

Report from Council

Web-based Social Networking and Real Estate Advertising

Licensees are reminded that if they use social networking, micro-blogging services or any other web-based application in the promotion of their real estate services, the Council's advertising rules apply; in particular, the name of the licensee's brokerage must be prominently displayed and easily readable (section 4-6(2) of the Council Rules).

Whether the name of the brokerage is "prominently displayed and easily readable" is judged in relation to the rest of the material contained on a page. A brokerage name in tiny, hard to read font, at the bottom of a web-page is not acceptable.

In reviewing the use of social networks by licensees to promote their real estate services, it has been concluded that, provided a licensee displays the name of their brokerage on their profile, using Twitter or Facebook as examples, it is not required that each "tweet" or "post" also contain the name of the brokerage. The rationale is that once a licensee's profile has been accessed, the name of the brokerage displayed, and it is known that the individual is a licensee, it is the reader, with that knowledge, who then chooses whether to follow the licensee's "tweets" or asks to become a "friend" going forward.

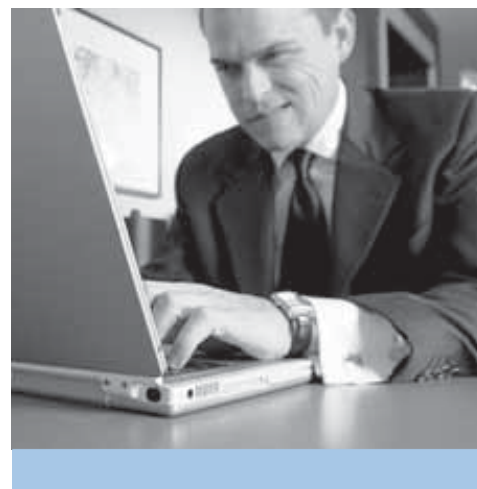
This is rather like a licensee introducing themselves to a consumer at an open

house; they identify themselves as a real estate licensee and present a business card with the name of their brokerage displayed. The licensee does not have to reintroduce themselves at each subsequent meeting if the consumer decides to maintain contact with the licensee, as the consumer already knows, via the first introduction, with whom they are dealing.

The same rationale applies to a video blog posted on a licensee's website. Provided that the name of the licensee's brokerage is prominently displayed and easily readable on the website, where the video is posted, it is not required that the licensee announce the name of their brokerage on each blog segment. However, if a licensee posts a video blog on any other website, such as YouTube, the name of the brokerage must be announced.

One of the primary purposes of the Council's advertising rules is to ensure that consumers accessing a licensee's advertising, anywhere in the world, are aware that they are dealing with a real estate licensee and know the name of the brokerage by which that licensee is engaged.

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



The advertising rules are intended to ensure that consumers accessing a licensee's advertising are aware that they are dealing with a real estate licensee and know the name of the brokerage by which that licensee is engaged.

This Issue:

- Web-based Social Networking and Real Estate Advertising
- Receiving Deposit Money Paid in Respect of Rental Real Estate
- Brokerage Standards Manual Reminder
- The Changing Face of REP

- Providing Real Estate Services Under the *Real Estate Services Act*
- A Seller's Financial Obligations and Clearing Title
- Agency Issues Related to Commercial Trading Services

- Strata Managers and the HRTC
- Residential Tenancy Branch Dispute Resolution Hearings
- Parking Stalls/Storage Lockers
- Disciplinary Decisions

A Note from the Chair



William R. Brown,
Chair

This edition's lead story discusses the Council's advertising requirements as they relate to web-based social networking sites, such as Facebook and Twitter. The Council's advertising requirements, while frequently thought of in terms of more traditional forms of media, apply equally to the online environment. As a result, I would urge you to review the guidelines and, when in doubt, consult with your managing broker.

Speaking of being online, the Council recently posted an enhanced version of its Rules and Bylaws that enables licensees to quickly navigate to any specific section. To take a look at what's been done, please visit www.recbc.ca/consumer/RESA.htm and click on either the Council Rules or Bylaws.

When you review the discipline decisions, you will note that the Council has sanctioned three licensees for failing to complete their Relicensing Education Program (REP) course requirements. I cannot emphasize enough the importance of licensees ensuring that they complete their REP requirements prior to licence renewal, as well as completing the application for licence renewal, including the REP certification section, accurately.

Managing brokers will note that this Report also contains several discipline summaries outlining the failure of brokerages to file an annual Accountant's Report within the prescribed time period. Over the five years that I have been on the Council, I have seen many firms disciplined for late filing for various reasons. I would urge managing brokers to take appropriate steps to file their Accountant's Reports on time, which may necessitate having a discussion with the reporting accountant well in advance of the filing date.

This past year has seen the market go from record high sales to steep declines and back again. At the same time, the number of licensees and course registrants decreased but, over the last few months, we are beginning to see a slight turnaround in both. I believe that this is no doubt driven by low interest rates and the fact that British Columbia does not seem to have been impacted to the same extent as some other North American jurisdictions.

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,

William R. Brown
Chair

Office Closures

The Council office will be closed or have reduced service hours on the following dates:

- Friday, December 18, 2009**—Office closing at noon for staff lunch
- Thursday, December 24, 2009**—Office closing at 3:00pm
- Friday, December 25, 2009**—Office closed for Christmas Day
- Monday, December 28, 2009**—Office closed for Boxing Day
- Thursday, December 31, 2009**—Office closing at 3:00pm
- Friday, January 1, 2010**—Office closed for New Year's Day

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STATISTICS

December 2009

Representatives: 16,431
Associate Brokers: 1,769
Managing Brokers: 1,336
Total Licensees: 19,536
Brokerages (including branch offices and sole proprietors): 1,401

Role of the Council

The Real Estate Council is a regulatory agency established by the provincial government. Its mandate is to protect the public interest by enforcing the licensing and license 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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Receiving Deposit Money Paid in Respect of Rental Real Estate

The October 2009 *Report from Council* contained an article entitled ‘Is there a difference between “commercial leasing” and “residential rentals”?’ This article resulted in a question as to whether a person who is licensed to provide trading services only, and who is involved in the initial rental or leasing of real estate, may collect security deposits in relation to that trade.

The definition of “trading services”, found in section 1 of the *Real Estate Services Act*, includes “receiving deposit money paid in respect of the real estate”. Therefore, a person who is licensed to provide trading services only may collect security deposits, pet damage deposits, and other deposits paid in respect of the rental or leasing of the real estate. Section 27 of the *Real Estate Services Act* requires that this money be promptly delivered to the brokerage for deposit into the brokerage’s trust account, from which it may be disbursed in accordance with the instructions of the landlord.

Those who are licensed to provide trading services only may not provide any rental property management services related to the ongoing management of the rental real estate. ■



Brokerage Standards Manual Reminder

Managing brokers are reminded that the Council has posted, on its website, the recently written *Brokerage Standards Manual*. The *Brokerage Standards Manual* has been developed to assist managing brokers in discharging their duties under the *Real Estate Services Act*. The Council urges all managing brokers to review this newly revised and expanded manual.

The *Brokerage Standards Manual* replaces the former *Office Practice Manual* and *Corporate Office Manual*.

If brokerages still have copies of either of the latter manuals, they should be recycled as the information is now out of date. The *Brokerage Standards Manual* was developed with the participation of several real estate licensees and has been thoroughly reviewed by an editorial committee. The Council is appreciative of licensees’ suggestions and comments, and would welcome any further input licensees may have to improve the *Brokerage Standards Manual*. Suggestions may be forwarded to the Council office at info@recbc.ca. ■



The newly-written **Brokerage Standards Manual** is available in a dynamic web version as well as a PDF version.



The Changing Face of REP

Since the inception of the Relicensing Education Program (REP), the Council has worked diligently with course providers to ensure that more courses are made available for the rental and strata management segments of the industry. There are currently 93 REP approved courses that all licensees may complete, five of which have been specifically designed for the rental and strata property management industry. The Council worked with the Professional Association of Managing Agents (PAMA) and Langara College for the purposes of adding new courses and recently approved Residential Tenancy Law for Property Managers and Advanced Strata Law.



In addition to improving the selection of in-class courses, the Council is looking at alternate forms of course delivery, such as online, teleconference or webinar, to better accommodate licensees, particularly those in more remote regions of the province and licensees with disabilities. It is hoped that alternative courses will be available sometime in the near future.

Finally, as reported in the August 2009 REP Sheet, the Council continues to work with the British Columbia Real Estate Association so that licensees receive a comprehensive program for continuing education. In working toward this goal, as previously reported, the Council has decided to:

1. Maintain the requirements set out for the first REP cycle. This means that in order to renew a licence in 2009 or 2010:

- **Individuals who are licensed to provide trading services must complete 2 courses:** 1 elective course and the mandatory “What Brokerages and REALTORS® Need to Know About Agency” course.
- **Individuals who are licensed for rental property management or rental property and strata management only must complete 2 elective courses.**
- **Individuals licensed for strata management services only** may be eligible for limited exemptions and should consult with the Council’s Education staff or visit www.recbc.ca for further information.

2. Revise the second cycle REP requirements to eliminate the requirement for an elective course for most licence categories. This means that in order to renew a licence in 2011 or 2012:

- **Individuals licensed to provide trading services only must complete** either the Real Estate E&O Insurance Legal Update course OR the Real Estate E&O Insurance Commercial Legal Update course.
- **Individuals licensed to provide trading services PLUS either rental property management services OR strata management services OR both must complete** the Real Estate E&O Insurance Legal Update course OR the Strata Law/Legal Update course OR the Real Estate E&O Insurance Commercial Legal Update course.
- **Individuals licensed to provide strata management services OR rental property management services OR both must complete** one elective course.

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

In addition to improving the selection of in-class courses, the Council is looking at alternate forms of course delivery, such as online, teleconference or webinar.

Providing Real Estate Services Under the *Real Estate Services Act*

The *Real Estate Services Act* (RESA) contains an important distinction from the former *Real Estate Act* relating to the provision of services. Most provisions of the former Act did not apply to licensees if they were acting on their own behalf in a transaction, or providing real estate services free of charge, or acting under one of the available exemptions. This has changed under RESA.

Section 2 of RESA states that:

“2 (1) This Act applies to every person who provides real estate services to or on behalf of another for or in expectation of remuneration.

(2) In addition but subject to the rules, this Act applies to every licensee who provides real estate services, even if the licensee

(a) provides real estate services on the licensee’s own behalf;

(b) provides real estate services to or on behalf of another but not for or in expectation of remuneration, or

(c) would otherwise be exempted by this Act or the Regulations from the requirement to be licensed in relation to the provision of those real estate services.”

Unless they are acting under one of the exemptions related to managing their own rental real estate (section 9-1 of the Council Rules), managing rental real estate owned by their family (section 9-2 of the Council Rules), or managing the common assets of a strata corporation in which they own a strata lot (section 9-3 of the Council Rules), this means that **the requirements of RESA, including the Regulations, By-laws, and Rules, apply to licensees even if they are providing real estate services free of charge, acting on their own behalf, or could have acted without being licensed because they could have been exempt.**

For example, the Council has seen instances where licensees have not provided their brokerage with documentation related to a purchase of real estate they have made on their own behalf. This is a contravention of section 3-2 of the Council Rules; licensees are required to provide their brokerage with copies of the Disclosure of Interest in Trade and any other disclosure documents involved in the trade, the Contract of Pur-



chase and Sale, and all other documents or information required under sections 8-4 and 8-5 of the Council Rules in relation to the purchase of real estate, even though it has been purchased on their own behalf.

These requirements also apply when the licensee is selling real estate on their own behalf.

The sections of the Council Rules referred to in this article may be referenced at www.recbc.ca/consumer/rules.htm. ■

A Seller’s Financial Obligations and Clearing Title Avoiding Surprises at Closing

Licensees should be aware that, in some instances, sellers may find themselves unable to clear title as their financial obligations are greater than they expected and exceed the proceeds of the sale. Examples of this might occur when penalties are applied for the early pay-out of a mortgage, interest has accumulated if mortgage payments have fallen into arrears, or if a lien against the property is unsatisfied. The amounts of these sorts of financial obligations can be very substantial and, when combined with commissions payable, may create a circumstance where the seller has no practical remedy and the transaction collapses, leaving the buyer, the seller and the licensees involved all in regrettable positions with potential legal implications.

At the time of listing a property, it is a prudent practice for licensees to discuss with a

seller their obligation to clear title and the nature of the expenses they will face at closing. Licensees should advise their seller-clients to review the terms of their mortgage, as well as seek written confirmation from their mortgagees of the amount of any outstanding mortgage balances, accrued interest, or penalties.

A seller that is planning on acquiring another property, based on the sale of an existing property, may also want to familiarize themselves as to the portability of their existing mortgage and any terms, conditions and time limitations that may apply.

Licensees who advise and assist their clients in obtaining clear and certain information as to their financial obligations at



the time of listing a property, place their clients in a position of being able to make informed decisions when considering any offers. This ultimately sets the stage for a smooth completion without surprises.

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

Agency Issues Related to Commercial Trading Services

There are many differences between residential and commercial trades in real estate, one of the more common being that the parties involved in a commercial trade are often thinking about the investment value of real estate more so than its value as shelter. They may have either in-house or independent professional advisors, such as accountants and lawyers, assisting them in analyzing this investment value and determining the best way to structure ownership and use to maximize that value. The relative sophistication of the parties may affect the types of services or level of advice expected from licensees. With this in mind, the nature of representation the brokerage and licensee are providing to the parties involved in a commercial trade in real estate, and what duties are owed to those parties by the brokerage and licensee, can sometimes be misunderstood.

Section 5-10 of the Council Rules requires licensees to disclose matters related to the nature of the representation they will be providing.

5-10 Disclosure of representation and relationship in trading services

Before providing trading services to or on behalf of a party to a trade in real estate, a licensee must disclose the following to the party:

- (a) the nature of the representation that the licensee will provide to the party;
- (b) as applicable,
 - (i) that the licensee, or a related licensee, is or expects to be providing trading services to or on behalf of any other person, in any capacity, in relation to the same trade in real estate,
 - (ii) that the licensee, or a related licensee, is or expects to be receiving remuneration relating to trading services referred to in subparagraph (i) from any other person, and
 - (iii) the nature of the licensee's relationship, or the relationship of the related licensee, with any person referred to in subparagraph (i) or (ii).

In providing trading services, whether those services are related to commercial or residential real estate, it is important for the brokerage and licensee and the party to whom the services are being provided, whether that is the seller/landlord/lessor ("seller"), or the buyer/tenant/lessee ("buyer"), or both, to understand the nature of the relationship between them because the duties and obligations of the brokerage and the licensee are determined by that relationship.

The most common relationship options are single agency, limited dual agency, and no agency. The nature of the relationship should be established at the earliest opportunity and one way this may be accomplished is to use the *Working with a REALTOR®* brochure, or some similar document, to explain the various types of agency relationships and what duties and obligations are owed in each case. The relationship can be *express*, as in the case of a signed Listing Contract or Buyer's Agency Contract or *implied* by the conduct of the parties. In the majority of cases, the representation that is at least initially offered and agreed to is single agency representation where the brokerage and the licensee represent either the seller or the buyer. This may change, becoming limited dual agency if the brokerage represents both the seller and the buyer. However, it is not always necessary that a brokerage be the agent of the buyer or seller.

Adhering to the four D's can prove helpful in fulfilling the disclosure requirements of section 5-10 of the Council Rules:

1. **Decide** which party you wish to represent and the nature of the representation, and obtain the consent of that party to do so;
2. **Disclose** to all parties so they know who you are representing;
3. **Document** the decision and disclosure; and
4. **Demonstrate** actions that are consistent with what you have decided, disclosed and documented.



Further information outlining the most common relationships and the duties and obligations of the brokerage and the licensee in each type follows on the next page. It is important to remember that a brokerage and client may agree to alter the duties and obligations of these typical relationships, thereby customizing the services to be provided. Whatever relationship is agreed to, the Council encourages licensees to confirm these relationships in writing so as to avoid misunderstanding. Remember: Your conduct must be consistent with the agency relationship that has been established. More information is also available on pages 16 through 21 of the Licensee Practice Manual, 6th Edition. Questions may be directed to info@recbc.ca.

Obligations Related to Various Licensee Service Relationships

The relationship between a brokerage and a seller or buyer can be one of agent and principal, no agency, or limited dual agency. The following chart (next page) outlines the various obligations that a brokerage and its related licensees have depending on the service relationship that is established. The reference to "customer" is a reference to a relationship in which there is no agency representation. The reference to "client" is a reference to the principal and agent relationship. ■

General Obligations	To Customer (no agency)	To Client (single agency)	As Limited Dual Agent
1. Perform mandate	No	Yes	Yes
2. Obey instructions	No	Yes	*
3. Act in person	No	Yes	Yes
4. Honesty	Yes	Yes	Yes
5. Act in impartial, objective manner	No	No	Yes
6. Exercise care and skill	Yes	Yes	Yes
7. Disclose information concerning:			
7.1 Other party's maximum/minimum price or terms	No	Yes	No
7.2 Other party's motivation	No	Yes	No
7.3 Material defects in the seller's property	Yes	Yes	Yes
7.4 Buyer's financial ability to complete transaction	No	Yes	No
7.5 Other confidential information obtained from other party	No	Yes	No
8. Provide confidential advice on any or all relevant matters	No	Yes	No
9. Help negotiate and draft favourable terms	No	Yes	No
10. Recommend relevant "experts" (appraisers, surveyors, inspectors, etc.)	No	Yes	No
11. Present, in a timely manner, all offers, counter-offers, etc.	Yes	Yes	Yes
12. Convey, in a timely manner all information that party wishes to have communicated	Yes	Yes	Yes
13. Keep fully informed regarding the progress of the transaction	Yes	Yes	Yes
Fiduciary Obligations			
14. Loyalty	No	Yes	No
15. Avoid all conflicts of interest			
15.1 Not act for both parties	No	Yes	N/A
15.2 Not make secret profit	No	Yes	Yes
15.3 Not buy client's property	No	Yes	N/A
15.4 Not sell own property to client	No	Yes	N/A
15.5 Not act for parties whose interests conflict	No	Yes	N/A
16. Not misuse confidential information	No	Yes	Yes
17. Disclose all personal (brokerage's) conflicts of interest	No	Yes	Yes
Statutory Duties			
18. To account	Yes	Yes	Yes
19. Other miscellaneous statutory duties	Yes	Yes	Yes
Vicarious Liability			
20. Client vicariously liable for misconduct of brokerage	No	Yes	**
Non Agency Services (May also be provided in agency relationships)			
21. Provide real estate statistics, comparable property information, etc.	Yes	Yes	Yes
22. Provide standard form agreements and other relevant documents	Yes	Yes	Yes
23. Act as a scribe in the preparation of standard form agreements, etc.	Yes	Yes	Yes
24. Provide the names of "experts" (appraisers, surveyors, inspectors, etc.)	Yes	Yes	Yes

*Yes, if no conflict of interest

** Not known at the present time

Home Renovation Tax Credit — What Strata Managers Need to Consider

Home Renovation Tax Credit

In January 2009, the federal government announced, as part of its economic stimulus package, a new Home Renovation Tax Credit (HRTC) which is available to individuals for filing of the 2009 personal income tax return. The HRTC will be calculated at 15% of the amount spent on a renovation in excess of \$1,000 to a maximum of \$10,000 and, as such, the maximum credit available is \$1,350 regardless of the individual's level of income. An individual will not receive a tax refund as a result of this credit if the individual does not have any tax payable.

The Council has been advised that renovations must be qualified as “eligible expenditures” to an “eligible dwelling” during the “eligible period”. Eligible expenditures refer to renovations or alterations exceeding \$1,000 and do not include ordinary repair and maintenance items. As a general rule, if the item you purchase will not become a permanent part of your eligible dwelling, it is not eligible. Eligible dwellings refer to the dwelling the owner, their spouse or their minor children ordinarily occupy. The eligible period is for work to be performed or goods purchased after January 27, 2009 and for work completed before February 1, 2010.

Renovations to Common Property of a Strata Corporation

The Council has been advised that the HRTC is available to individual strata lot owners for expenditures relating to common property renovations made by their respective strata corporations. There is no apparent restriction as to where the monies for those renovations come from and, therefore, payment for such renovations can come from the strata corporation's contingency reserve fund, special levy fund, a previously established and funded special project fund, or the operating fund.



The HRTC is available to individual strata lot owners for expenditures relating to common property renovations made by their respective strata corporations.

When the common property renovations are completed and paid for by the strata corporation, each individual owner will be eligible to claim their proportional share of those expenditures, which is based on the unit entitlement of their respective strata lot. If a renovation project started before January 27, 2009 or if the contract to do the renovation was signed by the strata corporation prior to this date, the renovation would not be eligible.

Documentation for Common Property Renovations for HRTC

The Council has been advised that a statement, similar to that prepared for a proposed special levy payment schedule, which indicates the total expenditure for the renovation and the individual strata lot owner's unit entitlement share of that expenditure, is sufficient documentation to support the strata lot owner's claim for this tax credit. There appears to be no requirement to provide each owner with

copies of all invoices or a detailed listing of each item in a renovation project.

If a brokerage licensed to provide strata management services agrees to prepare and provide this documentation for common property renovations that took place within the eligible time period, in accordance with section 5-1 (6) of the Council Rules, this addition to the terms of the written service agreement, including any fee that is to be charged the strata corporation client by the brokerage, must be in writing and signed by the strata corporation client and an authorized signatory of the brokerage.

For further information on eligibility criteria for the HRTC, licensees may wish to advise their strata corporation clients to seek advice from a tax consultant or contact Canada Revenue Agency (CRA) and/or visit their website at www.cra-arc.gc.ca/tx/ndvdlsgmnts/hmwnt/hrtc/lgbly-eng.html. ■

Rental Property Managers' Role at Residential Tenancy Branch Dispute Resolution Hearings

Recently, the Unauthorized Practice Committee of the Law Society of BC conducted an investigation with respect to the conduct of a licensee providing rental property management services at Residential Tenancy Branch ("RTB") Dispute Resolution Hearings. The purpose of the investigation was to determine whether the licensee contravened section 15 of the *Legal Profession Act*, which refers to a person's authority to practice law.

In this case, it came to the Committee's attention that a licensee had advertised the services of advocating and/or representing tenants, as well as owners, for a fee, at RTB Dispute Resolution Hearings, with whom the licensee's related brokerage may not have had written service agreements. These services were intended to be provided in expectation of remuneration.

Section 15 of the *Legal Profession Act* provides that no person, other than a practising lawyer, is permitted to engage in the practice of law. Section 15 defines the "practice of law" to include:

- (a) *appearing as counsel or advocate,*
- (b) *drawing, revising or settling*

...

- (ii) *a document for use in a proceeding, judicial or extrajudicial,*

...

- (iv) *a document relating in any way to a proceeding under a statute of Canada or British Columbia,*

but does not include

...

- (h) *any of those acts if not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,*

It is important for licensees providing rental property management services to understand that their attendance at RTB Dispute Resolution Hearings is as a landlord, in relation to the rental property, pursuant to the written service agreement



held between their related brokerage and the owner of rental real estate. The *Residential Tenancy Act* contemplates the term "landlord", in relation to a rental property, to include the owner's agent.

The Unauthorized Practice Committee has confirmed that they would take no position against licensees providing rental property management services who provided those services to owners of rental real estate, in relation to RTB Dispute Resolution Hearings, for the rental properties they are managing. The Committee also confirmed that a situation where a licensee is providing advocacy and related services in RTB Dispute Resolution Hearings to tenants or owners of rental real estate not managed by the licensee would constitute the unauthorized practice of law.

Licensees purporting to advocate on behalf of a tenant or owner of rental real estate for properties they are not managing may find themselves in a conflict with the Law Society for potentially contravening section 15 of the *Legal Profession Act*.

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

Licensees purporting to advocate on behalf of a tenant or owner of rental real estate for properties they are not managing may find themselves in a conflict with the Law Society.

A Closer Look at Common Property Parking Stalls/Storage Lockers: The Role of Strata Corporations and Strata Managers

Background

In the April 2009 *Report from Council* article entitled “Parking Stalls/Storage Lockers”, licensees acting on behalf of sellers were cautioned not to assume that the buyer would have the use of the same parking stalls and storage locker or even the same number of parking stalls and storage lockers that the seller used.

Licensees were advised that if the parking stall/storage locker was part of a strata lot, limited common property or under a lease from the developer, the parking stall/storage locker information could be included on the listing.

However, if the parking stall/storage locker was designated as common property, the listing licensee was advised to confirm with the strata council which parking stall/storage locker will be assigned to the buyer.

If the strata council confirmed the parking stall/storage locker information in writing, that information could then be included on the listing with the notation “subject to the provisions of the *Strata Property Act*”.

Failing to confirm with the strata council what common property parking stall/storage locker would be assigned to the buyer and, if the parking stall/storage locker is common property, failing to advise buyers that the allocation was subject to the *Strata Property Act* can be costly for the seller.

In the case of *Adibfar v. Kaulius*, the buyers successfully sued the sellers who had promised that two parking stalls would be included with the suite. Subsequently, the strata council amended the allocation of common property and allocated only one parking stall per strata lot. The extra parking stalls were available for rent at a cost of \$20 per month on a first come,



first served basis. The buyers had to pay \$20 per month for the use of the second parking stall. The buyers sued the sellers for the cost of the extra \$20 per month fee for the second parking stall and for the difference in value of their suite with one parking stall instead of two. The Court found that the sellers were liable for misrepresentation.

The advice to listing licensees to confirm parking stall/storage locker assignments with the strata council has resulted in an increased number of calls to licensees providing strata management services.

Although proposed amendments to the *Strata Property Act* would require a Form B to include “...which parking stalls and storage lockers, if any, have been allocated to the strata lot”, this amendment would not require a strata corporation to advise which parking stalls/storage lockers will be allocated to a buyer.

This article examines the role of the strata corporation and strata manager in providing parking stall/storage locker information when requested by sellers or listing licensees.

The Role of the Strata Corporation

The strata corporation has a significant role to play in advising sellers with respect to what parking stalls and/or storage lockers the buyer will be entitled to use. However, some strata corporations do not retain parking stall or storage locker infor-

mation or are unwilling to advise the seller of what parking space or storage locker will be assigned to the buyer.

Strata corporations that do not maintain this information may be unaware of section 35(1)(c) of the *Strata Property Act*. Section 35(1)(c) requires a strata corporation to prepare and retain a list of owners which contains, among other things, the owners’ parking stall numbers. Thus, a strata corporation must know what stall is currently assigned to each owner and the strata corporation must also update the list after the sale of a strata lot to show what stall is assigned to the buyer.

Maintaining a list of parking stalls assigned to owners does not necessarily mean, however, that the same parking stall or the same number of parking stalls will be assigned to a buyer. As noted above, under section 76 of the *Strata Property Act*, it is within the discretion of the strata council, who are fulfilling the duties of the strata corporation, to allocate common property. Although buyers will often be assigned the same parking stall or storage locker as the seller, there is no guarantee that this will occur. If a strata council is going to make a change in respect of the allocation of parking or storage, such a change will often occur at the time of a sale. Thus, simply knowing what parking stall or storage locker is assigned to a seller is not sufficient to assure a buyer of the parking stall or storage locker that they will be entitled to use. It is also necessary that the strata council confirm

what parking stall or storage locker will be assigned to the buyer.

Because section 35 of the *Strata Property Act* requires the strata corporation to update the owners' list with the buyer's parking stall allocation, a strata corporation should not refuse to advise sellers of what parking stalls would be assigned to the new buyer. Since the strata corporation will have to make the decision with respect to the allocation of common property parking stalls at some point, a strata corporation could be encouraged to make the decision in advance of the sale of any given unit, given the time sensitive nature of selling a unit and, in some cases, the infrequency of strata meetings.

The Role of the Strata Manager

The strata manager is obligated to carry out the duties of the strata corporation which have been delegated to the strata manager by way of a strata management service agreement.

If the strata manager has taken on the responsibility for maintaining the documents required by section 35 of the *Strata Property Act*, the strata manager would be responsible for preparing and retaining the parking stall list.

In practice, many strata corporations have not prepared a parking stall list or, if one was initially prepared, it has not been kept up to date.

If the strata manager's service agreement includes maintaining the documents required by section 35 and if a current parking stall list does not exist, not only is the strata corporation not in compliance with the *Strata Property Act* but the strata manager may be in breach of their contractual obligations to the strata corporation.

To ensure that the strata corporations are in compliance with section 35, strata managers should advise their clients of the obligation to prepare and retain parking stall lists.

If the strata management contract obligates the strata manager to maintain the documents as set out in section 35, the strata manager should ensure that the parking stall list is prepared and maintained. Alternatively, if the brokerage does not wish to assume the responsibility to prepare and maintain the parking stall list required by section 35 of the *Strata Property Act*, the brokerage should amend its contract with the strata corporation to delete this obligation. The

76 of the *Strata Property Act* and that it can be changed as permitted by that section.

If the strata corporation refuses to maintain or refuses to advise a seller what parking stalls will be assigned to the buyer, the strata manager has no choice but to advise the seller that such information is not available. As indicated above, if the strata corporation has refused to maintain this information, the strata manager may want to amend their contract to ensure that they are not obligated to maintain these documents. If the strata corporation refuses to provide this information, it would then be up to the buyer to determine whether they wish to proceed with the sale.

If the parking stall/storage locker is designated as common property, the listing licensee is advised to confirm with the strata council which parking stall/storage locker will be assigned to the buyer.

Storage Lockers

Section 35 of the *Strata Property Act* does not require that a strata corporation maintain a list of storage lockers allocated to the exclusive use of owners or tenants. Nonetheless, if the storage lockers are common property, they are subject

responsibility would then rest with the strata corporation.

Assuming that the strata corporation has maintained an up to date list of parking stall numbers and will advise sellers of which parking stalls will be assigned to the buyers, when such advice is being given to the seller, the strata manager should ensure that:

- (a) the strata corporation has authorized the exclusive use of the parking stall for the buyer and that the strata manager is not making the decision without the direction of the strata council;
- (b) the strata council has authorized the strata manager to release the information;
- (c) the information provided to the seller includes the advice that the parking stall assignment is based on section

to the same allocation provisions as noted above under section 76 of the *Strata Property Act*, namely that the storage lockers are within the control of the strata corporation and can be allocated for the exclusive use of an owner or tenant, pursuant to section 76 of the *Strata Property Act*.

Although the strata corporation is not obligated to maintain the list, it is in the interest of all owners for a strata corporation to do so and to advise sellers of what storage locker (if any) will be allocated for the exclusive use of a buyer of their strata lot.

If strata corporations are unwilling to maintain the list or provide the information to a seller, as with parking stalls, the strata manager must advise that the information is not available. ■

Disciplinary Decisions

Since the October 2009 *Report from Council newsletter*, the following actions have been taken as a result of disciplinary hearings and Consent Orders conducted by the Council.

Trading Services

Feroz Dean

ISSUE: Feroz Dean, representative, Fraseridge Realty Ltd. dba Amex-Fraseridge Realty, Vancouver, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he: (a) listed and marketed a property without the consent of the owner of the property, contrary to section 4-8 of the Council Rules; (b) attempted to enter into a listing agreement with a party who was already subject to an accepted Contract of Purchase and Sale in relation to the same property and represented by another licensee, contrary to section 5-5 of the Council Rules; and (c) while providing real estate services to SK and HK, failed to provide those services with reasonable care and skill, contrary to section 3-4 of the Council Rules.

RESULT: Feroz Dean was suspended for twenty-one (21) days from November 18, 2009 to December 8, 2009 (inclusive) and was ordered to successfully complete the disciplinary education assignment applicable to Chapter 2 (The *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2009" course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Jeffrey Lee

ISSUE: Jeffrey Lee, associate broker, West Coast Realty Ltd. dba Sutton Group-West Coast Realty, North Vancouver, was found by a Discipline Hearing Committee to have committed professional misconduct within the meaning of sec-

tion 35(1) of the *Real Estate Services Act* in that he, in the provision of property management services to his client with respect to property owned by his client on West Keith Road in North Vancouver, B.C.: (a) contrary to section 3(1) of the *Real Estate Services Act*, allowed his wife to provide rental property management services to his client when she was not licensed to do so and he demonstrated incompetence in that regard; (b) contrary to section 7(3)(a) of the *Real Estate Services Act*, provided real estate services directly to his client and not through his brokerage; (c) contrary to section 7(3)(b) of the *Real Estate Services Act*, directly or indirectly, accepted remuneration for real estate services from his client and not his brokerage; and (d) contrary to section 3-3(1)(a) and 3-3(1)(c) of the Council Rules, authorized extensive repairs and renovations to the property and paid for those repairs and renovations, without proper authorization or approval from his client.

RESULT: Jeffrey Lee was suspended for fourteen (14) days from November 11, 2009 to November 24, 2009 (inclusive) for professional misconduct. Further, Jeffrey Lee was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 12 (Law of Agency) of the Real Estate Trading Services Licensing and to pay enforcement expenses to the Council in the amount of \$3,176.50.

Yaakov (Jacky) Levi

ISSUE: Yaakov (Jacky) Levi, currently unlicensed, entered into a Consent Order with the Council in which he consented to an Order that, while he was licensed as a representative with Crest Realty Westside Ltd. dba Re/Max Crest Realty Westside, Vancouver, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 3-4 of the Council Rules in that he: (a) led the buyer and/or his representative to believe that the seller had verbally accepted the buyer's offer dated April 11, 2008, except

for the price, which was verbally countered by the seller and verbally accepted by the buyer, and also, except for the completion, possession and adjustment dates, which the seller requested an extension to give the said dates to the buyer and which dates the buyer was agreeable on any dates chosen by the seller, which he knew or ought to have known was untrue or misleading in that he had the seller accept another offer; and (b) failed to ensure that all offers, counter-offers and extensions to the said Contract of Purchase and Sale dated April 11, 2008 were made by the seller in writing and signed by the seller.

RESULT: Yaakov (Jacky) Levi was suspended for fourteen (14) days upon licence reissuance, ordered to successfully complete the disciplinary education assignments applicable to Chapter 9 (Professional Ethics) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Samrit Kaur Sihota

ISSUE: Samrit Kaur Sihota, representative, Camosun Properties Ltd. dba Re/Max Camosun, Victoria, entered into a Consent Order with the Council in which she consented to an Order that she: (a) committed professional misconduct within the meaning of section 35(1)(d) of the *Real Estate Services Act* in that she: (i) failed to clarify in the Contract of Purchase and Sale dated April 19, 2005, the exact nature of the interest in the property the buyers were purchasing as the sellers intended to subdivide the property into bare land strata lots, resulting in the buyers receiving a property significantly smaller than described in the legal description of the property in the contract; (ii) failed to name all of the owners of the property in the contract dated April 19, 2005 and obtain signatures from all of the owners in the acceptance portion of the contract; and (iii) marketed the property on the basis that it would be subdivided into bare land strata lots without ensuring

Disciplinary Decisions, *cont'd*

that the sellers had complied with the provisions of the *Real Estate Development and Marketing Act* and, in particular, section 4 and section 14; and (b) committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (i) contravened section 3-4 of the Council Rules by failing to ensure that the contract dated May 30, 2006 was made subject to the contractual interests of MH and EK in "Lot 1" by Contract of Purchase and Sale dated April 19, 2005; (ii) contravened section 3-3(1)(i) of the Council Rules by failing to take reasonable steps to avoid a conflict of interest, when she drafted the contract dated May 30, 2006 without obtaining the informed consent of MH and EK with whom she was in a limited dual agency relationship in the Contract of Purchase and Sale dated April 19, 2005; and (iii) contravened section 3-3(1)(d) of the *Real Estate Services Act* by failing to advise MH and EK to seek independent legal advice when the Contract of Purchase and Sale dated April 19, 2005, in which they were the buyers, had not completed with respect to the purchase of "Lot 1", which was being sold to new owners by Contract of Purchase and Sale dated May 30, 2006.

RESULT: Samrit Kaur Sihota was suspended for fourteen (14) days from November 18, 2009 to December 1, 2009 (inclusive) and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*) and Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course, to enrol in and attend the first available CPE course "Contracts: Keep on Top of Changes", and pay enforcement expenses to the Council in the amount of \$1,000.00.

Fatima (Tina) Maria Cooper

ISSUE: Fatima (Tina) Maria Cooper, representative, TRG The Residential Group Realty Ltd. dba TRG The Residential Group Realty, Vancouver, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (a) provided real estate services, includ-

ing property management services for which she was unlicensed, other than on behalf of the brokerage with which she was licensed, contrary to section 7(3)(a) of the *Real Estate Services Act*; (b) accepted remuneration in relation to real estate services from a person other than the brokerage with which she was licensed, contrary to section 7(3)(b) of the *Real Estate Services Act*; (c) failed to keep the managing broker of her brokerage informed of the real estate services she was providing, contrary to section 3-2(a) of the Council Rules; and (d) failed to ensure all real estate advertising included the name of her related brokerage, contrary to sections 4-5(2) and 4-6(2) of the Council Rules.

RESULT: Fatima (Tina) Maria Cooper was suspended for fourteen (14) days from November 18, 2009 to December 1, 2009 (inclusive), and was ordered to successfully complete the disciplinary education assignment applicable to Chapter 2 (The *Real Estate Services Act*) and pay enforcement expenses to the Council in the amount of \$1,000.00.

Kim Kruse Johannsen & Sean Robert Humm

ISSUE: Kim Kruse Johannsen, representative, Ocean Pointe Realty Ltd. dba Re/Max Ocean Pointe Realty, Chemainus, entered into a Consent Order with the Council in which he consented to an Order 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 an adequate level of supervision to a licensee while that licensee was performing duties on Mr. Johannsen's behalf, contrary to section 3-2(4) of the Council Rules; and (b) failed to act with reasonable care and skill in that he did not ensure a licensee properly completed the Contract by including Mr. Humm's name as the name of the person who had prepared the Contract and both Mr. Humm's name and Mr. Johannsen's in the agency disclosure section of the Contract, contrary to section 3-4 of the Council Rules.

ISSUE: Sean Robert Humm, representative, Ocean Pointe Realty Ltd. dba Re/Max Ocean Pointe Realty, Chemainus,

entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed to act with reasonable care and skill in that he failed to advise the Buyers to secure the Seller's agreement in writing to the addition of a subject to financing clause before they removed the existing subjects to clauses in the Contract, contrary to section 3-4 of the Council Rules.

RESULT: Kim Kruse Johannsen was reprimanded and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00 and to successfully complete the next available Unit 10, "Legal and Ethical Issues" of the BCREA Residential Trading Services Applied Practice Course.

RESULT: Sean Robert Humm was suspended for seven (7) days from December 2, 2009 to December 8, 2009 (inclusive) and was ordered to successfully complete the disciplinary education assignments applicable to Chapter 11 (Contracts for Real Estate Transactions) of the Real Estate Trading Services Licensing Course.

RESULT: Kim Kruse Johannsen and Sean Robert Humm were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Orlando Irvin Johannson

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 in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, as the selling agent in the purported sale of a property from LS and BM ("sellers") to AS ("buyer") by Contract of Purchase and Sale: (a) represented, or allowed the buyer to represent, to the sellers, the listing agent or both of them, on a contract addendum that a deposit of \$10,000.00 had been paid by the buyer and received by the brokerage, when he knew that was untrue or mislead-

Disciplinary Decisions, *cont'd*

ing and he failed to promptly clarify with the listing agent that the deposit had not been paid by the buyer or received by the brokerage, contrary to section 3-4 of the Council Rules; and (b) failed to promptly provide the contract to his managing broker and failed to immediately notify his managing broker that he had not received the deposit due within twenty-four hours of subject removal, as required by section 3-2(1) and (2)(b) of the Council Rules.

RESULT: Orlando Irvin Johannson was suspended for seven (7) days from December 2, 2009 to December 8, 2009 (inclusive) and was ordered to successfully complete the disciplinary education assignment applicable to Chapter 2 (The *Real Estate Services Act*) of the Real Estate Trading Services Licensing Course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Brinder (Bic) Hayer

ISSUE: Brinder (Bic) Hayer, representative, Langer Bros. Holdings Ltd. dba Coldwell Banker Boardwalk Properties, Prince George, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: (a) he confirmed he had completed the course requirements of the Council's Re-Licensing Education Program when he had not completed the course requirements, contrary to section 35(1)(g) of the *Real Estate Services Act*; and (b) 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 2-8.1 of the Council Rules.

RESULT: Brinder (Bic) Hayer was reprimanded and ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Clifford Maurice Shillington Re/Max Kelowna

ISSUE: Clifford Maurice Shillington, managing broker, Norwich Real Estate Services Inc. dba Re/Max Kelowna, Kel-

owna, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he failed, contrary to section 3-1(1)(b) of the Council Rules, to ensure that the business of Re/Max Kelowna was carried out competently and in accordance with the Act, Regulations and Council Rules and, contrary to section 3-1(3)(a) of the Council Rules, to ensure the trust accounts and records of the brokerage were maintained in accordance with the *Real Estate Services Act* and Council Rules.

ISSUE: Norwich Real Estate Services Inc. dba Re/Max Kelowna, Kelowna, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that it: (a) failed, contrary to section 27(4) of the *Real Estate Services Act*, in respect of money held by the brokerage as a holding brokerage on behalf of the Service Brokerages, to obtain a separate written agreement in which the principals of the Service Brokerages agreed to a trust deposit being held by Re/Max Kelowna rather than the Service Brokerages; and (b) failed, contrary to section 7-1.1(2)(a) of the Council Rules, while holding money as a holding brokerage on behalf of the Service Brokerages, to deposit the money held in trust for the Service Brokerages in a separate trust account in the name of the Service Brokerages.

RESULT: Clifford Maurice Shillington was reprimanded.

RESULT: Norwich Real Estate Services Inc. dba Re/Max Kelowna was ordered to pay a discipline penalty to the Council in the amount of \$3,000.00.

RESULT: Clifford Maurice Shillington and Norwich Real Estate Services Inc. dba Re/Max Kelowna were ordered to be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Jinhong (Justin) Park

ISSUE: Jinhong (Justin) Park, representative, Hanna Realty Ltd., Coquitlam,

entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: (a) he confirmed he had completed the course requirements of the Council's Re-Licensing Education Program when he had not completed the course requirements, contrary to section 35(1)(g) of the *Real Estate Services Act*; and (b) 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 2-8.1 of the Council Rules.

RESULT: Jinhong (Justin) Park was reprimanded and ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Home Team Realty Ltd.

ISSUE: Home Team Realty Ltd., Victoria, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

RESULT: Home Team Realty Ltd. was reprimanded and ordered to pay enforcement expenses to the Council in the amount of \$1,000.00.

Richard Kurt Otto Wittstock Amacon Realty Ltd.

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

ISSUE: Richard Kurt Otto Wittstock, managing broker, Amacon Realty Ltd., Vancouver, entered into a Consent Order

Disciplinary Decisions, *cont'd*

with the Council in which he consented to an order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant's Report was filed with the Council by the prescribed date.

RESULT: Amacon Realty Ltd. was reprimanded.

RESULT: Richard Kurt Otto Wittstock was reprimanded.

RESULT: Further, Amacon Realty Ltd. and Richard Kurt Otto Wittstock were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Heung Ki (James) Min

ISSUE: Heung Ki (James) Min, representative, Hanna Realty Ltd., Coquitlam, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that: (a) he confirmed he had completed the course requirements of the Council's Re-Licensing Education Program when he had not completed the course requirements, contrary to section 35(1)(g) of the *Real Estate Services Act*; and (b) 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 2-8.1 of the Council Rules.

RESULT: Heung Ki (James) Min was reprimanded and was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, and to pay enforcement expenses to the Council in the amount of \$1,000.00.

Larry William Anderson

ISSUE: Larry William Anderson, representative, Envoy Realty Ltd. dba Sutton Premier Realty, Surrey, entered into a

Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* in that he failed to take reasonable steps to ensure that his advertising contained an accurate description of the square footage of a property, contrary to one or more than one of section 35(1)(d) of the *Real Estate Services Act* and section 3-4 of the Council Rules

RESULT: Larry William Anderson was ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2009" course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Robert Stephen Greene Smart Property Services Limited

ISSUE: Smart Property Services Limited, North Vancouver, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Robert Stephen Greene, managing broker, Smart Property Services Limited, North Vancouver, entered into a Consent Order with the Council in which he consented to an order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling his responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that he failed to ensure that the said Accountant's Report was filed with the Council by the prescribed date.

RESULT: Smart Property Services Limited was reprimanded.

RESULT: Robert Stephen Greene was reprimanded.

RESULT: Further, Smart Property Services Limited and Robert Stephen Greene were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Jun (Vivienne) Yu

ISSUE: Jun (Vivienne) Yu, representative, Westmar Realty Ltd. dba Macdonald Realty Westmar, Richmond, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that she: (a) contrary to section 3-2(4) of the Council Rules, permitted an unlicensed assistant to show the property and to present an offer and counter-offer to the seller's agent; and (b) contrary to section 6-1 of the Council Rules, paid remuneration to an unlicensed assistant for performing the services referred to above.

RESULT: Jun (Vivienne) Yu was reprimanded and was ordered to enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2009" course, and pay enforcement expenses to the Council in the amount of \$1,000.00.

Dan Richard Smallwood OK Valley Realty

ISSUE: Smallwood Realty Inc. dba OK Valley Realty, Westbank, currently unlicensed, entered into a Consent Order with the Council in which it consented to an Order that, while licensed as a brokerage, it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council by the prescribed date.

ISSUE: Dan Richard Smallwood, currently unlicensed, entered into a Consent Order with the Council in which he consented to an order that, while he was licensed as the managing broker with Smallwood Realty Inc. dba OK Valley Realty, Westbank, he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services*

Disciplinary Decisions, *cont'd*

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

RESULT: OK Valley Realty was reprimanded.

RESULT: Dan Richard Smallwood was reprimanded.

RESULT: Further, OK Valley Realty and Dan Richard Smallwood were jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,000.00.

Michael Fraser Murdoch & Christopher Earl Simmons Royal LePage Sunshine Coast

ISSUE: Michael Fraser Murdoch, representative, Pebbles Realty Ltd. (Scht) dba Royal LePage Sunshine Coast (Scht), Sechelt, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 2-13(2) of the Council Rules in that he failed to renew his licence within thirty days of his licence's expiry and he continued to provide real estate services after his licence had expired.

ISSUE: Christopher Earl Simmons, managing broker, Pebbles Realty Ltd. (Scht) dba Royal LePage Sunshine Coast (Scht), Sechelt, entered into a Consent Order with the Council in which he consented to an Order that he committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* in that he, as managing broker for the brokerage and in contravention of section 6(2) of the *Real Estate Services Act*: (a) permitted a licensee to provide trading services while not licensed to do so; and (b) failed to ensure that the said business of the brokerage was carried out in accordance with the Act, Regulations, Rules and/or Bylaws.

ISSUE: Pebbles Realty Ltd. (Scht) dba Royal LePage Sunshine Coast (Scht), Sechelt, entered into a Consent Order with the Council in which it consented to an Order that it committed professional misconduct within the meaning of section 35(1) of the *Real Estate Services Act* by contravening section 7(5)(a) of the *Real Estate Services Act* by permitting real estate services to be provided by an unlicensed individual.

RESULT: Michael Fraser Murdoch was reprimanded and ordered to enrol in and attend the first available "Real Estate E&O Insurance Legal Update 2009" course.

RESULT: Christopher Earl Simmons was reprimanded.

RESULT: Royal LePage Sunshine Coast (Scht) was reprimanded.

RESULT: Michael Fraser Murdoch, Christopher Earl Simmons and Royal LePage Sunshine Coast (Scht) are jointly and severally liable to pay enforcement expenses to the Council in the amount of \$750.00.

Strata Management Services

V.I. Strata Financial Management

ISSUE: Carole Walters, sole proprietor, dba V.I. Strata Financial Management, Nanaimo, entered into a Consent Order with the Council in which she consented to an Order that she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by contravening section 30 of the *Real Estate Services Act* in that, upon termination of the written services agreement with the a strata corporation, she paid the brokerage for two outstanding invoices out of monies held on behalf of the said strata corporation in the brokerage trust account without the instructions to do so from the strata council for the strata corporation.

RESULT: Carole Walters dba V.I. Strata Financial Management was reprimanded, ordered to pay a discipline penalty to the Council in the amount of \$1,000.00, to successfully complete the disciplinary education assignments applicable to Chapter 2 (The *Real Estate Services Act*), Chapter 3 (Professional Ethics) of the Strata Management Licensing 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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