would also be permitted to rent the strata lot. This effectively broadens the potential market for the strata lot and may be viewed by the buyer as an advantage. However, for a buyer hoping to see rental restrictions in place in order to create an owner occupied community, the fact that the strata corporation would be unable to restrict rentals may be viewed by a buyer in such a circumstance as a disadvantage.

All buyers, including buyers from developers, should confirm the rental period on the Rental Disclosure Statement. Although, in the past, most Rental Disclosure Statements did not expire for significant periods of time since January 1, 2010, some developers have filed Rental Disclosure Statements for a very short period, such as five years. In such cases, the protection from a Rental Disclosure Statement ends for all owners, including the first buyer, when the Rental Disclosure Statement expires. Most first buyers believe that they will always be able to rent because they purchased from the developer. This is not the case. Developments with very short rental periods would, therefore, not be attractive to buyers who wish to rent the strata lot for an extended period.

Future Resales

In the past, because the Rental Disclosure Statement did not apply to anyone other than the developer and first buyer, very

few strata corporations bothered to attach the Rental Disclosure Statement to the Information Certificate (Form B) when a strata lot was re-sold. However, because the Rental Disclosure Statements filed on or after January 1, 2010 can benefit second, third, and fourth etc. purchasers it is necessary for the Rental Disclosure Statement to be attached to the Form B so that buyers and licensees acting on their behalf can determine whether the resale has a pre-January 2010 Rental Disclosure Statement, in which case the new buyer would not benefit from the Rental Disclosure Statement, or whether the resale has a post-January 2010 Rental Disclosure Statement, in which case the new buyer will have the benefit of the Rental Disclosure Statement until it expires.

It will, therefore, be necessary for buyers and licensees acting on their behalf to determine the expiry date of the Rental Disclosure Statement for the resale of strata lots in the future. Section 59 of the *Strata Property Act* requires that the developer's Rental Disclosure Statement be attached to the Information Certificate (Form B). As noted above, unless the building is clearly one for which the Rental Disclosure Statement was filed before January 1, 2010, licensees acting on behalf of buyers should insist that the Rental Disclosure Statement be attached to the Form B. If the licensee has any doubt or uncertainty about the date the Rental Disclosure Statement was filed, the licensee should insist that the Rental Disclosure Statement be attached to the Form B.

Licensees acting on behalf of buyers should then check the filing date on the Rental Disclosure Statement.

1. If the Rental Disclosure Statement was filed before January 1, 2010, buyers of resale properties should be informed that a rental bylaw would apply to them.
2. If the Rental Disclosure Statement was filed on or after January 1, 2010, the licensee should check the expiry date and, if the date has not expired, advise resale buyers that they will be protected from a rental bylaw until the Rental Disclosure Statement expires. ■

Rental Property Management Licensing Scenarios



From time to time, the Council, in conjunction with the Office of the Superintendent of Real Estate, which has responsibility for unlicensed activity under the *Real Estate Services Act* (RESA), publishes information related to various scenarios that give rise to questions about licensing. The following two scenarios are related to rental property management services.

Scenario 1

Fred provides property management services for several owners of vacation rental properties located in the Okanagan Valley. Fred provides a central booking service for people who wish to stay in self-contained units when they vacation during the summer months. He takes initial deposits and collects the balance of the fees on the first day the property is to be occupied. Fred also arranges for housekeeping services while the units are occupied, takes care of minor repairs, and in the case of the detached homes in his rental portfolio, he also arranges for the yard maintenance. He sends the owners the remaining funds each month, along with accounting statements.

Some of these properties are made available for fixed term occupation during the off-season. Fred finds tenants and negotiates fixed term leases for these properties. He collects and holds the security and pet damage deposits for these properties, collects the rents, pays the expenses on behalf of the owners, and sends the owners the remaining funds each month, along with accounting statements.

In return for these services, Fred receives a percentage of the rental income from which he must pay for all housekeeping services during the vacation season. Regular maintenance is invoiced to the owners separately. During the off-season, Fred receives a percentage of the fixed term lease payments.

Does Fred need to be licensed under RESA?

The management of the short term vacation rentals does not require licensing under RESA; however, activities related to the provision of travel services to the public, when those travel services are supplied by another person, require licensing under the Business Practices and Consumer Protection Act. Because travel services include accommodation that is for the use or benefit of a traveler, tourist, or sightseer, Fred appears to be providing travel services in relation to his vacation rental portfolio. Fred should contact Consumer Protection B.C. (www.consumerprotectionbc.ca), the organization responsible for administration of the Business Practices and Consumer Protection Act, to determine whether he is required to be licensed under that legislation.

Management of the fixed term lease portfolio during the off-season does require licensing under RESA. The services Fred provides to the owners of these properties constitute rental property management services provided on behalf of the owner/landlord. These rental property management services, like all real estate services, must be provided in the name of and on behalf of a licensed brokerage. All monies received in relation to these services must be treated as trust funds under RESA.

Another important component of RESA is that the money Fred receives and holds in relation to the short term vacation rentals must not be commingled with the money he receives in relation to the fixed term leases. This is true even where the money is received in relation to the same real estate, e.g. short term vacation rental during the summer and fixed term lease during

the off-season. Separate accounts must be established for funds received in relation to these two different types of service.

As a real estate licensee, Fred should ensure his clients understand which of his services are regulated under RESA, which are subject to the Business Practices and Consumer Protection Act, and that any funds he collects on behalf of the clients will be held by his brokerage in segregated accounts.

Scenario 2

Mary has leased a home and now intends to sub-lease that home to John. Does Mary have to be licensed under RESA to do so?

No. Section 1 of RESA defines the term “owner” in relation to rental real estate to include “a person entitled to possession of the real estate who exercises a right to sub-rent or sub-lease the real estate to another.” Section 3 of RESA states that:

“A person must not provide real estate services to or on behalf of another, for or in expectation of remuneration, unless the person is

- (a) licensed ... to provide those real estate services, or*
- (b) exempted from the requirement to be licensed ... in relation to the provision of those real estate services”*

Mary is an “owner” as defined in section 1 and may, therefore, act on her own behalf in all aspects of this sub-lease without having to be licensed. ■

False or Misleading Statements on a Licence Renewal Application

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

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



Managing brokers are reminded that, in signing an application, a managing broker certifies that they are satisfied from personal knowledge or from inquiries, that the licence renewal applicant is of good reputation and is suitable for licensing (including the completion of REP requirements), and thereby approves the application. If an applicant for licence renewal has not completed the REP course requirements, the licence renewal applicant should take immediate steps to complete them **prior** to their licence renewal date and **prior** to submitting the Application for Licence Renewal form. Do not submit the application to the Council if the licence renewal applicant is only registered in a course; the courses must be completed before applying.

If the licence renewal applicant is not eligible for renewal because they have not completed the REP course requirements, they should notify the Council, in writing, that they do not intend to renew their licence at this time and that they will cease to operate effective the date that their current licence expires.

The Council appreciates the diligence of licensees and managing brokers in ensuring that licence renewal applicants have completed the REP course requirements prior to licence renewal and completed the Application for Licence Renewal properly. Should you require any further information with respect to REP, please visit the Council's website at www.recbc.ca or contact the Council at 604-683-9664 or toll-free 1-877-683-9664. ■

Council Employment Opportunity Compliance Officer

The Real Estate Council requires an individual to join, on a one-year contract, our compliance team for the intake, assessment and investigation of complaints against real estate licensees. Experience in the real estate industry as a managing broker, or associate broker and/or experience serving as a member of a real estate board's business practices committee is required. The position requires excellent verbal and written communication skills, excellent judgment and analytical skills, dispute resolution skills as well as strong organizational abilities and computer proficiency. This position is based at the Council office in Vancouver.

We offer a competitive salary and benefits package. Please submit your resume with cover letter outlining qualifications and experience by **August 26, 2011** to:

Maureen Coleman, Manager, Compliance
Real Estate Council of British Columbia
info@recbc.ca

Pre-closing Commission Advances— *What happens if the trade does not complete?*

For many years it has been a common practice for developers to offer licensees who represent their buyer-clients, in the purchase of pre-sale development units, a portion of the selling commission within a month or two of the pre-sale contract being entered into, although completion may be years away. Most usually, and understandably, these advances come with strings attached; if the sale doesn't complete, the advanced portion of the commission is to be repaid to the developer.

Section 5-15(4)(a) of the Council Rules provides that money held by a brokerage that is not stakeholder money* may be withdrawn in accordance with a service agreement or other agreement under which the applicable real estate services are provided. When a developer offers to pay a commission advance, the licensee is usually presented with and asked to sign, on behalf of their brokerage, an agreement that sets out the terms under which the commission is being advanced, including the provision that, in the event that the deal does not complete, the brokerage will repay that amount. As such, if the brokerage then pays out the advanced commission to the licensee, the brokerage itself has taken on a contingent liability to repay the advance in the event of a collapsed sale.

Where commissions have been advanced and sales subsequently collapse, if the money is not voluntarily repaid, like any creditor, the developer would presumably have to sue the brokerage. The brokerage, in turn, would then have to try to collect



Both the developer and the brokerage, when they participate in pre-paying commissions, are taking a calculated risk

from the licensee. It appears that both the developer and the brokerage, when they participate in pre-paying commissions, are taking a calculated risk, as does the licensee who doesn't maintain a contingency fund against some pre-sale trades collapsing.

These circumstances may become particularly acute if a number of licensees in a particular brokerage have sold multiple units in developments, with a number of sales collapsing, when market conditions take a turn for the worse.

Given the thousands of pre-sales that occur each year in the province, it is not difficult to imagine the potential impact on the solvency of a brokerage that has

paid out many advances if pre-sale trades collapse and the commission advance liabilities are no longer contingent but rather are current. The implications are of particular concern if the now current liabilities exceed the financial resources of the brokerage and the licensees are unable or unwilling to repay the brokerage.

It is suggested that brokerages seek professional advice with respect to their policies on the pre-payment of commissions and the related accumulation of contingent liabilities. Additionally, all commission advances, that are repayable in the event of a collapsed sale, should be recorded by the brokerage and reported to the brokerage's external reporting accountant as contingent liabilities. ■

* Advance commissions may not be withdrawn from funds being held as a stakeholder; i.e. a buyer's deposit may not be used to pay advance commissions. Advance commissions must be paid to the brokerage directly by the party who has agreed to pay them—in this case, the developer.

Notice of Licensee Resignation

Yu-Fong (Lisa) Tseng

Yu-Fong (Lisa) Tseng, while licensed with Green Team Realty Inc., Vancouver, requested the Real Estate Council of British Columbia to discontinue disciplinary proceedings against her as she has decided to permanently retire from

real estate practice. Ms. Tseng was facing a disciplinary hearing into her professional conduct and would have been required to appear before a hearing panel of the Real Estate Council to respond to these allegations.

Considering the fact that there is likely

no greater disciplinary penalty than not being licensed to act again, the Real Estate Council agreed with Ms. Tseng's request. Ms. Tseng surrendered her licence on May 21, 2011 and the lifetime ban on Ms. Tseng's licensing under the *Real Estate Services Act* is effective as of June 20, 2011. ■

Disciplinary Decisions

Since the June 2011 *Report from Council* newsletter, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

Jarnail Singh Purewall

ISSUE: Jarnail Singh Purewall, representative, Medallion Realty Ltd. dba Sutton Group Medallion Realty, Surrey, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, when he provided trading services in relation to the Contract of Purchase and Sale for property located on 62B Avenue, Surrey, he: (a) provided trading services independent of his employing brokerage, contrary to section 7(3)(a) of the *Real Estate Services Act*; (b) failed to ensure that a separate written agreement was entered into by the parties when the \$20,000.00 deposit was not to be held in trust by his brokerage, contrary to section 27(4) of the *Real Estate Services Act*; (c) failed to promptly provide to his brokerage the trade records for the intended sale, contrary to section 3-2(1)(b) of the Council Rules; (d) failed to keep his managing broker informed of the trading services he was providing in relation to the contract, contrary to section 3-2(2)(a) of the Council Rules; (e) failed to disclose the nature of the representation that he was providing to the buyer, contrary to section 5-10 of the Council Rules; (f) failed to ensure that the buyer was advised to seek independent legal advice with respect to paying the deposit directly to the seller, contrary to section 3-4 of the Council Rules; and (g) initialed the change of completion date from August 14, 2009 to August 21, 2009, on behalf of the seller, without written authorization to do so, contrary to section 5-3 of the Council Rules.

RESULT: Jarnail Singh Purewall was suspended for one hundred and twenty (120) days from July 20, 2011 to November 16, 2011 (inclusive), and was ordered to pay a discipline penalty to the Council in the amount of \$5,000.00, successfully complete the Trading Services Remedial Education Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Davinder (Dave) Singh Sidhu

ISSUE: Davinder (Dave) Singh Sidhu and Dave Sidhu Personal Real Estate Corporation, Tapestry Realty Ltd. dba Royal Group Tapestry Realty, Surrey, while licensed as Davinder (Dave) Singh Sidhu, representative, Greyfriars Realty International Ltd., Surrey, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, while acting as a limited dual agent in the potential sale and purchase of a property, he: (a) did not disclose to the president and director of the seller material information promptly after he became aware of it, namely that information regarding the buyer was being communicated to him by another licensee, contrary to sections 3-3(1)(f) and 3-4 of the Council Rules; and (b) failed to disclose to the buyer specific information regarding the amount of remuneration he expected to receive or, alternatively, to obtain confirmation of the buyer's willingness to proceed without such specific information, contrary to section 5-11(2) of the Council Rules.

RESULT: Davinder (Dave) Singh Sidhu was suspended for thirty (30) days, fourteen (14) days of which were served from November 4, 2009 to November 17, 2009 (inclusive). For the remaining sixteen (16) days, Davinder (Dave) Singh Sidhu and Dave Sidhu Personal Real Estate Corporation were suspended from August 17, 2011 to September 1, 2011 (inclusive). Further, Davinder (Dave) Singh Sidhu was ordered to successfully complete the Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Taroo Singh Hare

ISSUE: Taroo Singh Hare, representative, Tapestry Realty Ltd. dba Royal Group Tapestry Realty, Surrey: (a) in connection with the potential sale and purchase of a property, (i) committed conduct unbecoming a licensee within the meaning of section 35(2) of the *Real Estate Services Act* in that he instructed another licensee to prepare a Contract of Purchase and Sale in the name of a fictitious buyer; and (ii) committed conduct unbecoming a licensee within the meaning of section 35(2) of the *Real Estate Services Act* in that he signed the Contract of

Purchase and Sale using a fictitious name or alias, intending to mislead the president and director of the corporate seller and the other licensee about the true identity of the buyer in an attempt to advance his and his family's position in legal proceedings involving the seller and its president and director; and (b) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, contrary to section 3-2(2)(a) and 3-2(5)(a) of the Council Rules, failed to notify his managing broker that he entered into a Contract of Purchase and Sale using a fictitious name with the intent of misleading the seller.

RESULT: Taroo Singh Hare was suspended for thirty (30) days from August 17, 2011 to September 15, 2011 (inclusive), and was ordered to successfully complete the Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Gaurav Puneet Sharma Orlando Irvin Johansson

ISSUE: Gaurav Puneet Sharma, representative, Landmark Realty Corp., Abbotsford, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he: (a) contrary to section 3-4 of the Council Rules, failed to act with reasonable care and skill, in that he failed to clarify with the buyers and with the buyers' representative whether the buyers wanted vacant possession of the property, free and clear of the tenancies; (b) contrary to section 3-4 of the Council Rules, failed to act with reasonable care and skill in that he failed to provide to the buyer or to the buyers' representative any information relating to the tenancies, such as rent, term, security deposits or copies of any tenancy agreements; and (c) contrary to sections 3-3(1)(a) and 3-4 of the Council Rules, failed to act in the best interests of the sellers and failed to act with reasonable care and skill, in that he allowed the sellers to enter into the sale contract which provided for vacant possession which he knew or ought to have known was not possible given the possession date was less than 30 days from the date of the sale contract.

Disciplinary Decisions, *cont'd*

ISSUE: Orlando Irvin Johannson, representative, 541012 British Columbia Ltd. dba Re/Max Sabre Realty Group, Port Coquitlam, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he: (a) contrary to one or more than one of sections 3-3(1)(a) and 3-4 of the Council Rules, failed to act in the best interests of the buyers and failed to act with reasonable care and skill, in that he knew that the property was subject to the tenancies and knew that the buyers wanted vacant possession and failed to advise the buyers about the requirements of the *Residential Tenancy Act* and the risks associated with non-compliance with the Act; and (b) contrary to one or more than one of sections 3-3(1)(a) and 3-4 of the Council Rules, failed to act in the best interests of his clients and failed to act with reasonable care and skill, in that he failed to make the appropriate inquiries of the listing representative as to the steps taken to ensure that the property would not be subject to the tenancies.

RESULT: Gaurav Puneet Sharma was suspended for fourteen (14) days from August 3, 2011 to August 16, 2011 (inclusive) and was ordered to successfully complete the Trading Services Remedial Education Course.

RESULT: Orlando Irvin Johannson was suspended for seven (7) days from August 3, 2011 to August 9, 2011 (inclusive) and was ordered to successfully complete the Trading Services Remedial Education Course.

RESULT: Gaurav Puneet Sharma and Orlando Irvin Johannson were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Gordon Arthur Walker

ISSUE: Gordon Arthur Walker, representative, Sterling Realty Ltd. dba Prudential Sterling Realty, Burnaby, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) failed to provide to his managing broker the original or a copy of the first sale contract, contrary to section 3-2(1) of the Council Rules; (b) failed to notify his managing broker that the

deposit to be paid pursuant to the first sale contract was not paid, contrary to section 3-2(2)(b) of the Council Rules; (c) failed to act with reasonable care and skill, in that he failed to provide in the second sale contract the terms under which the deposit would be paid, contrary to section 3-4 of the Council Rules; (d) failed to use reasonable care and skill, in that the second sale contract was dated July 1, 2009 when in fact the second sale contract was entered into on July 16, 2009, contrary to section 3-4 of the Council Rules; and (e) failed to disclose to the buyer the amount and source of remuneration he expected to receive, contrary to section 5-11 of the Council Rules.

RESULT: Gordon Arthur Walker was suspended for fourteen (14) days from August 17, 2011 to August 30, 2011 (inclusive), and was ordered to successfully complete the Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Shaolin (Juliana) Qu

ISSUE: Shaolin (Juliana) Qu, representative, West Coast Realty Ltd. (WBlvd) dba Sutton Group-West Coast Realty (W.Blvd), Vancouver, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, as representative for the first buyer in his attempted purchase of a residential property by way of a June 27, 2010 Contract of Purchase and Sale as amended from time to time and concurrently or thereafter, as representative for the second buyer in her purchase of the same property by way of a June 29, 2010 Contract of Purchase and Sale, she: (a) failed to take reasonable steps to avoid a conflict of interest when she agreed to represent the second buyer while the first buyer's offer had expired but may have continued to be interested in the property, in contravention of sections 3-3(1)(a), (c), (e) and (i) and 3-4 of the Council Rules; and (b) failed to ensure that the first buyer was advised and agreed that it was permissible for Ms. Qu to represent other buyers of the property, in accordance with sections 3-3(1)(a), (b), (c) and (f), 3-3(2), 3-4, 5-1(4)(e), 5-1(6) and 5-10(b) of the Council Rules, prior to Ms. Qu agreeing to represent the second buyer in her purchase of the property.

RESULT: Shaolin (Juliana) Qu was suspended for seven (7) days from August 3, 2011 to August 9, 2011 (inclusive), and was ordered to successfully complete the Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Robert Louis (Becks) Beckwermert

ISSUE: Robert Louis Beckwermert (Becks), representative, West Coast Realty Ltd. (Brdwy) dba Sutton Group-West Coast Realty (Brdwy), Vancouver, entered into a Consent Order with the Council that, while licensed with Multiple Realty Ltd., Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* when he: (a) provided real estate services separate from his brokerage in that he provided real estate services on behalf of a company and drafted contracts for buyers when he was not licensed with that company, contrary to section 7(3)(a) of the *Real Estate Services Act*; and (b) accepted remuneration related to real estate services from an entity other than his brokerage in that he accepted remuneration from a company in accordance with the terms of the contract he entered into with the company, while he was licensed with Multiple Realty Ltd., contrary to section 7(3)(b) of the *Real Estate Services Act*.

RESULT: Robert Louis Beckwermert (Becks) was suspended for seven (7) days from August 3, 2011 to August 9, 2011 (inclusive), and was ordered to successfully complete the Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

William Delton Wendt

ISSUE: William Delton Wendt, managing broker, 683693 B.C. Ltd. dba Bramco Holdings, Kelowna, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of: (a) section 35(1)(g) of the *Real Estate Services Act* in that he confirmed that he had completed the course requirements of the Council's Re-licensing Education Program when he had not completed the course requirements; and (b) section 35(1)(a) of the *Real Estate Services Act* in that he failed to complete the course requirements of the Council's Re-licensing Education Program prior to making application for his licence renewal, contrary to section

Disciplinary Decisions, *cont'd*

2-8.1 of the Council Rules.

RESULT: William Delton Wendt was reprimanded, and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00 and enforcement expenses to the Council in the amount of \$1,000.00.

Soroush Babaeian

ISSUE: Soroush Babaeian, managing broker, Royalty Group Realty Inc., Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he contravened sections 3-1(1)(a) and 3-1(2)(a) of the Council Rules in that he failed to be actively engaged in the management of the brokerage by not taking reasonable steps to ensure that a licensee with his brokerage notified the Council promptly in writing that the said licensee had been charged with a criminal offence, when advised by the said licensee verbally of the said charge, as required by section 2-21(2)(d) of the Council Rules.

RESULT: Soroush Babaeian was reprimanded, and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker's Licensing Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Phyllis Yuen Ling Yoe

ISSUE: Phyllis Yuen Ling Yoe (Phyllis Lee-

Yoe), representative, Royal Pacific Realty (Kingsway) Ltd., Vancouver, entered into a Consent Order with the Council that she committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by failing to ensure that the Assignment Agreement accurately set out the amount to be paid by the Assignee regarding a deposit previously paid by the Assignor, contrary to sections 3-3 and 3-4 of the Council Rules.

RESULT: Phyllis Yuen Ling Yoe (Phyllis Lee-Yoe) was reprimanded, and was ordered to successfully complete the Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Yee Chen (Virginia) Kung

ISSUE: Yee Chen (Virginia) Kung, representative, Macdonald Realty Ltd. (Coq) dba Macdonald Realty (Coq), Coquitlam, entered into a Consent Order with the Council that, while licensed with Macdonald Realty Ltd. (MplRd) dba Macdonald Realty (MplRd), Maple Ridge, she committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by failing to ensure that the Assignment Agreement accurately set out the amount to be paid by the Assignee regarding a deposit previously paid by the Assignor, contrary to sections 3-3 and 3-4 of the Council Rules.

RESULT: Yee Chen (Virginia) Kung was reprimanded, and was ordered to successfully complete the Trading Services

Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00.

Nicholas Warren Askew

ISSUE: Nicholas Warren Askew, managing broker, Pacesetter Marketing Ltd., North Vancouver, entered into a Consent Order with the Council that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that, as managing broker, he: (a) permitted the brokerage to provide real estate services through an individual who was not licensed with the brokerage in that when the licensee completed an application to transfer his licence to the brokerage on October 27, 2009, and proceeded to represent clients of the brokerage, Mr. Askew failed to ensure that the licensee's licence was transferred to the brokerage, contrary to section 7(5)(a) of the *Real Estate Services Act*; and (b) failed to be in active charge and control of the brokerage's business in that he failed to notice that on two Agency Disclosure addendums, the licensee indicated that he was the seller's representative but had inserted in brackets "Multiple Realty", contrary to section 6(2) of the *Real Estate Services Act* and section 3-1(1) of the Council Rules.

RESULT: Nicholas Warren Askew was reprimanded, and was ordered to successfully complete the Trading Services Remedial Course and pay enforcement expenses to the Council in the amount of \$1,000.00. ■

Feedback?

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

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