

Report from Council

Sale of a Business— When is a Real Estate Licence Required?

Sale of a Business under the former *Real Estate Act*

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

Under the new *Real Estate Services Act*, the sale of a business is not included in the definition of “real estate” and the requirement for licensing under the Act depends on whether the sale of a business includes a real estate component (i.e. includes the sale or lease of real property, including an assignment of a lease).

Sale of a Business under the new *Real Estate Services Act*

1. Sale of a business by assets

The sale of a business by assets that includes a real estate component (i.e. includes the sale or lease of real property, including an assignment of a lease) is an activity that requires a real estate licence. A real estate licence is not required where the sale of a business by assets does not include a real estate component.

2. Sale of a business by sale of shares of a corporation

In a share transaction, all of the assets

and liabilities of the corporation are in effect the indirect subject matter of the transaction, since the buyer is buying the shares of the corporation which owns the assets and is responsible for those liabilities.

The Courts have determined that where there is:

- (a) a purchase of 100% of the issued and outstanding shares in the capital of a corporation, the buyer is in effect acquiring an interest in the underlying property of the corporation; or
- (b) a purchase of less than 100% of the issued and outstanding shares in the capital of a corporation, the buyer does not acquire an interest in the underlying property of the corporation.

As a result:

- (i) If the transaction involves the acquisition or disposition of 100% of the issued and outstanding shares in the capital of a corporation that has a real estate component (sale or lease of real property, including an assignment of lease), a real estate licence is required by third parties providing trading services in relation to the transaction; i.e. this is considered a trade in real estate;
- (ii) If the transaction involves the acquisition or disposition of 100% of the issued and outstanding shares in the

Continued on page 4 >



Under the Real Estate Services Act, the sale of a business is not included in the definition of “real estate.”

Office Closures

The Council office will be closed on the following dates:

- Thursday, December 25 for Christmas Day
- Friday, December 26 for Boxing Day
- Thursday, January 1, 2009 for New Years Day
- Friday, January 2, 2009

A Note from the Chair



Judi A. Whyte, RI
Chair

Licensees throughout the province will have experienced the rapid change in the real estate market in the last few months. For a number of licensees this will be their first experience with a market decline, which will bring challenges to all segments of the industry. Registrations in the licensing courses are down dramatically and the

Council statistics indicate that the number of licensees has decreased from the peak of 20,400 in August of this year to just over 19,900 at the end of November. With the decline in market activity, some licensees may choose to surrender their licence until market conditions improve. Licensees considering surrendering their licence should see the reminder note on page 4 of this Report in order to avoid having to requalify for licensing by re-writing the licensing exam.

With the New Year approaching, licensees renewing after January 1, 2009 will have to certify that they have completed the Relicensing Education Program (REP) courses required in the first cycle. Licensees are again urged to ensure that they have completed their REP requirements several months prior to their licence renewal date. In addition, managing brokers should en-

sure that licensees under their supervision have completed the required REP courses prior to signing any related licensees' application for licence renewal.

I would encourage all managing brokers, as well as the owners of real estate brokerages, to read the article on page 3 of this Report, which details a recent decision of the Financial Services Tribunal. The decision underscores the importance of managing brokers being actively engaged in the management of the related brokerage, as well as the consequences for failing to carry out their duties in accordance with the *Real Estate Services Act*.

You will note from the article beginning on page 5 that the Council, at its meeting on December 6, made changes to its Rules and Bylaws that will allow certain brokerages to file a notice to reader report, instead of a review engagement report, with respect to their financial statements. The amendments will also allow brokerages that do not hold or receive public trust money during the course of a fiscal year to file a solemn declaration, rather than the currently required Accountant's Report. These changes will reduce the cost of financial reporting requirements for some brokerages.

Finally, on behalf of Council members and staff, I would like to take this opportunity to wish you and your family a happy holiday season and best wishes for the New Year.

On behalf of the Council,

Judi Whyte, RI, Chair

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STATISTICS

December 2008

Representatives: 16,678
Associate Brokers: 1,772
Managing Brokers: 1,386
Brokerages: 1,429

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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Appeal Decision of the Financial Services Tribunal Confirms Obligations of a Managing Broker

The October 21, 2008 appeal decision of the Financial Services Tribunal in *Peter Dalip Alexander and the Real Estate Council of British Columbia* reinforces the obligation of a managing broker to be actively engaged in the management of their related brokerage.

A July 18, 2008 decision of a Discipline Hearing Committee of the Council found that Mr. Alexander attended the office of the brokerage only occasionally, and that he

- did not meet or in fact know most of the employees of the brokerage,
- did not supervise the employees of the brokerage,
- had no direct involvement in the investigation of the incident giving rise to the investigations of the Council,
- did not participate in the financial matters of the brokerage or review its books and records,
- played no role in responding to an audit performed by the Council,
- did not have keys to the brokerage's offices,
- did not have an office,
- did not sign cheques or have signing authority on the brokerage's trust accounts,
- did not have any direct responsibility for rental property management services provided by the brokerage, and
- at no time sought active involvement in the office.

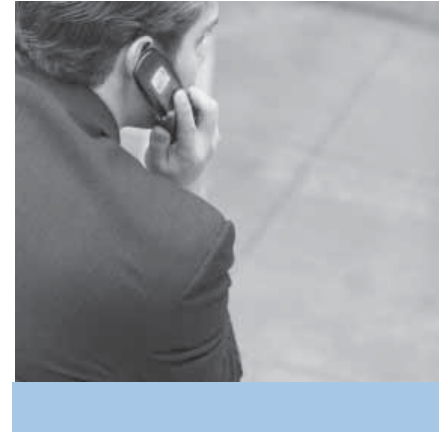
The evidence established that neither Mr. Alexander nor his related brokerage intended Mr. Alexander to do anything other than sign formal documents, in particular the annual financial statements, required by the Council.

As a result, the Discipline Hearing Committee found that Mr. Alexander had committed professional misconduct within the meaning of section 35(1) and/or (2) of the *Real Estate Services Act*. Because Mr. Alexander was no longer licensed at the time of the decision, he was ordered to undertake educational assignments prior to any future application for licensing, and was ordered to pay enforcement expenses related to the hearing.

On appeal, Mr. Alexander asserted that regardless of the statutory and regulatory requirements imposing duties and responsibilities on licensed managing brokers, he should not be found to have committed professional misconduct where those duties and responsibilities have intentionally not been complied with by him in circumstances where he was acting effectively as a "nominee" managing broker for nominal consideration and without any intent or desire to put himself in the position of being capable of fulfilling the said duties and responsibilities.

In reaching its appeal decision, the Financial Services Tribunal stated:

"To rule in favour of the Appellant in this Appeal would be to create an absurdity. In effect, the Appellant is asking the FST to give its approval to conduct by a licensed managing broker that is flagrantly contrary to the legislation, regulations, and rules governing managing brokers. Further, it would be asking the FST to approve bogus arrangements whereby owners of property may be expected to be harmed by wrongful, fraudulent, or even criminal activi-



ties that are masked by an appearance of legitimacy due to the managing broker's licensed status.

It is illogical and unreasonable for the Appellant to take the position that he was a knowing participant in a scheme that thwarts the legislation, regulations and rules that governs his profession but is not responsible for the consequences of that participation because he turned a blind eye to the scheme, did not make any attempts to put himself in a position where he could comply with his duties and responsibilities, and accepted payment, however nominal, for his participation in the scheme. The public requires protection from such misconduct."

The Discipline decision of the Council was ordered to stand, including the requirement to pay enforcement expenses of \$3,864.00. Further, the Appellant was ordered to pay \$1,000.00 costs in the Appeal as a result of the FST finding that the Appeal had "no merit whatsoever." ■

¹The primary duties of a managing broker are established in section 6(2) of the *Real Estate Services Act* and in section 3-1 of the Council Rules.

Section 6(2) of RESA provides:

"6(2) A managing broker licensed in relation to a brokerage acts for the brokerage for all purposes of the Act, and is responsible for

(a) the exercise of the rights conferred on the brokerage by its licence,
(b) the performance of the duties imposed on the brokerage by its licence, and
(c) the control and conduct of the brokerage's real estate business, including supervision of the associate brokers and representatives who are licensed in relation to the brokerage."

Section 3-1 of the Council Rules provides:

"3-1(1) Supervision—a managing broker must

(a) be actively engaged in the management of their related brokerage,
(b) ensure that the business of the brokerage is carried out competently and in accordance with the Act, Regulations, Rules and Bylaws, and
(c) ensure that there is an adequate level of supervision for related associate brokers and representatives and for employees and others who perform duties on behalf of the brokerage."

capital of a corporation that **does not** have a real estate component (sale or lease of real property, including an assignment of lease), a real estate licence is **not** required by third parties providing trading services in relation to the transaction; i.e. this is **not** considered a trade in real estate; or

- (iii) If the transaction involves the acquisition of disposition of less than 100% of the issued and outstanding shares in the capital of a corporation regardless of whether or not it has a real estate component (sale or lease of real property, including an assignment of lease), a real estate licence is not required by third parties providing trading services in relation to the transaction; i.e. this is not considered a trade in real estate.

The *British Columbia Securities Act* applies to all trading (or selling) of securities (including shares). The *Securities Act* requires a person to be registered under the *Securities Act* and to file and obtain a receipt for a prospectus from the British Columbia Securities Commission before trading securities. There are a number of exemptions available from these registration and prospectus requirements, but a person using these exemptions must follow specific conditions.

Licensees are cautioned to seek legal advice, or contact the British Columbia Securities Commission, prior to listing and marketing securities to determine whether there is an exemption from the registration and prospectus requirements of the *Securities Act* that fits their circumstances.

Compliance with the *Real Estate Services Act* where the sale of a business is by assets or 100% of the shares of a corporation owning the business includes a real estate component.

Licensees are cautioned that before proceeding with the sale of a business, brokerages and licensees must determine whether the transaction includes a real estate component in circumstances where there is a sale of assets or the sale of 100% of the shares of the corporation owning the business. If there is a real estate component and a licence is required in these circumstances, the licensee must comply with the provisions of the *Real Estate Services Act*.

Disclosure obligations and deposit requirements where the sale of a business does not fall under the *Real Estate Services Act*.

If there is no real estate component in the sale of a business by assets or sale of 100% of the shares of the corporation that owns the business or in circumstances where there is the sale of less than 100% of the shares, licensees must advise the party that engages the licensee to list and sell the business that they are not acting as a licensee and that the licensee is not regulated under the *Real Estate Services Act* in relation to the sale, including holding the deposit. This advice would also be applicable if licensees are involved in the sale of a business that initially involves the sale of assets with a real estate component which would require a real estate licence but subsequently changes to the sale of less than 100% of the shares of the corporation owning the real estate which would not require a real estate licence. Section 27(5) of the *Real Estate Services Act* provides that a brokerage must ensure that no money, other than money held in relation to real estate services, is paid into its brokerage trust account. This would, for example, exclude a deposit in relation to the sale of a business by assets or the sale of 100% of the shares of the business without a real estate component or a deposit in the sale of a business by way of less than 100% of the shares. Deposits in these circumstances would have to be held in a separate trust account other than the brokerage's statutory trust account. ■

FYI

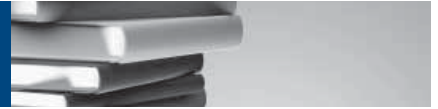
Reminder about Requalification Dates and Surrendering Licences

Licensees are reminded that, as the Council does not provide requalification dates over the telephone, written requests must be made to the Council office. Licensees wishing their requalification dates must either send a letter, fax or email to the Council office at 900-750 West Pender Street, Vancouver, BC V6C 2T8, fax 604-683-9017 or email info@recbc.ca. Please note that it may take up to 10 business days to process requests for requalification dates.

The Council reminds those licensees wishing to surrender their licence that their managing broker must sign off the reverse side of the licence certificate and return it to the Council's office. Licensees with questions about surrendering their licence may contact the Council office at 604-683-9664 or toll-free 1-877-683-9664. ■

Licensee Practice Manual on Website

Licensees are advised that the Licensee Practice Manual (LPM) is now available on the Council's website (www.recbc.ca) in a PDF format. Licensees may access the LPM under the Publications section within the Licensee Information tab. ■



Relicensing Education Program Requirements for Second Cycle—2009–2010

Second cycle begins January 1, 2009

The Real Estate Council's Relicensing Education Program (REP) requires licensees to complete educational requirements every licensing cycle as a condition of continued licensing. The second cycle begins on January 1, 2009. This means that licensees must complete the applicable continuing education courses, as outlined below, in the second cycle in order to renew their licence in 2011/2012. It is important for licensees to note that the REP requirements are separate from any requirements mandated by the real estate boards through their Professional Development Program (PDP). The Council has, however, designed REP to ensure that its course list contains many of the courses that are included in the PDP, including the mandatory course.

Requirements during the Second Cycle of the Relicensing Education Program 2009–2010

Individuals licensed for the first time after December 31, 2008 to provide trading services only:

One mandatory course—*Legal Update (Trading Services)** AND either the *Residential* or *Commercial Trading Services Applied Practice Course*

Individuals licensed before January 1, 2009 to provide trading services only:

One mandatory course—*Legal Update (Trading Services)** AND one elective course

Individuals licensed to provide trading services PLUS either rental property management services OR strata management services OR both:

One mandatory course—either *Legal Update (Trading Services)** OR *Legal Update (Strata Management)* AND one elective course

Individuals licensed to provide strata management services OR rental property management services OR both:

One elective course

Licensees may choose their elective course requirement from a list of approved REP Courses that are detailed on the Council's website at www.recbc.ca/licensee_info/rep.htm.

Licensees must keep proof of completed education and attendance records in a specific education file, along with sufficient information about the courses, including



New REP courses

The Council recently approved two new REP courses:

- Disclosure Issues and Risks offered by BCREA
- Legal Update (Strata Management) offered by PAMA

completion certificates and marks. These records must be kept for five years from the last date of the REP cycle (licence renewal date) in which the education was completed.

Licensees with questions about REP may contact the Council's Education Department at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca. ■

*Refers to the Real Estate E&O Insurance Legal Update 2008 course

Amendments to Council Rules and Bylaws

The following amendments to the Council Rules and Bylaws were approved by the Council at its meeting on December 6, 2008. The amended wording is displayed in light blue in the sections below.

The amendments are related to two brokerage financial reporting issues. Brokerages are currently required to annually file with the Council information related to their operations. Currently, this includes an Accountant's Report, a copy of

the brokerage's financial statements that have been the subject of either an audit or a review engagement depending on the structure of the brokerage, and a brokerage activity report.

The amendments will allow certain brokerages that have proven their ability to maintain proper books and records and a positive financial position to file a notice to reader, instead of a review engagement, with respect to their financial statements.

The amendments will also allow brokerages that do not hold or receive public trust money during the course of a fiscal year to file a solemn declaration, rather than the currently required Accountant's Report.

The Rule and Bylaw amendments take effect January 1, 2009 and apply to brokerage year ends starting January 1, 2009 or later. Licensees with questions may contact the Council office at 604-683-9664, toll-free 1-877-683-9664 or email, info@recbc.ca.

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1-1 Definitions

public trust money means all money held or received by a brokerage and to which section 27 (1), (2) or (3) [payment into trust account] of the Act applies, except remuneration that has already been earned, as determined in accordance with these rules, by the brokerage at the time it is held or received by the brokerage;

Defines the term 'public trust money' to only include money that is being held for someone other than a licensee

7-7 Annual financial statements, accountant's report and brokerage activity report

- (1) A brokerage must, within 120 days after the end of each fiscal year of the brokerage, file with the council
 - (a) financial statements for that fiscal year,
 - (b) an accountant's report respecting that fiscal year, completed in accordance with the bylaws, and
 - (c) a brokerage activity report respecting that fiscal year, completed in accordance with the bylaws.
- (2) The financial statements must
 - (a) be audited by an accountant, in the case of a brokerage that is a public company as defined in the Business Corporations Act, or
 - (b) in any other case, have been subject, at a minimum, to
 - (i) a review engagement by an accountant, or
 - (ii) if authorized under subsection (2.1), a notice to reader prepared by an accountant.
- (2.1) The council may authorize a brokerage to file financial statements that have been subject to a notice to reader prepared by an accountant if all of the following conditions are met:
 - (a) for a minimum of 3 consecutive fiscal years immediately preceding the date of authorization, the brokerage has filed financial statements that comply with subsection (2) (a) or (b) (i) and has satisfied the other requirements of this section as applicable;
 - (b) during those 3 fiscal years there have been no significant trust account or general books and records exceptions
 - (i) reported in relation to the brokerage under section 4-9 [annual accountant's report] of the bylaws, or
 - (ii) discovered in relation to the brokerage in any review under section 7-6 [council review of accounts and other records] of these rules;
 - (c) the council is satisfied that at the end of each of those 3 fiscal years the brokerage's current assets exceeded its current liabilities.
- (3) An accountant who
 - (a) audits, ~~or~~ reviews the financial statements or prepares a notice to reader in relation to the financial statements, as contemplated by subsection (2) or (2.1), or
 - (b) completes the accountant's report must be independent of the brokerage and of any director, officer or partner of the brokerage or a related licensee of the brokerage.
- (4) The brokerage must
 - (a) disclose to an accountant referred to in subsection (3) every savings institution account that was opened, closed or maintained by the brokerage during the fiscal year,
 - (b) provide the accountant with access to all financial and other records of the brokerage for the fiscal year, and
 - (c) provide the accountant with any other information the accountant considers necessary to enable the accountant to conduct the audit, ~~or~~ review the financial statements, prepare the notice to reader or to complete the accountant's report, as required by this section.
- (5) The council may withdraw an authorization given to a brokerage under subsection (2.1) if
 - (a) the brokerage does not file financial statements that comply with this section,
 - (b) a trust account or general books and records exception has been reported or discovered as described in subsection 2.1 (b) in relation to the brokerage, or

This establishes the criteria to be met by a brokerage whereby the Council could authorize it to file a notice to reader, instead of a review engagement, along with an accountant's report and a business activity report.

Expands the requirement of independence on the part of the accountant to include an accountant who prepares a notice to reader.

Similarly, (4)(c) expands the need to provide information to include to an accountant who is preparing a notice to reader.

(5) establishes the situations in which the Council may withdraw an authorization given to a brokerage to file a notice to reader.

Proposed Rule Changes Related Trust Accounts**Description**

- | | |
|--|--|
| <ul style="list-style-type: none">(c) the council is not satisfied that the brokerage's current assets exceed its current liabilities at the end of any fiscal year.(6) Before withdrawing an authorization given to a brokerage under subsection (2.1), the council must give the brokerage notice of its intention to do so and the reasons.(7) As an alternative to filing an accountant's report under subsection (1) (b), a brokerage that did not hold or receive any public trust money during the fiscal year to which the financial statements relate may file with the council a solemn declaration, completed in accordance with section 4-9.1 of the bylaws, respecting<ul style="list-style-type: none">(a) that fiscal year, or(b) if the brokerage did not carry on business for the entire fiscal year, that part of the fiscal year for which the brokerage did carry on business. | <p>(6) requires the Council to provide notice if it intends to withdraw an authorization.</p> <p>(7) establishes that a brokerage which does not hold or receive any public trust money during a fiscal year may file a solemn declaration rather than file an accountant's report. It would still be required to file financial statements and a brokerage activity report.</p> |
|--|--|

Proposed Bylaw Changes Related Trust Accounts**Description****Division 2 – Brokerage Reports and Declarations****4-9 Annual accountant's report**

- (1) An accountant's report filed by the brokerage with the council under section 7-7 (1) (b) [annual accountant's report] of the rules must
 - (a) be in a form approved by the council,
 - (b) be prepared in accordance with this section, and
 - (c) include the information required by this section.

This is a correction to a typographical error in the subsection reference. It currently reads section 7-7 (1)(a) rather than 7-7 (1)(b).

4-9.1 Solemn declaration—alternative to accountant's report

- (1) A solemn declaration filed by a brokerage with the council under section 7-7 (7) of the rules must
 - (a) be made by a related managing broker on oath or by solemn affirmation,
 - (b) be made before a commissioner for taking affidavits for British Columbia,
 - (c) be in a form approved by the council,
 - (d) be signed by the related managing broker and the person before whom the declaration is made,
 - (e) include the information and statements required by this section, and
 - (f) be submitted to the council together with the brokerage activity report and the financial statements for the applicable fiscal year of the brokerage.
- (2) The declaration must contain, or have attached to it, the following:
 - (a) the name of the brokerage;
 - (b) the name of the related managing broker making the declaration;
 - (c) a list of each brokerage trust account, commission trust account and other savings institution account opened or maintained by the brokerage during the fiscal year;
 - (d) for each account listed under paragraph (c),
 - (i) the name and branch location of the savings institution at which the account is or was kept,
 - (ii) the account number,
 - (iii) an indication of the type of account, and
 - (iv) if the account was opened or closed, or both, during the fiscal year, the date of the opening or closing, as the case may be;
 - (e) the end date of the brokerage's fiscal year to which the declaration relates.
- (3) The declaration must state that
 - (a) the brokerage did not hold or receive any public trust money during the fiscal year to which the declaration relates, and
 - (b) to the knowledge of the related managing broker, all information and statements in the declaration are true and complete.

Establishes information to be included and the process to be followed with respect to the solemn declaration proposed under section 7-7 (7) of the Rules.

Disciplinary Decisions

Since the October 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) [professional misconduct] and 37 [failure to cooperate with investigation] of the *Real Estate Services Act*

ISSUE: Peter Dalip Alexander, currently unlicensed, while licensed as a managing broker, Pacifica First Management Ltd., Vancouver, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that: (a) in his capacity as managing broker responsible for the brokerage's rental property management business, was not actively engaged in this aspect of the management of the brokerage, that he failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulation, Rules and Bylaws and that there was adequate levels of supervision for related associate brokers and representatives; (b) he failed to supervise a licensee competently and with sufficient attention to ensure that the licensee was supervising persons performing rental property management services at the property with an appropriate degree of diligence and attention and that the licensee had imposed sufficient controls on the collection and receipt of and accounting for rental and other payments at the property to ensure that any misappropriation or other improper withholding of rental and other monies would be discovered in a timely way; and (c) he failed to cooperate with an investigation conducted by the Council under section 37 of the Act.

RESULT: Peter Dalip Alexander, as he had been unlicensed since August 3, 2007, would be immediately eligible to be licensed as a representative or an associate broker subject to a determination as to his suitability for licensing by a subsequent Qualification Hearing Committee. Further, any application by Peter Dalip Alexander to be licensed as a managing broker would be subject to him first successfully completing the disciplinary education assignments applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) and Chapter 14 (Property Management) of the Broker's Licensing Course, and subject to a determination as to his suitability for licensing as a managing broker by a subsequent Qualification Hear-

ing Committee. Further, he was ordered to pay enforcement expenses to the Council in the amount of \$3,864.00.

APPEAL: The Financial Services Tribunal upheld the disciplinary decision of the Council in its entirety by a decision issued October 21, 2008.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], 7(3)(a) [relationships between managing brokers and other licensees], 27(1)(a) [payment into trust] of the *Real Estate Services Act*, and sections 3-2(2) [keep managing broker informed], 3-4 [duty to act with reasonable care and skill], 4-5(2) [licensee names must be indicated], 4-6(2) and 4-6(4) [restrictions and requirements related to advertising generally], and 4-7 [false or misleading advertising prohibited] of the Council Rules

ISSUE: Valeria Lockwood, representative, Sussex Group—S.R.C. Realty Corporation (WVan) dba Prudential Sussex Realty (WVan), West Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (a) represented to the seller of the real estate that she was licensed to provide real estate services in the State of Oregon, USA, when she was not so licensed, in contravention of section 3-4 of the Council Rules; (b) provided real estate services other than on behalf of the brokerage in relation to which she was licensed, in contravention of section 7(3)(a) of the *Real Estate Services Act*; (c) failed to promptly pay or deliver all money held or received from, for or on behalf of a principal in relation to real estate services, in relation to the payments made to her in March and April, 2007, in contravention of section 27(1)(a) of the *Real Estate Services Act*; (d) published real estate advertising that the licensee knows contains a false statement or misrepresentation concerning real estate, a trade in real estate or the provision of real estate services, in that the real estate was advertised as being "sold before auction for \$3,800,000" when the real estate was not sold and Lockwood had not brought about a sale of the real estate, in contravention of section 4-7 of the Council Rules; (e) failed to ensure that the licensee name of her related brokerage is clearly indicated in the course of providing the real estate services, in contravention of section 4-5(2) of the Council Rules; (f) failed to keep the managing broker informed of the real estate services being provided and

other activities being performed by her on behalf of the brokerage, in contravention of section 3-2(2) of the Council Rules; (g) failed to display the licensee name of the brokerage in a prominent and easily readable way, in contravention of section 4-6(2) of the Council Rules; and/or (h) included an office address for the licensee which was not the address of the related brokerage office, in contravention of section 4-6(4) of the Council Rules.

RESULT: Valeria Lockwood was suspended for thirty (30) days from October 8, 2008 to November 6, 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 Valeria Lockwood, and a Consent Order was issued. Further, Valeria Lockwood was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 9 (Professional Ethics) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available "Real Estate E&O Insurance Legal Update 2008" course, and 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 section 3-1(1) [managing broker responsibilities—supervision] of the Council Rules

ISSUE: Gordon Richard Harmon, managing broker, Sussex Group—S.R.C. Realty Corporation (WVan) dba Prudential Sussex Realty (WVan), West Vancouver, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to ensure that there was an adequate level of supervision for the brokerage's related representative, Valeria Lockwood, in contravention of section 3-1(1) of the Council Rules.

RESULT: Gordon Richard Harmon 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 Gordon Richard Harmon, and a Consent Order was issued. Further, Gordon Richard Harmon was ordered to pay enforcement expenses to the Council in the amount of \$750.00.

Disciplinary Decisions, *cont'd*

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 35(1)(d) [incompetence] of the *Real Estate Services Act*, and sections 3-3(1)(a) [act in best interests of clients] and 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Harpreet Singh Sachal, representative, Tapestry Realty Ltd. dba Royal Group Tapestry Realty, Surrey, committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* by contravening sections 3-3(1)(a) and 3-4 of the Council Rules in that he failed to draft the Contract of Purchase and Sale dated September 20, 2007, so as to ensure the Sellers would be able to fulfill their legal obligation to provide notice to the tenants of the Property, ending the tenancy in accordance with section 49 of the Residential Tenancy Act and meet their obligation to provide vacant possession of the Property to the Buyers, pursuant to the Contract of Purchase and Sale.

RESULT: Harpreet Singh Sachal was suspended for fourteen (14) days from November 26, 2008 to December 9, 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 Harpreet Singh Sachal, and a Consent Order was issued. Further, Harpreet Singh Sachal was ordered to enroll in and attend the first available CPE course "Selling Tenant-Occupied Properties" and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct] and 35(1)(d) [incompetence] of the *Real Estate Services Act*, and sections 3-3(1)(a) [act in best interests of clients] and 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Yuvraj Singh Brar, representative, United Realty RCK & Associates Ltd., Surrey, committed professional misconduct within the meaning of section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* by contravening sections 3-3(1)(a) and 3-4 of the Council Rules in that he failed to ensure that the Contract of Purchase and Sale dated September 20, 2007 was drafted so as to ensure the Sellers would fulfill their legal obligation to provide notice to the tenants of the Property, ending the tenancy in accordance with section 49 of the Residential Tenancy Act,

and meet their obligation to provide vacant possession of the Property to the Buyers, pursuant to the Contract of Purchase and Sale.

RESULT: Yuvraj Singh Brar was suspended for fourteen (14) days from November 26, 2008 to December 9, 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 Yuvraj Singh Brar, and a Consent Order was issued. Further, Yuvraj Singh Brar was ordered to enroll in and attend the first available CPE course "Selling Tenant-Occupied Properties" and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35(1)(d) [professional misconduct by demonstrating incompetence] of the *Real Estate Services Act*, and sections 3-4 [duty to act with reasonable care and skill], 4-7 [false or misleading advertising prohibited], and 5-9(3) [disclosure] of the Council Rules

ISSUE: Raymond Frederick Smith, currently unlicensed, while licensed as a representative, Ocean Pointe Realty Ltd. (Ldy) dba Re/Max Ocean Pointe Realty (Ldy), Ladysmith, demonstrated incompetence and thereby committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that as representative for the listing agent in the purported sale of two lots on Harbour Road, Coal Harbour, B.C. (collectively referred to as "property") to JB ("buyer"), he: (a) failed to disclose to the buyer's representative, in accordance with section 5-9(3) of the Council's Rules, that the seller, to whom he was providing real estate services, was an associate of his as that term is defined in section 5-7 of the Council Rules; (b) represented to the buyer in the property listing and other promotional material, contrary to section 4-7 of the Council Rules, that: (i) the property was zoned for residential mobile homes, which he knew or ought to have known was untrue or misleading, as its present use is a lawful, but non-conforming use; (ii) the property comprised a total of 14 mobile home sites and 11 RV sites totaling 25 sites, which he knew or ought to have known was untrue or misleading, as only 9 mobile homes would be permitted in the future; (iii) the property was fully serviced by sewer when the property included only 19 sewer connections and there were Regional District restrictions on further connections; and, (c) failed to ascertain material facts relating to the property, including

that access to three of the mobile home sites required access over a neighbouring property, in accordance with his duty under section 3-4 of the Council Rules.

ISSUE: Leonard Alan Birtwistle, associate broker, Ocean Pointe Realty Ltd. dba Re/Max Ocean Pointe Realty, Chemainus, demonstrated incompetence and thereby committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that as representative for the listing agent in the purported sale of two lots on Harbour Road, Coal Harbour, B.C. (collectively referred to as "property") to JB (buyer), he: (a) failed to disclose to the buyer of the buyer's representative, in accordance with section 5-9(3) of the Council Rules, that the seller, to whom he was providing real estate services, was an associate of his as that term is defined in section 5-7 of the Council Rules; (b) represented to the buyer in the property listing and other promotional material, contrary to section 4-7 of the Council Rules, that: (i) the property was zoned for residential mobile homes, which he knew or ought to have known was untrue or misleading, as its present use is a lawful, but non-conforming use; (ii) the property comprised a total of 14 mobile home sites and 11 RV sites totaling 25 sites, which he knew or ought to have known was untrue or misleading, as only 9 mobile homes would be permitted in the future; (iii) the property was fully serviced by sewer when the property included only 19 sewer connections and there were Regional District restrictions on further connections, and (c) failed to ascertain material facts relating to the property, including that access to three of the mobile home sites required access over a neighbouring property, in accordance with his duty under section 3-4 of the Council Rules.

RESULT: Raymond Frederick Smith will be suspended for fourteen (14) days upon licence reissuance 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 Raymond Frederick Smith, and a Consent Order was issued. Further, Raymond Frederick Smith was ordered to successfully complete the next available Unit 4 "Listing Documentation" of the British Columbia Real Estate Association Residential Trading Services Applied Practice Course, enroll in and attend the first available CPE Course "Real Estate E&O Insurance Legal Update 2008" or "Professional-

Disciplinary Decisions, *cont'd*

ism It Pays! Be Safe or Be Sued!”, and to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: Leonard Alan Birtwistle was suspended for fourteen (14) days from October 29, 2008 to November 11, 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 Leonard Alan Birtwistle, and a Consent Order was issued. Further, Leonard Alan Birtwistle was ordered to successfully complete the next available Unit 4 “Listing Documentation” of the British Columbia Real Estate Association Residential Trading Services Applied Practice Course, enroll in and attend the first available CPE Course “Real Estate E&O Insurance Legal Update 2008” or “Professionalism It Pays! Be Safe or Be Sued!”, and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35 [professional misconduct] of the *Real Estate Services Act*, and section 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Alfred Edwin Deglan, representative, Homelife Benchmark Realty Corp., Langley, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that he failed to act with reasonable care and skill when he advertised the property as being built in 1991, when he knew, or should have known, it was actually built in 1976, contrary to section 3-4 of the Council Rules.

RESULT: Alfred Edwin Deglan was suspended for seven (7) days from December 3, 2008 to December 9, 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 Alfred Edwin Deglan, and a Consent Order was issued. Further, Alfred Edwin Deglan was ordered to successfully complete the disciplinary assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 10 (The Law of Contract) 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 “Real Estate E&O Insurance Legal Update 2008” course, and pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1) [professional misconduct], 6 [brokerage must have managing broker], 7(3)(a), 7(3)(b) and 7(5)(a) [relationships between brokerages and other licensees] of the *Real Estate Services Act*, and section 5-1 [written services agreements] of the Council Rules

ISSUE: Whistler Resort Management Ltd., Whistler, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that it: (a) failed to have a managing broker in charge of the business of the brokerage, contrary to section 6 of the *Real Estate Services Act*; (b) permitted a licensee, while licensed with another brokerage, to provide real estate services to Whistler Resort, contrary to section 7(5)(a) of the *Real Estate Services Act*; and (c) paid remuneration to a licensee while he was employed by another brokerage, contrary to section 7(3)(b) of the *Real Estate Services Act*.

ISSUE: Alexander Felix Hoelk, managing broker, Whistler Resort Management Ltd., Whistler, committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he: (a) permitted the brokerage to provide real estate services through an individual who was not licensed in relation to or engaged by the brokerage, contrary to section 7(3)(a) of the *Real Estate Services Act*; (b) failed to ensure that the brokerage had written service agreements with former clients of another brokerage prior to providing real estate services to those clients, contrary to section 5-1 of the Council Rules; (c) permitted the brokerage to pay remuneration to a licensee who was not licensed in relation to the brokerage, contrary to section 7(3)(b) of the *Real Estate Services Act*; (d) failed to be actively engaged in the management of the said brokerage; (e) failed to ensure that the said business of the brokerage was carried out competently and in accordance with the Act, Regulation, Rules and/or Bylaws; and (f) failed to ensure that there was an adequate level of supervision for related associate brokers and representatives.

ISSUE: Scott Dean Schober, representative, Whistler Resort Management Ltd., Whistler, while licensed as managing broker, Whistler Resort Management Ltd., committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he: (a) permitted the brokerage to provide real estate services through an individual who was not licensed in relation to or engaged by the brokerage, contrary to section 7(3)(a)

of the *Real Estate Services Act*; (b) failed to ensure that the brokerage had written service agreements with former clients of another brokerage prior to providing real estate services to those clients, contrary to section 5-1 of the Council Rules; (c) permitted the brokerage to pay remuneration to a licensee who was not licensed in relation to the brokerage, contrary to section 7(3)(b) of the *Real Estate Services Act*; (d) failed to be actively engaged in the management of the said brokerage; (e) failed to ensure that the said business of the brokerage was carried out competently and in accordance with the Act, Regulation, Rules and/or Bylaws; and (f) failed to ensure that there was an adequate level of supervision for related associate brokers and representatives.

RESULT: Whistler Resort Management Ltd. 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 Whistler Resort Management Ltd., and a Consent Order was issued. Further, Whistler Resort Management Ltd., Alexander Felix Hoelk and Scott Dean Schober were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Alexander Felix Hoelk 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 Alexander Felix Hoelk, and a Consent Order was issued. Alexander Felix Hoelk was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00, enroll in and attend the first available CPE courses “Condo 101—Strata Law for Realtors”, “Condo 202—Advanced Strata Law for Realtors” and “Real Estate E&O Insurance Legal Update 2008”. Further, Alexander Felix Hoelk, Scott Dean Schober and Whistler Resort Management Ltd. were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

RESULT: Scott Dean Schober 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 Scott Dean Schober, and a Consent Order was issued. Scott Dean Schober was ordered to pay a discipline penalty to the Council in the amount of \$2,000.00, enroll in and attend the first available CPE courses

Disciplinary Decisions, *cont'd*

"Condo 101—Strata Law for Realtors", "Condo 202—Advanced Strata Law for Realtors" and "Real Estate E&O Insurance Legal Update 2008". Further, Scott Dean Schober, Alexander Felix Hoelk and Whistler Resort Management Ltd. were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

COMPLAINT: Contravention of section 35(1)(a) [professional misconduct] and 35(1)(d) [incompetence] of the *Real Estate Services Act*, and section 3-1 [ensuring adequate level of supervision] of the Council Rules

ISSUE: Johan Louis Kolk, managing broker, Island Homes Realty Corp. dba Island Homes Realty, Ladysmith, committed professional misconduct pursuant to section 35(1)(a) and 35(1)(d) of the *Real Estate Services Act* by contravening section 3-1 of the Council Rules in that he: (a) permitted the said licensee, Susan Mae Perry to undertake to act as a limited dual agent, when the licensee was the buyer in the subject transaction, and in conflict with the interests of the said sellers; and (b) failed to ensure that Susan Mae Perry made the Contract of Purchase and Sale subject to the sellers seeking independent advice and/or independent legal advice with respect to the value of the property and/or the terms and conditions of the said contract.

RESULT: Johan Louis Kolk 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 Johan Louis Kolk, and a Consent Order was issued. Further, Johan Louis Kolk was ordered to pay a disciplinary education penalty to the Council in the amount of \$2,500.00, successfully complete the disciplinary assignment applicable to Chapter 2 (Mandatory Requirements Under the *Real Estate Services Act*) of the Broker's Licensing Course, and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35(1)(a) [professional misconduct], 6 [brokerage must have managing broker], 25 [brokerage records], and 35(1)(d) [incompetence] of the *Real Estate Services Act*, and sections 2-17(2) [mailing address for delivery], 3-1 [managing broker responsibilities], 3-3(1)(i) and (j) [duties to clients], 4-2 [business sign required], 5-7 [definitions], 5-8 [disclosure], 5-9 [disclosure of interest in trade], 8-1 [financial records], and 8-2 [trust account and general

account records] of the Council Rules, and 4-8(2) [amendments to brokerage licences] of the General Bylaws

ISSUE: Plainsman Development Management Inc. dba Plainsman Realty, Kamloops, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it: (a) failed to disclose its interest in the sale of seven properties, as required by sections 5-8, 5-9(3) and 5-7 of the Council Rules; (b) failed to maintain its financial records as required in that the said brokerage failed to prepare detailed trust liability listings and monthly trust reconciliations, as required by section 8-1 and 8-2 of the Council Rules and section 25 of the *Real Estate Services Act*; (c) failed to display a sign with its licensee name on or near the door of its head office, as required by section 4-2 of the Council Rules; and (d) failed to apply for an amended licence when the brokerage's office address changed and failed to promptly deliver a notice to the Council updating its address for delivery, as required by section 4-8(2) of the General Bylaws and section 2-17(2) of the Council Rules.

ISSUE: William Albert Brown, managing broker, Plainsman Development Management Inc. dba Plainsman Realty, Kamloops, 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) with respect to the purchase and sale of a property under a Contract of Purchase and Sale dated May 13, 2007, failed to promptly and fully disclose a conflict of interest in that the said licensee acted as limited dual agent in circumstances where the seller of the property was an associate of his related brokerage, and failed to take adequate steps to avoid any conflict of interest in that he did not advise the purchaser of the property to either seek independent representation or, in the alternative, independent advice with respect to the trade, contrary to section 3-3(1)(j) and 3-3(1)(i) of the Council Rules; (b) with respect to the purchase and sale of a property under Contract of Purchase and Sale dated May 12, 2007, failed to promptly and fully disclose a conflict of interest in that the said licensee acted as a limited dual agent in circumstances

where the seller of the property was an associate of his related brokerage, and failed to take adequate steps to avoid any conflict of interest in that he did not advise the purchaser of the property to either seek independent representation or, in the alternative, independent advice with respect to the trade, contrary to section 3-3(1)(j) and 3-3(1)(i) of the Council Rules; (c) in his capacity of managing broker of the brokerage, failed to ensure that the said brokerage disclosed its interest in the sale of seven properties, as required by sections 5-8, 5-9(3) and 5-7 of the Council Rules; (d) in his capacity of managing broker of the brokerage, failed to ensure that the said brokerage maintained its financial records as required in that the said brokerage failed to prepare detailed trust liability listings and monthly trust reconciliations, as required by sections 8-1 and 8-2 of the Council Rules and section 25 of the *Real Estate Services Act*; (e) in his capacity of managing broker of the brokerage, failed to ensure that the said brokerage displayed a sign with its licensee name on or near the door of its head office, as required by section 4-2 of the Council Rules; and (f) in his capacity of managing broker of the brokerage, failed to ensure that the said brokerage applied for an amended licence when the brokerage's office address changed and failed to ensure that the said brokerage promptly delivered a notice to the Council updating its address for delivery, as required by section 4-8(2) of the General Bylaws and section 2-17(2) of the Council Rules.

RESULT: Plainsman 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 Plainsman Realty, and a Consent Order was issued. In addition, Plainsman Realty was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, and to undergo, by the Council, an audit of its books, records and accounts on or before March 31, 2009, the costs of which audit are to be borne by Plainsman Realty. Further, Plainsman Realty and William Albert Brown were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

RESULT: William Albert Brown 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 William Albert Brown,

Disciplinary Decisions, *cont'd*

and a Consent Order was issued. In addition, William Albert Brown was ordered to successfully complete the disciplinary assignment applicable to Chapter 2 (Mandatory Requirements under the *Real Estate Services Act*) of the Broker's Licensing Course. Further, William Albert Brown and Plainsman Realty were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of section 35 [professional misconduct] of the *Real Estate Services Act*, and section 3-3(1)(h) [duties to clients] of the Council Rules

ISSUE: Rajesh Kumar Nayyar, representative, Apex International Services Ltd. dba Century 21 Apex International, Delta, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that he, acting on behalf of a buyer, failed in his duty to his client by not using reasonable efforts to discover relevant facts respecting the age of the house, which was built in 1976 and not in 1991 as shown on the MLS® listing, contrary to section 3-3(1)(h) of the Council Rules.

RESULT: Rajesh Kumar Nayyar 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 Rajesh Kumar Nayyar, and a Consent Order was issued. Further, Rajesh Kumar Nayyar was ordered to successfully complete the disciplinary assignment applicable to Chapter 2 (The *Real Estate Services Act*) 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 "Real Estate

E&O Insurance Legal Update 2008" course, and 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 section 3-4 [duty to act with reasonable care and skill] of the Council Rules

ISSUE: Brian Delmer Burch, representative, Blue Sky Realty Ltd., Cranbrook, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, in the listing of a property, failed to act with reasonable care and skill in that he listed the property for sale and accepted offers on the property when the property was not covered by the Home Warranty Insurance as required by section 22(1) of the *Homeowner Protection Act*, contrary to section 3-4 of the Council Rules.

RESULT: Brian Delmer Burch was reprimanded for professional misconduct as described above after an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was entered into between the Real Estate Council and Brian Delmer Burch, and a Consent Order was issued. Further, Brian Delmer Burch was ordered to successfully complete the disciplinary assignment applicable to Chapter 2 (The *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, to enroll in and attend the first available CPE course "Real Estate E&O Insurance Legal Update 2008" course and to pay enforcement expenses to the Council in the amount of \$750.00.

COMPLAINT: Contravention of sections 35 [professional misconduct] and 7(3)(a) [relationships between brokerages and other li-

censees] of the *Real Estate Services Act*, and section 5-15 [when licensee remuneration can be paid out of trust account] of the Council Rules

ISSUE: Irvin Abram Hildebrand, representative, Multiple Realty Ltd. (Rhmd), Richmond, committed professional misconduct within the meaning of section 35 of the *Real Estate Services Act* in that he: (a) contravened section 7(3)(a) of the *Real Estate Services Act* in that he provided real estate services through an unlicensed entity while licensed with the brokerage; and (b) contravened section 5-15 of the Council Rules in that he accepted remuneration prior to that remuneration being earned.

RESULT: Irvin Abram Hildebrand 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 Irvin Abram Hildebrand, and a Consent Order was issued. Further, Irvin Abram Hildebrand was ordered to successfully complete the disciplinary assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 10 (the Law of Contract) of the Real Estate Trading Services Licensing Course, enroll in and attend the first available CPE course "Real Estate E&O Insurance Legal Update 2008", and pay enforcement expenses to the Council in the amount of \$750.00. ■

Feedback?

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

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